

THIS NOTICE CONTAINS IMPORTANT INFORMATION THAT IS OF INTEREST TO THE REGISTERED AND BENEFICIAL OWNERS OF THE SUBJECT SECURITIES. IF APPLICABLE, ALL DEPOSITORIES, CUSTODIANS AND OTHER INTERMEDIARIES RECEIVING THIS NOTICE ARE REQUESTED TO EXPEDITE THE RE-TRANSMITTAL TO BENEFICIAL OWNERS OF THE SECURITIES IN A TIMELY MANNER.

LEHMAN BROTHERS UK CAPITAL FUNDING III LP (“LP III”)

EUR 500,000,000 FIXED/FLOATING RATE ENHANCED CAPITAL ADVANTAGED PREFERRED SECURITIES (“LP III PREFERRED SECURITIES”)

ISIN XS0243852562

21 September 2023

Liquidation of LB GP No.1 Ltd (“the Company”) and implications for parties interested in the LP III Preferred Securities

1 PRELIMINARY INFORMATION

- 1.1 THIS NOTICE IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION.
- 1.2 If you are in any doubt as to the action you should take, you are recommended to seek your own financial, legal, or other advice immediately from your stockbroker, bank manager, solicitor, accountant, or other appropriately authorised independent financial adviser.
- 1.3 If you have sold or otherwise transferred your entire (or any part of your) interest in the LP III Preferred Securities you should immediately forward this notice to the purchaser or transferee or to the stockbroker, bank, or other agent through whom the sale or transfer was effected for transmission to the purchaser or transferee.
- 1.4 This notice may contain certain information potentially relating to the future outlook for LP III and certain information is sourced from third parties. Any statements about the future outlook for LP III may be influenced by factors that could cause actual outcomes and results to be materially different and be out of the Joint Liquidators’ control. As a result, you should not rely on any forward-looking statements. Any forward-looking statements included in this notice are made or relayed only as of the date of this notice, and except as otherwise required by law, the Joint Liquidators undertake no obligation to test, audit, confirm, publicly update, or revise any such forward-looking statements to reflect subsequent events, circumstances or otherwise.
- 1.5 REGARDING SECURITIES IN RELATION TO LP I, LP II, LP III (defined in 2.1 below): **Your particular attention is drawn to the important developments referred to in paragraphs 4.29 to 4.37 on pages 10 and 11 of this Notice. The Joint Liquidators request that any questions or comments that you may have in connection with these developments be sent to us by email by no later than 12 midday (UK time) on Thursday 5 October 2023. Please send your emails to the email address shown in paragraph 9.1.2 on page 16 of this Notice.**

2 QUALIFICATION STATEMENT

2.1 This notice has been prepared using information obtained by Bruce Alexander Mackay and Matthew Robert Haw (i) acting as the Joint Liquidators of the Company; and (ii) acting as licensed insolvency practitioners specifically in relation to winding up:

2.1.1 Lehman Brothers UK Capital Funding LP (“**LP I**”)

2.1.2 Lehman Brothers UK Capital Funding II LP (“**LP II**”)

2.1.3 Lehman Brothers UK Capital Funding III LP (“**LP III**”)

2.1.4 Lehman Brothers UK Capital Funding IV LP (“**LP IV**”)

2.1.5 Lehman Brothers UK Capital Funding V LP (“**LP V**”),

(together “**the Partnerships**” or individually a “**Partnership**” as the context requires).

2.2 Reference to the Joint Liquidators throughout this notice also includes (where the context requires) Bruce Alexander Mackay and Matthew Robert Haw acting as insolvency practitioners for the purpose of winding up the Partnerships.

2.3 This notice provides an update regarding the progress of the liquidation of the Company and winding up of the Partnerships. This notice should not be used for any other purpose, and it cannot be relied upon to inform any investment decision in relation to any debt or financial interest in LP III and the Partnerships. We caution those parties interested in the LP III Preferred Securities and any other stakeholders who may have an interest in the winding-up of the Partnerships against using data in this notice as a basis for estimating the likelihood and/or value of any potential payment from LP III and/or any of the Partnerships.

2.4 The information set out in this notice is being distributed to all of those that are recorded as account holders in the relevant clearing system in relation to the LP III Preferred Securities (“**the Account Holders**”) at the same time. Further, a notice will be published via stock exchange announcements and Bloomberg explaining that this notice is available to Account Holders, such that the information set out in this notice does not constitute material non-public information.

2.5 Neither the Joint Liquidators nor their firm, RSM UK Restructuring Advisory LLP, (“**RSM**”) accept any liability whatsoever arising as a result of any decision or action taken or refrained from as a result of information contained in this notice.

2.6 This notice should be read in conjunction with the previous notices to the Account Holders issued by the Joint Liquidators, copies of which are available on request. To avoid unnecessary repetition, the content of earlier reports has not been included below unless directly relevant to the current update.

2.7 The Joint Liquidators reserve the right to maintain confidentiality on any issue they consider could be commercially sensitive and to refrain from providing detailed commentary on any issues that may fit into this category.

2.8 The Joint Liquidators, on behalf of the Company and the Partnerships, reserve all rights against third parties on all matters and no conclusion should be drawn by third parties as to the Joint Liquidators' and/or the Partnerships' position or legal arguments on any such matters from information contained or not contained within this notice.

3 **BACKGROUND**

3.1 Bruce Alexander Mackay and Matthew Robert Haw of RSM UK Restructuring Advisory LLP were appointed as joint liquidators (“**the Joint Liquidators**”) of the Company on 28 February 2017. The Joint Liquidators have issued seven earlier detailed notices to Account Holders. To avoid unnecessary repetition, Account Holders are referred to earlier reports for detail relating to historic matters and this report focuses on current relevant issues. Where possible, the same defined terms are used in this notice as used in earlier updates.

3.2 Although this specific notice is addressed and has been distributed (to the extent possible) to the Account Holders of the LP III Preferred Securities with ISIN XS0243852562 issued by LP III, this notice contains information that may be relevant to each of the Partnerships and is therefore to be read as a composite update to enable the Account Holders of Securities issued by each of the Partnerships to understand the position applicable to all of the Partnerships. Separate notices (in materially the same form) have been distributed to the Account Holders of Securities issued by each of the Partnerships.

4 **THE PARTNERSHIPS' ASSETS**

Cash held in LP III, LP IV and LP V

4.1 The table below summarises the cash balances that were held for LP III, LP IV and LP V at the date of liquidation (there was no cash held by LP I and LP II). The table goes on to show the current amount of cash held as of 21 September 2023, after deducting the funding of costs to date and the payment of distributions made so far to Account Holders of LP IV and LP V.

Receipts and payments summaries as at 21 September 2023

	LP III €	LP IV €	LP V \$
Asset Realisations			
Matured money market investment	12,820,347	10,817,135	26,729,664
Swaps settlement	-	-	2,000,000
Bank Interest	19,692	1,094	1,133,402
	12,840,039	10,818,229	29,863,065
Cost of Realisation			
Funding contributed to LB GP No.1 Ltd	(4,999,935)	(1,189,875)	(3,160,263)
Bank charges	(8)	(34)	(196)
Realised Fx Loss	(3,699)	-	-
	(5,003,643)	(1,189,909)	(3,160,459)
Distributions			
ECAPS Accountholders	-	(9,000,000)	(25,000,000)
	-	(9,000,000)	(25,000,000)
Current cash balances	€7,836,396	€628,320	\$1,702,606

Note: The only assets of LP I and LP II are the Sub-Notes claims in the LBH Administration, as such LP I and LP II have not realised any assets to date. The future realisations of LP I, LP II and LP III will depend upon eventual recoveries from LBH in relation to the Sub-Notes claims, which are subject to ongoing litigation. Liquidation costs remain subject to re-apportionment in due course, including some costs to LP I and LP II.

Claims by LP I, LP II and LP III against Lehman Brothers Holdings Plc (“LBH”)

- 4.2 Paragraphs 4.3 to 4.33 are only of direct relevance to the Account Holders of Securities issued by LP I, LP II, and LP III.
- 4.3 LBH issued subordinated loan notes to LP I, LP II, and LP III in return for the payment of the regulatory capital that had been raised by the issuance of the Securities by LP I, LP II, and LP III. These three Partnerships have a claim for payment of a dividend by LBH in relation to the subordinated notes that were issued.
- 4.4 The Joint Administrators of LBH have issued an updated estimated outcome statement for LBH dated June 2023, which is available for view on PwC’s website as follows:
- [Lehman Brothers Holdings PLC Update - June 2023 \(pwc.co.uk\)](https://www.pwc.co.uk/lehman-brothers-holdings-plc-update-june-2023)
- 4.5 The above link provides a narrative update relating to matters impacting the financial outcome for creditors of the LBH estate together with an updated estimated financial outcome statement and is directly relevant to the estimated value of the three Partnerships’ claims for payment of a dividend by LBH in relation to the subordinated notes.

- 4.6 The updated estimated outcome statement is based upon various assumptions which are explained in the estimated statement referred to in the above link.
- 4.7 In addition to the variables relating to the value of LBH's estate (i.e. what LBH may have available to distribute) and as explained in the above link, any value to be distributed to the three Partnerships will also be impacted by the final outcome of ongoing litigation between LBH, the three Partnerships and LBHI (see 4.9 below), in particular, applications for directions issued in March and April 2023.

Priority of subordinated claims against LB Holdings Intermediate 2 Limited ("LBHI2") and LBH

- 4.8 As explained in previous update notices, the subordinated claims of LBH against LBHI2, and of LP I, LP II, and LP III against LBH were found by the Court of Appeal to rank ahead of the respective claims of Scottish LP 3 and Lehman Brothers Holdings Inc. ("**LBHI**"). An application by LBHI to the Supreme Court for permission to appeal was not successful. The litigation that concluded in the Court of Appeal is hereinafter referred to as the "**ECAPS 1 Applications**" or "**ECAPS 1**".

March and April 2023 priority legal issues application and related Court applications

- 4.9 In March and April 2023 new directions applications were issued to seek the Court's determination on certain new areas of contention arising in relation to LBH's estate. The applications are summarised as follows:
- 4.9.1 Application notice dated 14 March 2023 between (1) The Joint Administrators of LBH and (2) the Company, (3) LBHI and (4) Deutsche Bank A.G. (London Branch) ("**DB**") whereby the Joint Administrators of LBH sought directions from the Court on the priority and payment of future distributions to the subordinated creditors of LBH (the "**ECAPS 2 Priorities Application**");
 - 4.9.2 Application notice dated 25 April 2023 between (1) the Joint Administrators of LBH and (2) the Company whereby the Joint Administrators of LBH sought directions in relation to their entitlement to pay a distribution to the Company in relation to the LBH Sub-Notes notwithstanding the failure of the Company to submit a proof of debt (the "**Distribution Application**"); and
 - 4.9.3 Application notice dated 27 April 2023 between (1) DB, (2) the Joint Administrators of LBH, (3) the Company and (4) LBHI, seeking an order that the legal issues 1,4 and 5 (as explained in the Directions Application) should be struck out on the basis of estoppel, issue estoppel and/or abuse of process (the "**Strike Out Application**").
- 4.10 The above applications are referred to as the "**ECAPS 2 Applications**" or "**ECAPS 2**" and a summary of the core aspects of the ECAPS 2 Applications is as follows.

ECAPS 2 Priorities Application: Priority legal issues as regards statutory interest

- 4.11 Whether, as argued by LBHI, the principal amount of the LBH Sub-Debt (Claim C) falls to be paid in priority to statutory interest payable on the claim in respect of the LBH Sub-Notes (Claim D), or whether, as argued by the Joint Liquidators and by DB, statutory interest payable on the LBH Sub-Notes falls to be paid in priority to the principal amount of the LBH Sub-Debt. (“**Priority Legal Issue 1**”)
- 4.12 Whether, as argued by the Joint Liquidators and DB, statutory interest payable on the claim in respect of the LBH Sub-Notes falls to be calculated by reference to the face amount of the LBH Sub-Notes, or as argued by LBHI, by reference to the discounted sum payable on that claim in accordance with Rule 14.44 of the Insolvency (England and Wales) Rules 2016. (“**Priority Legal Issue 2**”)
- 4.13 Whether, as argued by the Joint Liquidators and DB, the applicable period for the purposes of the calculation of statutory interest on the claim in respect of the LBH Sub-Notes begins with the date on which LBH entered administration, or, as argued by LBHI, on the date on which, in accordance with the subordination provisions of the LBH Sub-Notes, the holder of the LBH Sub-Notes became entitled to submit proofs of debt in LBH’s administration in respect of that claim (and, if so, what that date is). (“**Priority Legal Issue 3**”)

ECAPS 2 Priorities Application: Priority legal issues as regards the ECAPS Guarantees

- 4.14 Whether, as is argued by LBHI, clause 2.11 of the ECAPS Guarantees imposes upon the Holder (as defined therein) a trust in respect of any proceeds which have been distributed by LBH, which takes effect on receipt of those proceeds and requires such proceeds to be turned over to LBH. If so, what are the circumstances in which such trust arises and in respect of what proceeds? (“**Priority Legal Issue 4**”)
- 4.15 If LBH makes distributions on the LBH Sub-Notes but proceeds are thereafter ordered to be turned over to LBH by the Holder pursuant to clause 2.11 of the ECAPS Guarantees, what is the resultant order of priority as between the LBH Sub-Debt (Claim C) and the LBH Sub-Notes (Claim D), in respect of such sums received by LBH? (“**Priority Legal Issue 5**”)
- 4.16 LBH’s directions application dated 14 March 2023 and the accompanying witness statement of Edward John Macnamara, which provide further factual and background information to the statutory interest and ECAPS Guarantees issues, can be found on PwC’s website and the links are copied below:

[LBH – Application Notice dated 14 March 2023 \(pwc.co.uk\)](https://www.pwc.co.uk)

[LBH – Witness statement – 14 March 2023 – signed by Ed Macnamara \(pwc.co.uk\)](https://www.pwc.co.uk)

Strike Out Application

- 4.17 The Strike-Out Application, issued by DB, argues that some of the issues raised in the LBH Joint Administrators' application of 14 March 2023 have already been resolved by the ECAPS 1 Applications or that those issues should have been addressed during the ECAPS 1 proceedings.

Distribution Application

- 4.18 The circumstances which gave rise to the Distribution Application were as follows:
- 4.18.1 On 31 March 2023 the LBH Joint Administrators gave notice of their intention to declare an eighth interim distribution ("**the Dividend**") to unsecured, non-preferential creditors within two months from the last date of proving, being 28 April 2023.
 - 4.18.2 In the Dividend notice, the Joint Administrators anticipated that in addition to a further distribution being made to LBH's unsecured, non-preferential unsubordinated creditors, the amounts available for distribution would also enable a distribution to be made in respect of LBH's unsecured, non-preferential subordinated liabilities. This would mean a first distribution to the Company, as the senior subordinated creditor.
 - 4.18.3 Meanwhile, LBHI put the Joint Liquidators on notice that any dividend received from LBH should not be onward distributed by the Company for the benefit of the holders of the Securities; this being on account of LBHI's asserted position in relation to the ECAPS Guarantees, as described above.
 - 4.18.4 The Joint Liquidators of the Company opposed the Dividend because it would lead to prejudice to the holders of the Securities. This would arise from a loss of statutory interest payable by LBH on the amount of the Dividend paid to the Company, which could be held as un-distributable for some considerable time pending the final resolution of the ECAPS Guarantees position.
 - 4.18.5 The Joint Liquidators also formally opposed LBH's requirement for the Company to file proof of debt forms.
 - 4.18.6 These arguments and counterarguments ultimately resulted in the Joint Administrators of LBH filing the Distribution Application.
- 4.19 On 28 April 2023, on behalf of LPI, LP II, and LP III, the Joint Liquidators filed proof of debt forms in the LBH Administration. Given the Joint Liquidators' position that it was premature for the Company to be required to file proof of debt forms, these were filed without prejudice to the Company's position that it was in fact too early for proofs of debt to be filed.

- 4.20 On 6 June 2023 the LBH Joint Administrators postponed the Dividend pursuant to Rule 14.34(1) of the Insolvency (England and Wales) Rules 2016, pending the hearing of the Distribution Application.

ECAPS 2 Hearing – case management

- 4.21 A case management hearing took place on 4 May 2023, and at that hearing the Court determined the procedural timetable for the ECAPS 2 Applications. A copy of the transcript from the 4 May 2023 hearing can be found at Appendix 1 of this update. A copy of the sealed Order made by Mr Justice Hildyard setting out the procedural directions can be found on PwC’s website and a link is included below (the “**4 May 2023 Order**”):

[lehman-order-sealed-hildyard-j-may-23-priority-legal-issues-procedural-hearing.pdf \(pwc.co.uk\)](#)

- 4.22 The 4 May 2023 Order handed down after the case management hearing provides that the ECAPS 2 Applications will be heard together at a hearing listed to take place during the week commencing 9 October 2023. The hearing is estimated to last for 5 days including 1 day of judicial pre-reading.

- 4.23 The 4 May 2023 Order also provided a timetable for position papers and any further relevant evidence to be exchanged by the parties ahead of that hearing, as well as procedural directions in relation to the preparation for the hearing itself. In accordance with the 4 May 2023 Order the parties have now exchanged Position Papers and Reply Positions Papers. Copies can be found on PwC’s website and the links are copied below:

Position Papers exchanged on 30 June 2023:

[LB GP No1 Limited \(In Liquidation\) Position Paper \(pwc.co.uk\)](#)

[Deutsche Bank AG \(London Branch\) Position Paper \(pwc.co.uk\)](#)

[LBH Administrators’ Position Paper \(pwc.co.uk\)](#)

[LBHI Position Paper \(pwc.co.uk\)](#)

Reply Position Papers exchanged on 28 July 2023:

[LB GP No1 Limited \(In Liquidation\) Reply Position Paper \(pwc.co.uk\)](#)

[Deutsche Bank AG \(London Branch\) Reply Position Paper \(pwc.co.uk\)](#)

[LBH Administrators Reply Position Paper \(pwc.co.uk\)](#)

[LBHI Reply Position Paper - 28 July 2023 \(pwc.co.uk\)](#)

- 4.24 The 4 May 2023 Order also confirms that skeleton arguments must be exchanged by the parties by 2 October 2023.

4.25 A final hearing in relation to the ECAPS 2 Applications is listed from Monday 9 October 2023 to Thursday 12 October 2023 (“the **ECAPS 2 Hearing**”).

Application against third parties

4.26 By way of an application dated 8 April 2022 (the “**Third Parties Application**”) the Company filed an application against various third parties seeking a variety of monetary and non-monetary relief relating to the allegation that the third parties failed to intervene to prevent a breach a trust with the effect of reducing the value of funds potentially available to the Company and hence the Account Holders of the Securities of LP I, LP II, and LP III. The application has been stayed by consent between the parties until 28 days after the final determination of the ECAPS 2 Application.

Funds potentially flowing from the LBH estate to LP I, LP II and LP III

4.27 Following a review of the estimated value of LP I, LP II and LP III’s discounted claims in tandem with the LBH Joint Administrators’ most recently published estimated financial outcomes for the LBH stakeholders, the Joint Liquidators have prepared a table to show the potential flow of funds to LP I, LP II and LP III based on the outcome of ECAPS 1, before any entitlement to statutory interest. The sums ultimately to flow to LP I, LP II, and LP III are dependent on the final outcome of the ECAPS 2 Applications.

Please note that the figures in the table below are indicative only at this stage and subject to a number of significant assumptions. The figures are as disclosed by the LBH Joint Administrators in the latest public filing (June 2023) and have not been tested or audited by the Joint Liquidators. The Joint Liquidators refer readers to sections 1 and 2 of this update.

Estimated outcome for LP I, LP II and LP III as subordinated creditors of LBH	Notes	Base Case Recovery £'m	High Case Recovery £'m
Total estimated funds available	1	548	711
Estimated deductions	1	(315)	(221)
Total potential recoveries for LP I, LP II and LP III		233	490
Represented by			
LP I, LP II and LP III subordinated claims			
- Principal claims (£168m discounted)	2	(168)	(168)
- Accrued unpaid interest to 15.09.2008 (undiscounted)	3	(19)	(19)
Estimated surplus	4	46	303

Notes

1. The above estimated outcomes have been taken from LBH’s June 2023 update (linked at paragraph 4.4 of this report) and all the assumption in their update should be applied to the above estimated outcomes.
2. The figure of £168m represents the combined estimated discounted principal claims of LP I, LP II, and LP III. It is currently estimated that there will be more than sufficient funds in both the ‘Base Case’ and ‘High Case’ for LP I,

LP II, and LP III's collective total principal claim of £168m to be paid in full. This is subject to the Court rulings following the hearing of the ECAPS 2 Applications, in particular any finding in relation to the ECAPS Guarantees and Clause 2.11.

3. In addition to the principal claims the proof of debt forms filed in the LBH Administration on 28 April 2023 included an additional claim for accrued and unpaid interest from the date the last coupon was paid on the Sub-Notes up to the date of the LBH Administration on 15 September 2008. The additional accrued interest claims are not subject to discounting.

4. After the payment of LP I, LP II, and LP III's principal discounted subordinated claims totalling £168m and the additional accrued interest claims of £19m an estimated surplus of between £46m and £303m will remain in the LBH estate, based on the LBH June 2023 creditor update. Based on legal advice received, it is the Joint Liquidators' position that all and any part of the estimated surplus should first be applied to settle the statutory interest payable on the LP I, LP II, and LP III's principal claims in priority to any claim made by LBHI in respect of the LBHI Sub-Debt.

4. The basis of calculating the LP I, LP II and LP III statutory interest claim is yet to be determined. Both the priority of payment of the statutory interest due on the LP I, LP II and LP III Sub-Notes and the calculation methodology of the statutory interest due are to be determined within the ECAPS 2 Applications to be heard in October 2023.

4.28 At this stage the Joint Liquidators do not know when surplus funds are likely to start to flow from the LBH estate to enable interim distributions to be made to the Account Holders of the Securities in LP I, LP II, and LP III but, subject to what is said in paragraphs 4.29 to 4.37 below, it may not be possible until the issues set out in the ECAPS 2 Applications have been determined by the Court (including any appeals).

Proposed agreement concerning distributions from LBH

4.29 Following recent confidential, without prejudice and subject to contract discussions between certain Account Holders, a possible outline of an agreement concerning the distributions from LBH was brought to the Joint Liquidators at the beginning of September 2023. The terms of the possible agreement have since been developed and the parties to the ECAPS 2 Applications (and other relevant parties) have, subject to contract, agreed preliminary terms for the distribution of funds from LBH to LBH's subordinated creditors. The proposed terms of that distribution are set out in the terms sheet at Appendix 2 of the Notice ("**the Proposed Terms**"). The documents and information provided in Appendix 2 are confidential, without prejudice and subject to contract. The Proposed Terms involve the cessation of certain aspects of the litigation referred to in this update concerning GP1 and LBH, in summary as follows:

4.29.1 Priority Legal Issues 2, 3, 4 and 5 in the ECAPS 2 Application would be withdrawn. Priority Legal Issue 1 would remain to be resolved by the Court.

4.29.2 The Distribution Application would be withdrawn.

4.29.3 Priority Issues 4 and 5 would be withdrawn from the Strike Out Application.

4.29.4 The Third Parties Application would be withdrawn in full.

4.30 The Proposed Terms would require implementation ahead of the ECAPS 2 Hearing, due to start on 9 October 2023.

- 4.31 Appendix 3 is a comparative estimated outcome statement that demonstrates some of the possible Base Case Recovery / High Case Recovery (terms as per table in paragraph 4.27 above) in relation to the ECAPS 2 Applications and interrelation with the Proposed Terms. Please note that the sums disclosed are after accounting for the costs incurred in the LBH administration estate but are subject to costs incurred in the GP1 liquidation estate that are attributable to LP I, LP II and LP III.
- 4.32 The Joint Liquidators are aware that efforts are being made by certain Account Holders, that have taken an active participation in the winding up of the Company and the Partnerships, to determine whether support for the Proposed Terms can be confirmed in writing by certain known and significant Account Holders in each of LP I, LP II and LP III. A template letter of support (**the “Letter of Support”**) is set out in Schedule 1 of Appendix 2 to this notice. One of the purposes of canvassing levels of support from Account Holders is to allow the Joint Liquidators to informally ascertain levels of support for the Proposed Terms on a non-binding basis. The Joint Liquidators are supportive of the Proposed Terms but before entering final binding agreements in relation to the Proposed Terms want: (i) evidence of support (in the form of a Letter of Support) from at least a simple majority of Account Holders in each of LPI, LP II and LP III; and/or (ii) to understand whether there are any significant objections from Account Holders in relation to the Proposed Terms.
- 4.33 Account Holders that wish to express their support for the Proposed Terms (and the Joint Liquidators entering final and binding agreements in that regard) should complete the Letter of Support and return it urgently to the Joint Liquidators.
- 4.34 Alternatively, any Account Holders with any comments or significant objections relating to the Proposed Terms should make them known urgently to the Joint Liquidators.
- 4.35 Any Letters of Support, comments or objections from Account Holders should be provided as soon as possible by email to the Joint Liquidators in accordance with paragraph 9.1.2 below and in any event no later than 12 midday (UK time) on Thursday 5 October 2023.
- 4.36 Any Account Holder that is uncertain as to their legal rights should seek independent legal advice.
- 4.37 In the absence of objections and/or non-supportive comments, if the exercise described in paragraph 4.32 above gives rise to a clear majority (by value) of the total Securities issued for each of LP I, LP II and LP III confirming support for the Proposed Terms, the Joint Liquidators propose to enter into formal documents finalising the terms set out in the Proposed Terms (or a revised version of the Proposed Terms that is considered acceptable by the Joint Liquidators).

Claims by LP IV and LP V against LBHI

- 4.38 No further updates. Please refer to previous notices.

Subordinated guarantee claims

4.39 No further updates. Please refer to previous notices.

Claims against Lehman Brothers Special Financing and LBHI

4.40 No further updates. Please refer to previous notices.

5 PROFESSIONAL COSTS

5.1 The Court directed that the Joint Liquidators should explain to Account Holders the costs incurred to date and the basis upon which costs will be incurred in the future with regard to the winding up of the Partnerships.

5.2 The professional costs and expenses incurred to date on a time costs basis are as set out below. Please note that the Company and the Partnerships were not VAT-registered. Accordingly, input VAT, where incurred, is not recoverable and is an additional cost of the liquidation and winding up.

5.3 Joint Liquidators (RSM)

5.3.1 Time costs: £2,223,429 plus VAT and disbursements have been incurred to 20 September 2023, of which £69,110 relates to time costs incurred in the period leading up to the Joint Liquidators appointment on 28 February 2017.

5.3.2 Fees of £2,123,960 plus VAT and disbursements of £53,422 have been paid to date.

5.4 Charles Russell Speechlys LLP (“CRS”) (UK solicitors for the Joint Liquidators)

5.4.1 Time costs: £2,602,394.50 plus VAT and disbursements have been invoiced and paid for the period 14 September 2016 to 24 August 2023 in relation to time costs. Since the end of that period, a further £111,345.00 plus VAT and disbursements has been incurred but not paid up to and including 19 September 2023.

5.4.2 Disbursements: costs of £1,410,989.17 plus VAT has been incurred by Counsel instructed by CRS on behalf of the Joint Liquidators. All costs incurred by Counsel as of 19 September 2023 have been paid in full.

5.5 Kirkland & Ellis LLP (US attorneys for the Joint Liquidators)

5.5.1 Time costs: USD 578,379.75 has been invoiced to date which has been paid in full.

5.5.2 Disbursements: USD 17,199 has been invoiced to date and this sum has been paid in full.

5.6 Various Bank of New York Mellon entities (“BNYM”) (paying agent, common depositary, and initial limited partner)

- 5.6.1 Fees and costs totalling £180,355 have been paid to BNYM to date for the provision of transaction services, facilitating the distributions to the LP IV and LP V ECAPS Account Holders and for general assistance in facilitating investor communications and providing transaction records and documents (including the costs of BNYM's legal counsel).
- 5.7 Warwick Risk Management Ltd (valuer's fees)
 - 5.7.1 Fees totalling £20,000 plus VAT have been paid to Warwick Risk Management Ltd for the provision of valuation services.
- 5.8 Dentons UKMEA LLP (Solicitors for DB) (subject to the Joint Liquidators' assessment with regard to the reasonableness of those fees)
 - 5.8.1 Time costs: £105,881 plus VAT (up to 15 March 2017 as per proof of debt form).
 - 5.8.2 Disbursements: £6,960 plus VAT where appropriate (up to 15 March 2017 as per proof of debt form).
 - 5.8.3 As yet these costs have not been agreed and reimbursed, and the Joint Liquidators will follow up with Dentons UKMEA LLP to progress this matter to a conclusion.
- 5.9 Weil Gotshal & Manges (Solicitors for LBHI) (subject to the Joint Liquidators' assessment with regards to the reasonableness of those fees)
 - 5.9.1 Time costs: USD 97,795 (up to 11 April 2017 as per proof of debt form). As at the date of the Company's liquidation this sum converted to approximately £78,661.
 - 5.9.2 Following a review of these costs by the Joint Liquidators and discussions between the Joint Liquidators and LBHI, settlement was agreed at £59,000. The sum of £33,500 was deducted as settlement of LBHI's costs payable to the Company for the Supreme Court hearing in ECAPS 1. The net payment of £25,500 was made to LBHI in September 2022.
- 5.10 Agents' costs: It should be noted that additional costs have been incurred and will be discharged in connection with the maintenance of agents and the provision of information to the Account Holders of the Securities.
- 5.11 The professional costs and disbursements outlined above relate to necessary steps that have been taken to place the Company into liquidation and to undertake the process of winding up the affairs of the Partnerships. The process is complex and multi-faceted, which has involved and continues to involve extensive multi-party litigation with a number of significant and novel ongoing issues.

5.12 The professional costs and disbursements have been (and will continue to be) paid from sums realised (now and in the future) from the Partnerships' assets in accordance with the Order of the Court. To date the costs have been paid and apportioned as follows:

5.12.1 Costs relating to all Partnerships have been paid from the Funds (see para 4.1 above) and apportioned between LP III, LP IV, and LP V. To the extent any funds are realised from claims against LBH in relation to LP I and LP II then the apportionment of costs will be adjusted accordingly so that no one Partnership (or more than one) disproportionately bears the costs of the winding-up of the Partnerships collectively.

5.12.2 Costs specifically relating to LP I, LP II, and LP III in relation to the subordinated debt claims against LBH are currently being paid from LP III's Funds as LP I and LP II currently have no cash assets. LP IV and LP V have not contributed to these costs on the basis that work undertaken in relation to the subordinated debt claims against LBH does not relate to LP IV and V. To the extent any funds are realised in relation to the claims against LBH by LP I and LP II then the apportionment of costs will be adjusted accordingly so that LP III does not disproportionately bear the costs of issues relating jointly to LP I, LP II, and LP III.

5.13 At the date of this update the Joint Liquidators hold the following cash balances in each of the Partnerships. These figures are net of costs that have been paid to date but they do not take into account accrued or future costs:

5.13.1 LP III: €7,836,396

5.13.2 LP IV: €628,320

5.13.3 LP V: \$1,702,606

The LP IV and LP V net balances are after interim distributions that were made to those Partnerships' Securities Account Holders in October 2020, as referred to in Section 6 below.

5.14 The current hourly rates of those expected to be involved in this matter going forward are set out below (figures quoted exclude input VAT where applicable):

5.14.1 RSM

(a) Partner (Joint Liquidators) - £875 (increased from £750 on 1 May 2023)

(b) Associate Director - £595 (increased from £410 to £500 on 1 September 2022 and from £500 to £595 on 1 May 2023)

(c) Manager - £430 (increased from £375 on 1 May 2023)

- (d) Associates - £365 (increased from £300 on 1 May 2023)
- (e) Executive - £325 (increased from £250 on 1 May 2023)
- (f) Analyst - £275 (increased from £220 on 1 May 2023)

5.14.2 CRS

- (a) Partner - £750 to £875 (increased from £650 to £750 on 1 May 2023)
- (b) Senior Associate - £635 (increased from £535 on 1 May 2023)
- (c) Associate - £375 (increased from £295 on 1 May 2023)
- (d) Trainee - £274 (increased from £220 on 1 May 2023)

5.14.3 Counsel

- (a) King's Counsel - £750 (increased from £700 on 1 September 2022)
- (b) Junior Counsel - £350

6 DISTRIBUTIONS IN RELATION TO LP IV AND LP V

No further updates. Please refer to previous notices.

7 FURTHER UPDATE NOTICES TO HOLDERS OF SECURITIES

7.1 The Joint Liquidators will continue to provide update notices to Account Holders of Securities as and when there are significant matters to report and otherwise routinely on approximately an annual basis by the following methods:

- 7.1.1 To the extent possible, by notice distributed via the clearing systems relevant to the Securities for each Partnership (i.e. either the Euroclear system or Clearstream system); and
- 7.1.2 To the extent possible, by notice distributed via the relevant exchanges upon which the Securities for each Partnership are listed.

8 INFORMAL INVESTORS' COMMITTEE

8.1 Since the commencement of the winding up of the Partnerships, the Joint Liquidators have been approached by a number of Account Holders of the Securities and they have requested that an informal investors' committee ("**IIC**") is established.

8.2 The Joint Liquidators have established such an IIC. The IIC has two members, with the second member only having joined the ICC in February 2021. There have been no formal meetings of the ICC to date but the Joint Liquidators have engaged on an *ad-hoc* basis with the two members.

- 8.3 In order to join the IIC, an Account Holder of Securities will be required to sign a Memorandum of Understanding (“**MOU**”) as well as a Non-Disclosure Agreement (“**NDA**”).
- 8.4 If you are an Account Holder of Securities and you are interested in becoming a member of the IIC you will be required to enter into the MOU and NDA on the same terms as the current members and any other prospective members. To confirm your interest in joining the IIC, please contact Samantha Hawkins using the details provided at 9.1.2 below and verify your holding of the Securities in the manner set out at paragraph 9.2.2 below.
- 8.5 Please be reminded that the IIC has no statutory powers and will be non-binding upon the Joint Liquidators. Its purpose, if utilised, is to provide an additional means of liaising with Account Holders of Securities in relation to the Partnerships and providing a forum for discussing and providing feedback to the Joint Liquidators in relation to the various issues arising.

9 **CONTACTS**

- 9.1 Account Holders of the Securities who have queries concerning anything mentioned in this notice may contact the Joint Liquidators as follows:

9.1.1 Post: RSM UK Restructuring Advisory LLP, 25 Farringdon Street, London, EC4A 4AB

9.1.2 E-mail: Samantha.Hawkins@rsmuk.com

- 9.2 Please note that in any correspondence with the Joint Liquidators, the Account Holders of the Securities will be required to verify their interest in the relevant Securities to the Joint Liquidators by:

9.2.1 The Account Holders sending an e-mail to the Joint Liquidators c/o Samantha Hawkins using the email address shown at paragraph 9.1.2 above and referencing "LB GP No. 1 Ltd (In Liquidation)" and the ISIN of the Securities in the subject line and disclosing the identity of the Account Holder, the identity of the Partnership or Partnerships which issued the Securities, the nominal amount of each ISIN held by the Account Holder and the details of the person(s) who shall represent the Account Holder; and

9.2.2 The Account Holders providing (by e-mail to the Joint Liquidators c/o Samantha Hawkins) a letter, screen shot or other proof of the interest (in each case from Euroclear/Clearstream and their custodian (if applicable)) verifying each of its account holdings in the Securities and disclosing the following information:

- (a) ISIN
- (b) Account number
- (c) Participant name
- (d) Nominal amount
- (e) Beneficial Account Holder details (including e-mail address)

Dated: 21 September 2023



Signed:

**This notice is given by
Bruce Alexander Mackay
RSM UK Restructuring Advisory LLP
as Joint Liquidator of LB GP No.1 Ltd
Acting without personal liability**

Appendix 1.

Court transcript from the 4 May 2023 case management hearing

OPUS2

In the matter of Lehman Brothers Holdings plc (in administration)

Day 1AH0

May 4, 2023

Opus 2 - Official Court Reporters

Phone: 020 4518 8448

Email: transcripts@opus2.com

Website: <https://www.opus2.com>

1 Thursday, 4 May 2023
 2 (10.30 am)
 3 Directions hearing
 4 MR JUSTICE HILDYARD: Good morning.
 5 MR BELTRAMI: Good morning, my Lord. My Lord, I appear for
 6 the administrators of Lehman Brothers Holdings Plc and
 7 there is a cast you have seen from the skeleton,
 8 Mr Allison and Mr Lupi for Lehman Brothers Holdings Inc;
 9 Ms Hilliard and Mr Roscoe for LB GP No 1; and
 10 Ms Tolaney, Mr Fisher and Mr Goldfarb for Deutsche Bank.
 11 My Lord, it is a hearing, as you will have seen, for
 12 procedural directions, initially on the administrators’
 13 application for directions in respect of certain legal
 14 questions relating to priority, and also now in respect
 15 of two further related applications, one by the
 16 administrators in respect of distribution, and one by
 17 Deutsche Bank for striking out some of the procedural
 18 directions being sought.
 19 If I can jump to the end --- I hope it is going to be
 20 helpful --- and this is subject in a big way to
 21 your Lordship. There is a measure of --- more than
 22 a measure of consensus between the parties that
 23 an efficient way of resolving the procedural questions
 24 before the court is to order, if the court is willing to
 25 do so, a combined hearing of all three, and the

1

1 advantage of course is that it is more efficient, it
 2 will mean probably the strike-out will disappear and it
 3 may well be that distribution application becomes less
 4 poignant, given the fact it’s in the context of
 5 everything else.
 6 The only caveat to that is that the administrators
 7 certainly and I think at least some of the other parties
 8 are keen to have this determined sooner rather than
 9 later, for the reasons set out in our skeleton. Nobody
 10 seems to think that the issues are complex, or at least
 11 evidentially complex and will therefore require a long
 12 lead in, and the nub of it is that the administrators
 13 are keen, if at all possible and subject to the court,
 14 to have this determined in the early autumn period, in
 15 particular October if that can be done.
 16 What the parties have been discussing is the
 17 possibility of a set of directions for a four-day
 18 hearing with one-day reading in addition to that before
 19 your Lordship, if your Lordship were willing to hear it,
 20 in October if your Lordship were willing to order that
 21 to be done in October.
 22 Can I show you and to explain where we have got to
 23 a draft order which I hope you will find in something
 24 called a supplemental correspondence bundle.
 25 8, page 53.

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1 MR JUSTICE HILDYARD: Right.
 2 MR BELTRAMI: Just to explain what this is, this started as
 3 our draft and it has certain amendments to it which were
 4 made last night by Deutsche Bank, and in discussion with
 5 the other parties, there are a couple of other
 6 amendments which we would wish to make to it but just so
 7 your Lordship can see what we are proposing, is --- as
 8 I say, a final hearing for each of the applications
 9 together, for a time estimate, I think we are now agreed
 10 four days plus one day of reading to be on the safe
 11 side, the matter to be confined by reference to
 12 position papers with a timetable in June and July,
 13 a provision for reliance upon witness statements and
 14 documents arising in the previous hearing which
 15 your Lordship will have seen from the skeletons if
 16 necessary, and then skeleton arguments as set out.
 17 The additions, to explain, that have been suggested
 18 relate to evidence in that LBHI wish to serve evidence
 19 in response to Deutsche Bank’s strike-out application
 20 which is itself supported by the witness statement of
 21 Mr Taylor, and the proposal is that LBHI serve evidence
 22 in response at the same time as the position papers on
 23 30 June ---
 24 MR JUSTICE HILDYARD: This is not in the ---
 25 MR BELTRAMI: It is not in the draft ---

3

1 MR JUSTICE HILDYARD: Sorry these are additions ---
 2 MR BELTRAMI: These are additions to this draft, yes.
 3 MR JUSTICE HILDYARD: So LBHI ...
 4 MR BELTRAMI: LBHI to serve evidence in response to the
 5 strike-out application by 4 pm on 30 June 2023.
 6 Response from Deutsche Bank --- is that envisaged? Yes.
 7 With Deutsche Bank to serve any responsive evidence,
 8 I am anticipating 28 July for that. So that is
 9 the strike-out evidence piece.
 10 MR JUSTICE HILDYARD: I mean, I don’t want to wade into
 11 things which I only barely understand and which you will
 12 all be very much more up to speed on than I am presently
 13 but my understanding of the strike-out, as far as it
 14 goes, is that Deutsche say that all these matters were
 15 concluded or ought to have been concluded by the
 16 Court of Appeal when the judgment of Mr Justice
 17 Marcus Smith was appealed.
 18 MR BELTRAMI: My Lord, yes.
 19 MR JUSTICE HILDYARD: And that whatever may be the merits,
 20 whether under issue estoppel or cause of action estoppel
 21 or any other form of estoppel, res judicata, that is
 22 that. The evidence will go to what? As to ... I don’t
 23 know what it will go to.
 24 MR BELTRAMI: My Lord, at the moment this strike-out is
 25 supported by the evidence of Mr Taylor and there is

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1 a witness statement of about 30 pages and a long
 2 exhibit. Your Lordship is right that the witness
 3 statement and the exhibit essentially record the
 4 narrative history of events to date and there is stuff
 5 about the skeletons and the position papers and the
 6 judgments and --
 7 MR JUSTICE HILDYARD: A lot of it is, you know, it's very
 8 well crafted but stuff, as it were --
 9 MR BELTRAMI: My Lord yes, I don't think at the moment -- it
 10 is not really for me to say whether much of that is
 11 truly evidence or whether much of that actually requires
 12 evidence in response, but as there is evidence in
 13 support, LBHI wish to have the opportunity at least to
 14 put in evidence in response. But that is all that is
 15 being sought.
 16 MR JUSTICE HILDYARD: So it's an opportunity, it is not
 17 going to hold up the timetable so you don't care and
 18 no one cares.
 19 MR BELTRAMI: It is not going to hold up the timetable.
 20 MR JUSTICE HILDYARD: Okay.
 21 MR BELTRAMI: That is the LBHI evidence piece. The other
 22 evidence piece which isn't in the draft which we will
 23 have to add in is my learned friend Ms Hilliard's
 24 response to what we have called the distribution
 25 application. The distribution application, as

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1 your Lordship will have seen, is in relation to I think
 2 the proposed 8th interim distribution out of estate.
 3 Now, that is supported by evidence from Mr Macnamara
 4 and Ms Hilliard wishes for her client to have the
 5 opportunity to provide evidence in response to that.
 6 The issue, as your Lordship will have seen from the
 7 skeletons or at least the principal issue, is the
 8 suggestion that it would cause unfair harm to LB GP1
 9 were a distribution to be made in anticipation of or
 10 before a resolution of the issue about clause 2.11 of
 11 the guarantee.
 12 MR JUSTICE HILDYARD: This is the holding on trust and
 13 whether it should be enforceable once disbursed, yes.
 14 MR BELTRAMI: The argument before by LBHI is that if
 15 a distribution is made to GP1 and they distribute
 16 onwards through the holder, the holder holds on trust
 17 and returns back to PLC. That is the argument, and the
 18 application from the administrators is to distribute in
 19 any event before that is resolved.
 20 MR JUSTICE HILDYARD: Yes.
 21 MR BELTRAMI: Ms Hilliard's clients suggest that that would
 22 be unfairly harmful to GP1 and that's at the moment the
 23 concentrated issue on the distribution application. All
 24 of that may become less concentrated if -- and it is one
 25 of the advantages of having a combined hearing, because

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1 at the combined hearing the court will determine the
 2 clause 2.11 point and, therefore, will know the answer
 3 to that and therefore the distribution piece may well
 4 not be particularly contentious at that stage.
 5 But in any event, Ms Hilliard wishes the opportunity
 6 to put in evidence in response to that application, and
 7 she wishes to put in her evidence two weeks before
 8 the position paper date which would therefore be
 9 16 June 2023, and therefore I anticipate evidence in
 10 reply to that would be served on 30 June 2023.
 11 So there would be two rounds of evidence going to
 12 those second and third applications if necessary.
 13 Those are the -- there is one other point I should
 14 mention on the draft order, which is, as your Lordship
 15 may have picked up on the skeletons, the administrators
 16 having issued a notice of intention to distribute, there
 17 is a provision in the Insolvency Rules that that should
 18 be done within two months of the notice.
 19 MR JUSTICE HILDYARD: Yes.
 20 MR BELTRAMI: The administrators have indicated that they
 21 are not going to distribute to GP1 until the application
 22 is determined, and that application, subject to
 23 your Lordship, will be determined in October. And
 24 therefore the administrators wish to exercise their
 25 power under rule 14.34 to defer that because of the

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1 circumstances of the court. So we are simply recording
 2 that. But I am not sure that is going to be
 3 (inaudible).
 4 So, my Lord, that is --
 5 MR JUSTICE HILDYARD: That is power vested in you, you don't
 6 have to have a blessing by the court for that.
 7 MR BELTRAMI: It is a power vested in the administrators to
 8 defer. I can't remember what the exact wording is, "if
 9 there are circumstances requiring" or words to that
 10 effect. So it doesn't require the court's blessing, it
 11 is something that they can do, but we thought it
 12 appropriate to record it at least to ensure everyone
 13 knows that is being done pending the determination of
 14 the application.
 15 My Lord, as I say, that is the short way through
 16 this but it is subject to the contingency that the court
 17 is prepared to hear the matter within this short
 18 timeframe that we have identified. The parties are
 19 content that the timeframe is manageable in terms of
 20 procedure. There is an outside possibility I should
 21 mention, and Mr Fisher mentioned it to me yesterday,
 22 that depending on what is said in the position papers,
 23 a party may want to adduce some piece of evidence in
 24 response to something that is said.
 25 At the moment, as far as we can see, nothing has

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1 been said that is indicative of the need for evidence on
 2 the issues, but who knows, in a sense until we see the
 3 position papers. But that shouldn't -- it is not
 4 intended that would hold up the process.
 5 Were that to happen, and therefore were the
 6 position papers to generate a requirement on one party or
 7 another to produce evidence on something then that party
 8 will just have to do it in time. It is not envisaged
 9 that would mean or lead to an adjournment of the hearing
 10 date because that is in a sense the prize that
 11 the parties are seeking to achieve. I mention that just
 12 to close it off.
 13 These are the directions which the parties
 14 anticipate are needed, who knows quite what will be
 15 needed in due course once the issues actually are
 16 crystallised with the position papers. But in any event
 17 none of that ought to detract is --
 18 MR JUSTICE HILDYARD: I understand the only warning I would
 19 give is that if the court is persuaded, and listing in
 20 particular, is persuaded to give you what in effect is
 21 an accelerated hearing, I don't think it would be
 22 appreciated if by reference to evidence or any need for
 23 cross-examination or anything like that, the initial
 24 time estimate of four to five days were to be exceeded.
 25 Because I think that would break the deal.

1 MR BELTRAMI: My Lord, yes. Of course. That is well
 2 received and will be no doubt acted upon. I may show
 3 you in due course, if we get down to it, the estate on
 4 which the issues so far have been crystallised and it is
 5 simply on legal points, an interpretation -- either
 6 contractual interpretation or interpretation of rules.
 7 It is not obvious there will be any scope for evidence
 8 at all and, if there is, it doesn't seem to be likely to
 9 be in any way extensive.
 10 MR JUSTICE HILDYARD: But this isn't the sort of case where
 11 the defence to the claim of issue estoppel is based on
 12 some sudden revelation or change in the law, it is --
 13 which might occasion evidence, it is simply that it
 14 wasn't required to be raised before those tribunals at
 15 that time, that Lehman cases have been slightly
 16 piecemeal by reference to their complication, and that
 17 this is a separate point. Those are all submissions.
 18 MR BELTRAMI: Yes.
 19 MR JUSTICE HILDYARD: That is why I was wondering about the
 20 witness statement. But, you know, I appreciate that
 21 once one person puts in evidence, the other person
 22 wishes to retain the right to reply, if it occurs to
 23 them to be necessary.
 24 MR BELTRAMI: Your Lordship is right. The argument as
 25 I understand it in any event from the Deutsche Bank side

1 is that, well, what you are now seeking to do is to
 2 overturn the order of priority determined between LBHI
 3 and GP1 and therefore you should have done it before.
 4 The response to that, as I understand it, is, no, no,
 5 no, the order of priority between LBHI and GP1 was
 6 before the court last time; what we are now talking
 7 about is a further link down the chain which is what
 8 happens when the next person receives the money. And --
 9 MR JUSTICE HILDYARD: The 2.11 point, if I can put it that
 10 way, it might have surprised Court of Appeal to know
 11 that they were making all sorts of findings which were
 12 going to be run but that will be a matter dealt with in
 13 due course.
 14 MR BELTRAMI: Yes, your Lordship is right, it's a matter of
 15 argument based on the record rather than a matter of
 16 argument based on individual evidence which might make
 17 a difference.
 18 MR JUSTICE HILDYARD: Yes. Can I just clarify one thing.
 19 The tentative or provisional agreement between you which
 20 is obviously very welcome, though I know it comes with
 21 a condition attached which I will have to go and find
 22 out about, and I will return to, is it now -- when we
 23 get to the big feast in October, is it now agreed that
 24 the strike-out will, as it were, just become part of the
 25 argument or is it still envisaged that there might be

1 some argument as to whether that should be dealt with
 2 first or separately or any such thing?
 3 MR BELTRAMI: My Lord, that is probably not really in my
 4 domain.
 5 MR JUSTICE HILDYARD: No, I am sorry, Mr Beltrami, I am
 6 probably asking the wrong person. But I just wanted to
 7 be clear. What I would be nervous of is if we are going
 8 to have an argument as to whether there should be
 9 a strike-out in October, because I just -- I would
 10 prefer to think that the agreement extended beyond that.
 11 But I obviously can't force people.
 12 MS TOLANEY: Your Lordship is quite right, the strike-out
 13 will have to be subsumed within the issues at that
 14 point.
 15 MR JUSTICE HILDYARD: So you will be saying, look, I win
 16 because the Court of Appeal has already decided this.
 17 MS TOLANEY: Exactly.
 18 MR JUSTICE HILDYARD: Yes.
 19 MR BELTRAMI: My Lord, it may be the strike-out per se
 20 becomes less of an issue because the matter will be
 21 determined finally in any event. I imagine the court
 22 will be proceeding on the rather different -- the final
 23 test as opposed to a strike-out test but that is
 24 a matter no doubt --
 25 MR JUSTICE HILDYARD: I am sure that is right and I think

1 that is implicit and that was part of the reason for my
 2 intervention. Because I think the deal would have to be
 3 really from my point of view, look, we are going to deal
 4 with these things on the merits. One party says the
 5 merits have already been decided, the other says
 6 statutory interest, for example, is completely
 7 different, and 2.11 is a case which either is maintained
 8 or not. We then decide and people are either happy with
 9 the decision or not.
 10 MS TOLANEY: That is absolutely right, my Lord. I think our
 11 point is that it is still an abuse for them to run the
 12 argument but you will be determining that question in
 13 the context of hearing everything.
 14 MR JUSTICE HILDYARD: Yes. I will have to deal with the
 15 issue as to whether it was an abuse, will I?
 16 MS TOLANEY: Yes.
 17 MR JUSTICE HILDYARD: Is that because it goes to costs?
 18 MS TOLANEY: I think as to whether it is actually just
 19 simply an abusive argument they are not really entitled
 20 to run even — and that may be the first port even if
 21 you go on to determine —
 22 MR JUSTICE HILDYARD: That is the point I am getting at.
 23 What is the point of — it's very nice saying that
 24 something is an abuse and getting something off your
 25 chest, but is it relevant, except on an issue of costs,

1 if relevant at all?
 2 MS TOLANEY: I think it is relevant because it is our first
 3 line of argument, which is this has already been
 4 determined or alternatively it is abusive for it to be
 5 re-determined now. Your Lordship is entitled to say,
 6 having considered this, "I agree."
 7 MR JUSTICE HILDYARD: Sometimes cases proceed and it's clear
 8 that the matter is in fact decided upon already by
 9 a decision on all fours. But no question arises whether
 10 it was an abuse. It is just one of those things, the
 11 law has been clarified. But we are still to have an
 12 argument as to whether it's an abuse?
 13 MS TOLANEY: That would be, I think, my client's preference
 14 that the strike-out application is subsumed within the
 15 issues but the issue of whether they are estopped and/or
 16 it is abusive would still be one of the issues to be
 17 determined.
 18 MR JUSTICE HILDYARD: All right. You might want to ponder
 19 that. Because in a way, if — it would be unwise for me
 20 to deal with only that and not the substance.
 21 MS TOLANEY: I understand.
 22 MR JUSTICE HILDYARD: If I am dealing with the substance, in
 23 a sense, apart from sort of flinging words about, I am
 24 not sure what abuse adds to it. I will be guided in any
 25 event by the Court of Appeal obviously, dictated to by

1 the Court of Appeal, and — well, you might think about
 2 that and it may be that the abuse argument goes towards
 3 the end of "and anyway even if", but I would like to
 4 deal with the substance so that the administrators have
 5 a certain basis to proceed in case it were to go further
 6 or in case it would put questions in some other Lehman
 7 proceedings.
 8 MS TOLANEY: I understand that. We will definitely think
 9 about it, my Lord.
 10 MR JUSTICE HILDYARD: Thank you.
 11 MS TOLANEY: It obviously will go to costs as one point, but
 12 I think it may go beyond that. But we will give some
 13 thought to it.
 14 MR JUSTICE HILDYARD: Thank you. Right.
 15 On a tiny, tiny point I think it was mentioned by —
 16 was it Charles Russell Speechlys — that some provision
 17 ought to be made for bundle exchange and what goes into
 18 the bundles. That may be simply a Chancery Guide point.
 19 I don't know. I am in your hands on that.
 20 MR BELTRAMI: My Lord, I cannot remember that point. I am
 21 sure it was a good one. If there is something — it is
 22 always better to have these things out and agreed rather
 23 than —
 24 MR JUSTICE HILDYARD: It is, particularly when you are fast
 25 on the long vacation. So if you could agree between you

1 when you are going to exchange these things. August
 2 and September always seem a nice while off, and — but
 3 then they come about and then everyone forgets about it
 4 and it gets derailed. So I think it would be good to
 5 agree that, yes.
 6 MR BELTRAMI: My Lord, yes. My Lord, that is the order.
 7 MR JUSTICE HILDYARD: Yes.
 8 MR BELTRAMI: As we say, it is subject to the court granting
 9 us the indulgence. To that extent I can — it may be
 10 best to introduce to your Lordship who has read the
 11 papers and seen what is in issue, but to introduce the
 12 matter and explain how we have got to where we have got
 13 to. If your Lordship would find that helpful.
 14 MR JUSTICE HILDYARD: I am sure I would find it helpful.
 15 I am just wondering whether this is the time. I will
 16 tell you what I have done which may be implicit in the
 17 way you are putting it. I have read your skeletons as
 18 you suggested I should, and I have read the
 19 correspondence exchanged between the parties which
 20 showed the emergence of fundamental disagreements, in
 21 particular the one which caught one's eye most obviously
 22 was the issue of statutory interest.
 23 MR BELTRAMI: Yes.
 24 MR JUSTICE HILDYARD: I have a question on that which will
 25 demonstrate my ignorance. I admit that I am in that

1 position that I have read a lot and I am sort of muddled
 2 probably. I can see various points but probably haven't
 3 worked out how they interrelate fully. I wondered
 4 whether it was necessary for me to scratch my head at
 5 the present time or not.
 6 MR BELTRAMI: My Lord, I don't think it is. Your Lordship
 7 saw we have five issues. The -- round 1 sorted out, if
 8 you like, the basic issue of priority in the estate
 9 between the two competing creditors; round 2 was
 10 initiated towards the end of last year when the
 11 administrators sought to identify points of
 12 disagreement, they sought to edge the parties towards
 13 agreement without much success, and therefore the five
 14 points emerged. Three of the points are pure priority
 15 points if you like: statutory interest first --
 16 statutory interest on these sub-notes take priority over
 17 the principal of the sub-debt. That is the first
 18 priority issue. Is statutory interest based on the face
 19 value of the notes or the discounted value of the notes?
 20 That is the second issue. Does statutory interest run
 21 from the date of administration or the date, whenever
 22 that is, that the holders of the sub-notes were entitled
 23 to proof.
 24 So those were the three priority points on statutory
 25 interest.

1 Points 4 and 5 relate to the different issue of
 2 clause 2.11, which isn't really a priority issue in the
 3 same way as the statutory interest issue, but it is an
 4 issue which arises in the context of the distribution
 5 obviously where the contention is, as I said earlier,
 6 that if distributions are made to GP1 as the creditor of
 7 PLC, and GP1 distributes through the holder in the
 8 system, to its creditors, who are Deutsche Bank and
 9 others, the holders of the ECAPS --
 10 MR JUSTICE HILDYARD: Have the registered holders, BNY,
 11 indicated whether they do or don't want to be joined?
 12 MR BELTRAMI: No, the position is "not yet". We have
 13 written to them I think at least three times, first to
 14 notify them of the issue and then to notify them of the
 15 application on the hearing. I was told this morning
 16 they haven't come back yet.
 17 MR JUSTICE HILDYARD: Some process that they be bound must
 18 be found. Because I can take it -- I can assume on the
 19 basis of what I am told that the entire economic
 20 interest is elsewhere, but I think I must bind the
 21 registered holders in some way.
 22 MR BELTRAMI: Yes, we accept -- we have always anticipated
 23 they would need to be bound. Obviously they could agree
 24 to be bound --
 25 MR JUSTICE HILDYARD: Yes.

1 MR BELTRAMI: -- or they could insist on joining, or at
 2 least if they don't agree to be bound they will have to
 3 join.
 4 MR JUSTICE HILDYARD: Or they could appear by counsel for
 5 that purpose to be bound, as it were, by counsel for the
 6 economic interest holders, to be bound in that way. All
 7 I am flagging is we --
 8 MR BELTRAMI: Yes.
 9 MR JUSTICE HILDYARD: -- can't leave that in the air.
 10 MR BELTRAMI: No, we are conscious that will need to be
 11 done. We don't anticipate that they will have any
 12 substantive --
 13 MR JUSTICE HILDYARD: Contribution.
 14 MR BELTRAMI: -- interest in the matter and therefore if
 15 they don't agree formally to be bound, we anticipate
 16 there won't be any major issue about having them bound
 17 through the order of the court or otherwise. So it
 18 hasn't been done yet, we hoped their position would be
 19 clear by today, it hasn't been.
 20 We are certainly conscious of the fact that we need
 21 to clarify it, but we will aim to do it. If we still
 22 don't hear anything from them in the near future we will
 23 have to maybe take some further steps but your Lordship
 24 is right, they need to be brought into the process in
 25 a way, even if it is a matter of formality.

1 MR JUSTICE HILDYARD: Yes.
 2 MR BELTRAMI: So that is the 2.11 issue, so does it all come
 3 back to PLC, and if it does all come back to PLC, what
 4 do the administrators then do with it? LBHI's case is,
 5 well, give it to them, does it go around another loop
 6 forever? There are no doubt interesting questions about
 7 that.
 8 Those are the five issues. Insofar as we have
 9 received from the competing parties their position on
 10 those issues or their arguments on those issues, it
 11 appears that it turns on either interpretation of the
 12 rules or interpretation of the previous decisions either
 13 from Waterfall or from what they call ECAPS 1.
 14 So as I said earlier, we don't see at the moment any
 15 or at least very much scope for an evidential enquiry as
 16 opposed to a legal argument based on the issues we have
 17 identified.
 18 So those are the issues. The administrators clearly
 19 wish to have those issues resolved in order that they
 20 can continue with the distributions which are envisaged
 21 from the estate. We have indicated the amount, which on
 22 current estimation will be available to be subordinated
 23 creditors and therefore there certainly needs to be
 24 an argument.
 25 There are other issues floating around, to be

1 absolutely clear about this. You may have seen
2 reference to something called partial discharge which is
3 being looked at based on the decision of the
4 Court of Appeal on that issue, and there are various
5 other points that have been raised. So I can't pretend
6 at the moment that the determination of the five issues
7 identified will be the end of the story. It may be that
8 it will be the end of the story but there may be other
9 things coming through the pipeline in due course. But
10 we can only do what we can do in terms of having these
11 matters resolved.

12 MR JUSTICE HILDYARD: This may be a piece of string
13 question, but do you envisage that everyone will try and
14 work out what those are before this October date, if we
15 can achieve it, or is this just a sort of future feast
16 with no date?

17 MR BELTRAMI: The principal additional unresolved issue is
18 what they call the partial discharge issue, and that
19 relates to payments made to, I think mainly
20 unsubordinated creditors historically, who have been in
21 receipt of guarantee payments from LBHI before the
22 Court of Appeal's judgment. The Court of Appeal decided
23 that, in relation to LBHI's subordinated claim, partial
24 discharge reduced the amount. But the argument is, by
25 analogy, in order to reduce their amount, they may have

21

1 been overpaid in terms of statutory interest, or indeed
2 principal on those sums. That requires obviously legal
3 consideration and some economic consideration, and it is
4 rendered more complicated, as the administrators see it,
5 by reason of the fact that those creditors or some of
6 those creditors had to pay back money to LBHI through
7 a settlement agreement in other proceedings and, whether
8 that matters, it has to be considered.

9 So, on the face of it, it's a fairly knotty issue.
10 In Mr Macnamara's witness statement he expressed the
11 hope that once the numbers were resolved and the
12 administrators had identified a way forward, they could
13 be capable of agreement. That may be wishful thinking.
14 If it isn't, it will have to be resolved, it may not
15 necessarily even be these parties who are the relevant
16 parties to resolve that, or at least the only parties to
17 resolve it, because the creditors concerned may have
18 something to say about the matter too. So it's on
19 a slightly different track.

20 It appears unlikely at the moment we could fold that
21 into this application. But if it needs another
22 application regrettably we will have to make that in due
23 course.

24 I don't know what the actual numbers are, in any
25 event. We have said that we reserve for them. It may

22

1 be a smaller issue than we are dealing with, in any
2 event, today. But that is, if you like, the
3 semi-crystallised issue on partial discharge. There are
4 various other points that have been made, particularly
5 by Deutsche Bank, in relation to other parts of the
6 administration, and in relation to the admission of
7 certain creditors into the administration, the actual
8 status of LBHI in the administration, and there is
9 correspondence about that between my solicitors and
10 Deutsche Bank's solicitors.

11 As we see it, those matters aren't suitable to be
12 re-opened. If there is going to be an application by
13 Deutsche Bank in relation to that, so be it, but again
14 it is not something I think we can focus on at the
15 moment. All I wanted to say is I am not saying to the
16 court for certain once this has been resolved everything
17 will be clear. Because we are not in that situation
18 unfortunately.

19 MR JUSTICE HILDYARD: All right. It is a very clear,
20 Mr Beltrami. I think I would ask that such progress as
21 is practicable to be made on these matters being made
22 over the next couple of months before the long vacation
23 and I should like a report from -- which can be
24 informal, as to whether a landing has been reached or
25 not, all by reference to the fact that if the early

23

1 hearing date can be given, I would like to think that
2 there was some finality being introduced if at all
3 possible.

4 MR BELTRAMI: My Lord, yes.

5 MR JUSTICE HILDYARD: Yes. So I think I would like it
6 rehearsed or at least noted that I would expect the
7 administrators PLC and the parties concerned to have
8 sought to crystallise any issue by July 31 so that can
9 be -- so the court can know whether there is going to be
10 a need for something else or whether it can, within the
11 timetable, deal with those in October --

12 MR BELTRAMI: My Lord, yes.

13 MR JUSTICE HILDYARD: -- it which case you would have to
14 return and I would have to give directions or some judge
15 would have to give directions.

16 MR BELTRAMI: My Lord, yes.

17 MR JUSTICE HILDYARD: On the figures, and this may be in
18 Ms Hilliard's court rather than yours, but an invitation
19 was given to me to enquire about the effect of the
20 decision in the New York State court finding damages --
21 I think rejecting the claim for 495 million, which would
22 affect the figures which were being juggled with by
23 reference to these applications. Is that something
24 which has been deferred? Debated? What should I think
25 about that? It is quite a lot of money.

24

1 MR BELTRAMI: It is a lot of money. My Lord, the decision
 2 referred to the judgment of the 8 March of this year.
 3 MR JUSTICE HILDYARD: Yes.
 4 MR BELTRAMI: The latest administrative update is April of
 5 this year, 13 April of this year. That update indicates
 6 that there have been no material change to the level of
 7 estimated recoveries. So the updated figure post-dates
 8 the judgment.
 9 MR JUSTICE HILDYARD: I see. So that takes it into account?
 10 MR BELTRAMI: My instructions are there is no change to the
 11 level of estimated recoveries, notwithstanding the
 12 judgment.
 13 MR JUSTICE HILDYARD: Yes. At first blush that is not easy
 14 to follow. Because 495 million does seem quite a lot of
 15 money.
 16 MR BELTRAMI: Maybe so. It depends what the estimates were
 17 based on.
 18 MR JUSTICE HILDYARD: Yes, I see. So that is ---
 19 I understand that there may be --- maybe the claim for
 20 495 million has not been included in yours figures.
 21 MR BELTRAMI: My Lord, I don't want to go any further than
 22 the instructions I have on that which are, as I say,
 23 that there is no change to the figure of estimated
 24 recoveries.
 25 MR JUSTICE HILDYARD: Okay.

1 MR BELTRAMI: If your Lordship wants me to obtain more
 2 detail about that, I can do so but I don't have it right
 3 now.
 4 MR JUSTICE HILDYARD: I will hear Ms Hilliard briefly on
 5 that, in just a moment. Can I get one other --- I said
 6 I had a point which would probably betray my ignorance.
 7 It's this --- statutory interest is rather an odd bird
 8 and it doesn't really relate to any contractual
 9 entitlement, it is just what you do with the surplus in
 10 these very unusual of events of a very substantial
 11 surplus, and it is, I think Mr Justice David Richards
 12 said, to compensate people for the delay in getting
 13 their money which strikes a chord with the reason for
 14 interest in the first place. But when one reads the
 15 relevant rules on one interpretation one might think
 16 that it is just a pot available to all creditors,
 17 whatever may be their ranking, to be distributed
 18 pari passu and if that was so, why is it accepted, as it
 19 I think has been, that the unsubordinated creditors get
 20 their dibs on some element of statutory interest before
 21 anybody else? If they do, why doesn't that answer the
 22 question which is presently being raised?
 23 MR BELTRAMI: My Lord, I think the answer to your first
 24 question was Waterfall I, that was decided that the
 25 subordinated --- the statutory interest on the

1 unsubordinated debt took priority over the subordinated
 2 debt.
 3 MR JUSTICE HILDYARD: So that was the one that went to the
 4 Supreme Court and they said that.
 5 MR BELTRAMI: Yes. Your second question is, I think,
 6 a point that has been debated between these parties so
 7 far, but, as I say, on which albeit we have expressed
 8 preliminary views, shall we say earlier, we have now
 9 been told to --- and agreed to be entirely neutral. But
 10 clearly the interface between what the rules say and
 11 what Waterfall I Supreme Court says is going to be at
 12 the heart of that priority question.
 13 MR JUSTICE HILDYARD: Yes. Okay. Yes, thank you.
 14 MR BELTRAMI: My Lord, that is the main application. The
 15 strike-out application we have talked about to some
 16 extent, and the distribution application I introduced
 17 earlier is in respect of the proposed distribution to
 18 creditors, many of whom are the unsubordinated creditors
 19 who are still due some statutory interest, and the
 20 balance of which the administrators wish to pay to GP1
 21 in pursuance of its principal claim being able to do so
 22 because of certain waiver agreements either entered into
 23 or anticipated to be entered into by unsubordinated
 24 creditors of LBHI, who won the case, and another
 25 Lehman Group entity LBL. The latter hasn't yet been

1 achieved so far as I am aware, but that is
 2 the expectation.
 3 So the application commenced at a time when GP1
 4 hadn't submitted a proof of debt and therefore the
 5 context of the application was slightly different to the
 6 context that we are now facing, nevertheless GP1 have
 7 said the administrators ought not to distribute pending
 8 the 2.11 issue, because they say until that issue is
 9 resolved the funds will be, they say, effectively frozen
 10 in the meantime.
 11 That is the argument, there was a threat at one
 12 point to bring an unfair harm application against the
 13 administrators. I think that threat hasn't gone away,
 14 again it may or may not be necessary if we are actually
 15 going to proceed, and one of the advantages I think of
 16 proceeding with the global determination of everything,
 17 because if the 2.11 issue is determined at the same
 18 time, the spice in the distribution application
 19 disappears. Because if there is a trust, then one
 20 answer would be given. If there is not a trust, then
 21 the unfair harm point disappears.
 22 So, in a sense, we circumvent some of the
 23 difficulties perhaps of the distribution application by
 24 having the matter determined in the round. I don't
 25 think there is an objection to payment, other than

1 the 2.11 point. So they go hand in hand together.
 2 So it's another reason -- the administrators, for
 3 obvious reasons, are keen to distribute to the extent
 4 they can and as quickly as they can out of the estate
 5 and therefore if that can be resolved quickly then it
 6 would be an advantage to, I think, everybody.
 7 As we said in our skeleton, certainly at various
 8 points the administrators have been looking to have that
 9 application determined separately on its own because as
 10 a matter of argument we don't see the unfair harm point
 11 biting. But pragmatically if everything can be done
 12 in October, there is little point in having a super
 13 accelerated hearing on the distribution application even
 14 if that were achievable before the summer.
 15 So it is another reason why we are keen, and I think
 16 all the parties are keen, to have the combined hearing
 17 because it will also deal with the distribution point
 18 and others in response to that.
 19 MR JUSTICE HILDYARD: Can I just raise one point in that
 20 context. There was an argument at one point whether
 21 proof of debt is necessary.
 22 MR BELTRAMI: Yes.
 23 MR JUSTICE HILDYARD: I think something which is sometimes
 24 a group debt and sometimes not a group debt, as it were,
 25 is a protesting proof of debt, as being issued.

1 there any issue in respect of that?
 2 MR BELTRAMI: You say is there any issue. It was issued
 3 without prejudice to the contention that it needn't be
 4 issued.
 5 MR JUSTICE HILDYARD: Yes.
 6 MR BELTRAMI: But I don't think -- I don't think it is being
 7 suggested there isn't a proof of debt but they are
 8 saying, well, you forced us to do it, we didn't need to
 9 do it. But I think the argument has moved on from the
 10 proof point to the harm point --
 11 MR JUSTICE HILDYARD: Yes.
 12 MR BELTRAMI: -- as I see it. Because I think the reason
 13 for the reluctance to issue the proof was the harm point
 14 so they kind of go in a circle. I think I have got that
 15 right.
 16 MR JUSTICE HILDYARD: In terms of the date?
 17 MR BELTRAMI: Yes, because when -- the application was
 18 issued before there was a proof so the question, can the
 19 administrators distribute without a proof, that in
 20 a sense, inevitably perhaps, compelled the proof,
 21 therefore we have shifted the argument to the
 22 substantive one, as should they distribute not can they
 23 distribute --
 24 MR JUSTICE HILDYARD: Ms Hilliard, is itching to talk to
 25 that and will have a go in a moment just to clarify the

1 position. I am just trying to work out in my own mind
 2 what are the issues.
 3 MR BELTRAMI: As an independent application, the main issue
 4 would have been regardless of the 2.11 issue, should the
 5 administrators distribute? So is it a relevant harm
 6 that GP1 will not be able to pass on to -- or, they
 7 would be able to pass on -- is it a relevant harm that
 8 GP1's ultimate creditors, the beneficial owners of these
 9 instruments will not receive the money if it is frozen
 10 in the holders' hands. So that would have been the main
 11 question as an independent application. And GP1 would
 12 say it is a relevant harm and the administrators would
 13 say it isn't.
 14 If it is wrapped up with the 2.11 issue that
 15 question is still there just about, if this court is
 16 going to answer the 2.11 issue, it sort of answers the
 17 distribution point as well. Because if the answer is
 18 that there isn't a 2.11 trust, then there is no problem;
 19 the money will never be frozen anyway. If the answer is
 20 there is a 2.11 trust, then at least we know where we
 21 stand on that and a distribution can be made in
 22 accordance with it.
 23 So as I see it, one of the advantages of having the
 24 combined hearing is that much of the argument -- I don't
 25 think it has gone, but much of the argument about

1 the distribution on its own becomes less central to the
 2 case.
 3 MR JUSTICE HILDYARD: Yes.
 4 MR BELTRAMI: My Lord, I think that is all I can usefully --
 5 if it has been of any assistance -- provide at the
 6 moment.
 7 MR JUSTICE HILDYARD: It has been of great assistance. I am
 8 sorry to interrupt you, but the purpose of today has
 9 changed in light of the provisional agreements. And we
 10 are now back on track as to it being a procedural
 11 hearing simply to determine what process should be
 12 adopted before the hearing provided the court can help
 13 you on this. I have another matter in October which is
 14 always with me really, which is the Autonomy case, and
 15 I don't know when that is going to come back. I don't
 16 think has presently been fixed. So if you leap in early
 17 in October, from my point of view you should be okay.
 18 But I must find out from listing what -- whether that
 19 will be impossible or not. I will say that this --
 20 there is an obvious -- urgency maybe too strong, but
 21 there is an obvious sense in an early hearing.
 22 MR BELTRAMI: I am grateful. I think all the parties are
 23 grateful for that. I should just say, to be clear, if
 24 that were not possible then I would be coming back and
 25 asking for some early hearing about something. Because

1 certainly the distribution point we wish to have
 2 an answer to earlier rather than later. And whether
 3 that can be tied in with the 2.11 point, that may be
 4 a point for Deutsche Bank as well, but there are
 5 variations of the possibility if it is not possible to
 6 have everything done at the same time.
 7 MR JUSTICE HILDYARD: Without in any way pre-judging it,
 8 I will need to be re-programmed on 2.11 as to why that
 9 is an available point now.
 10 MR BELTRAMI: My Lord, yes. It may be that I can pass over
 11 to the combatants at that point.
 12 MR JUSTICE HILDYARD: Thank you very much. That is very
 13 helpful. Sorry not to hear more from you on the various
 14 issues but I will have forgotten them by October. It is
 15 probably not worth your breath now but it has been very
 16 helpful to have them outlined.
 17 MR BELTRAMI: Thank you, my Lord.
 18 MR JUSTICE HILDYARD: Right. Well, who wants to go next?
 19 Mr Allison.
 20 MR ALLISON: There was simply one point we wanted to mention
 21 on the order in the context of the strike-out
 22 application, really picking up on a point made by
 23 my Lord: do you really need evidence, I think was in
 24 essence my Lord's point. We have a great degree of
 25 sympathy for my Lord's position on that. We may wish to

1 file evidence. Presently we don't believe there is
 2 a need but of course we are still working through the
 3 evidence of Mr Taylor and the lengthy exhibits. It may
 4 be that there are simply other pieces of correspondence
 5 in advance of ECAPS 1 that need to be put before
 6 the court and one doesn't need evidence in a true sense
 7 to do so.
 8 MR JUSTICE HILDYARD: Yes. That is very helpful. I will
 9 leave it to the good sense of the parties to determine
 10 whether they do need evidence. My concern is that I do
 11 not wish to have stirred up listing only to be told that
 12 five days is not enough, and -- but some further process
 13 will be, cross-examination or a lengthy exchange upsets
 14 that. I do not want that. I think that would be a
 15 deal -- I would feel that I had stirred them up on
 16 a false basis.
 17 MR ALLISON: My Lord, we hear that very clearly and
 18 certainly in the context of the strike-out, even if
 19 there is some element of evidence served, I can't
 20 believe for a moment it would require any
 21 cross-examination.
 22 MR JUSTICE HILDYARD: No. There was some slightly
 23 depressing stuff about the administrators being in
 24 cahoots with one or other of the other parties --
 25 I can't remember who made the point.

1 MR ALLISON: There was. I was going to deal with that if we
 2 were having a fully opposed hearing. There was
 3 a suggestion made in GP1's skeleton that they were in
 4 cahoots, there was some unfortunate language used in
 5 that skeleton including -- I think "clandestine
 6 arrangements" was the --
 7 MR JUSTICE HILDYARD: That is the one.
 8 MR ALLISON: That is GP1's skeleton argument, paragraph 2.3.
 9 We found that an unfortunate use of language. I don't
 10 think, in view of where we have got to collectively for
 11 today's hearing, we need to trouble my Lord with
 12 submissions on that point, but we hope that we won't
 13 need to trouble the court with those points again. It
 14 is unfortunate it was put that way.
 15 MR JUSTICE HILDYARD: Ms Hilliard can make such points as
 16 she wants on that, very briefly. But that was
 17 a dissonant note, I thought, and slightly made me
 18 fear, when you mentioned evidence, that I wondered: oh,
 19 my goodness, are they going to bat on about that? But
 20 there is not the purpose of the evidence in any respect.
 21 MR ALLISON: Not insofar as we are concerned and
 22 Deutsche Bank are concerned in relation to the
 23 strike-out.
 24 MR JUSTICE HILDYARD: Ms Hilliard can clarify that.
 25 MR ALLISON: Exactly. Insofar as we are concerned it is

1 very focused, and I think as my Lord has said, probably
 2 at the end of the day it is not really evidence properly
 3 so-called, it's just getting the narrative of the
 4 documents out.
 5 MR JUSTICE HILDYARD: There is a lot of scene setting of
 6 a scene which actually I have seen quite often over the
 7 last six or seven years.
 8 MR ALLISON: Which can be done just as easily in written
 9 submissions by reference to documents.
 10 My Lord, that is the only point I wanted to mention
 11 in relation to the order, I didn't have anything else in
 12 relation to the order, save if I may urge and support
 13 the submissions of Mr Beltrami in relation to
 14 the timing. We put the cases in the skeleton about the
 15 purpose of administration, and the decision of
 16 Mr Justice David Richards, as he then was, in
 17 Waterfall I, on the need for speedy distributions and we
 18 do say that those points --
 19 MR JUSTICE HILDYARD: Everything is relative.
 20 MR ALLISON: Which we also understand but if the court can
 21 accommodate us we are in the fortunate position that
 22 the parties do seem to have coalesced around a timetable
 23 which works.
 24 Unless my Lord has anything further?
 25 MR JUSTICE HILDYARD: No, thank you. Ms Tolaney?

1 Ms Hilliard? I don't mind which of you goes next.
 2 MS HILLIARD: There are a few points. Firstly in relation
 3 to the listing, I and my junior are available in October
 4 but I have a five-week trial starting at the beginning
 5 of November. And my junior has a trial in the second
 6 week of October. So -- I can't be -- for my purposes,
 7 the beginning of October or even the last week
 8 in September would be immensely helpful because
 9 obviously in the run-up to --
 10 MR JUSTICE HILDYARD: I am taking it that really what you
 11 want and what I will press, insofar as I am able,
 12 listing is right at the beginning of October. That is
 13 when counsel are, each and every one of you available.
 14 Is that right? Mr Beltrami?
 15 MS HILLIARD: No, it's the second week.
 16 MR JUSTICE HILDYARD: Second week, sorry.
 17 MR BELTRAMI: My Lord, I am sure we can resolve it, and with
 18 the court. Personally I have a difficulty in the first
 19 week of October. Otherwise I am clear. Just that one
 20 week.
 21 MR JUSTICE HILDYARD: Sorry, I should have clarified this.
 22 It's the second week of October -- can you give me the
 23 dates of that.
 24 MR BELTRAMI: I think it's 9 October.
 25 MR JUSTICE HILDYARD: 9 October is the Monday, is it?

1 MR BELTRAMI: Yes.
 2 MR JUSTICE HILDYARD: That is convenient to you all?
 3 MR BELTRAMI: My Lord, we could manage 9 October.
 4 MR JUSTICE HILDYARD: All right.
 5 MS HILLIARD: Secondly, although we haven't issued
 6 an application for unfair harm under paragraph 74, and
 7 it doesn't need to be recorded in the order, I mention
 8 it only because we may do so, and it won't take up any
 9 more time because it will simply be responsive to the
 10 distribution application, and as you already realise and
 11 appreciated, if everything is going to be determined at
 12 the same time, the distribution application may well go.
 13 My only concern is that Lehman seems to be beset by
 14 appeals and cross appeals and so if one -- if LBHI don't
 15 win on their clause 2.11 point, they may well want to
 16 seek permission to appeal. And if they win on the
 17 clause 2.11 point, Deutsche Bank may well seek
 18 permission to appeal. In those circumstances we would
 19 welcome some confirmation from the joint administrators
 20 that their agreement not to distribute will continue.
 21 Because the issue about freezing of the proceeds would
 22 still -- will still be there. So -- unless, for
 23 example, LBHI if they fail, will say, well,
 24 a distribution can be made and we won't stop and we
 25 won't seek to claw back any of the proceeds. But

1 I can't believe they would do that if they were going to
 2 seek permission to appeal. So that is my only concern.
 3 MR JUSTICE HILDYARD: If the purpose of the application
 4 would be, in a sense, as a hook for an application to
 5 keep the status quo, as it were, pending any appeal,
 6 then it is not going to materially add to the timing
 7 which is all I am bothered about. I leave it to you
 8 entirely whether you issue a proceeding or not -- issue
 9 an application or not.
 10 MS HILLIARD: It would simply be responsive to sort of, if
 11 you like, articulate the position. Then you have the
 12 next point, however the guarantee issue is resolved,
 13 either side may seek permission to appeal, and, in those
 14 circumstances, I hope you would be receptive, maybe the
 15 administrators would be receptive, to effectively
 16 continuing the stop, stay on distribution until that is
 17 resolved. Because, if either side applies for
 18 permission to appeal, the issue still arises. If
 19 neither side applies for permission, then obviously the
 20 distribution can go ahead. But that is our concern.
 21 I will leave that point for you to just reflect on.
 22 MR JUSTICE HILDYARD: I think that is a point which will
 23 have to be dealt with at the time.
 24 MS HILLIARD: Very well.
 25 MR JUSTICE HILDYARD: Whether you issue anything to protect

1 yourselves I leave to you, but from my point of view
 2 I don't think I should jump that stile at the minute.
 3 MS HILLIARD: Very well, my Lord. Two other points. You
 4 did raise with Mr Beltrami the fact that will there are
 5 issues outstanding in the estate and Mr Beltrami
 6 indicated that it shouldn't affect anything. Well, to
 7 a certain extent it does affect things, and this issue
 8 about estimated outcomes is actually very curious.
 9 In April 2022 the PLC joint administrators issued
 10 a statement with estimated outcomes, with a low case of
 11 219 million after all unsubordinated creditors had been
 12 paid and a high case of 403 million. Now, that was
 13 in April 2022. You then had the most recent report of
 14 the joint administrators as at March 2023, or slightly
 15 after that, and they say no change.
 16 Now, by that time the existence of that New York
 17 judgment where LBIE had failed to succeed in their claim
 18 for 495 million had been handed down and yet
 19 Mr Macnamara in his seventh witness statement says there
 20 is no change in the estimated outcome. That is very
 21 curious.
 22 MR JUSTICE HILDYARD: It was a curiosity which I think
 23 Mr Beltrami didn't want to explore and I can see -- it
 24 may be that by whatever time it was, that that hadn't
 25 really been included as a likely recovery, I don't know.

1 MS HILLIARD: I don't know either but the point is that the
 2 low case and the high case, both figures, are absolutely
 3 key, because if it is now going to be said actually
 4 there is not going to be very much at all left in the
 5 PLC estate because of that failure, because the
 6 estimated outcomes statement in April 2022 actually said
 7 everything hung on LBIE recoveries, so ---
 8 MR JUSTICE HILDYARD: Not those recoveries ---
 9 MS HILLIARD: Generally --- it was ---
 10 MR JUSTICE HILDYARD: No, but providing on the low case,
 11 which they have confirmed, there would be enough to
 12 argue about ---
 13 MS HILLIARD: No, there wouldn't, there wouldn't, because
 14 the discounted face value is 188 million and even if you
 15 take interest --- if you accept that interest is payable
 16 on the discounted face value, it would overtop the
 17 219 million. So it is an important question, and it is
 18 one that it would be helpful to know the answer to, you
 19 know, within the next couple of months and in good time
 20 before the hearing in October because otherwise we don't
 21 know what we are arguing about or even if it is worth
 22 arguing about. And of course on our case it is our
 23 money that is being used for the joint administrators to
 24 make these arguments.
 25 On the clandestine agreement, the waiver agreement,

1 I'm afraid to say, was clandestine. We were presented
 2 with this so-called waiver agreement between LBHI and
 3 the joint administrators literally a week ago. We had
 4 no idea that it was being negotiated, and we had no idea
 5 of its existence so it was --- secret, clandestine, use
 6 whatever term you like but it is very odd that nobody
 7 told us about it and it is an even more curious
 8 agreement because the terms of the agreement are such
 9 that this so-called waiver terminates in June 2023. In
 10 other words, the terms of the agreement are that if the
 11 joint administrators haven't made a distribution to us,
 12 GP1, by June 2023 the waiver goes.
 13 Well, there may well be some kind of economic
 14 rationale for it but it did look as though we were being
 15 engineered into a situation where the money would be
 16 frozen, because of the clause 2.11 agreement, and --- but
 17 notwithstanding that, the joint administrators have
 18 entered into an agreement without our knowledge, I think
 19 that is clandestine, making sure that a distribution
 20 would be made to GP1 in circumstances where it would
 21 effectively not be able to be used by the ultimate
 22 beneficial holders, who everybody accepts --- it might be
 23 that the money comes to us but everybody accepts that
 24 the ECAPS holders are the ultimate beneficial holders,
 25 and they are the ones with the economic interest in

1 this. Everybody accepts that. That is why
 2 Deutsche Bank is a party.
 3 We are not a conduit exactly, it is our money when
 4 it's paid to us, that is our position, but it ultimately
 5 goes to the ultimate beneficial holders who are the
 6 ECAPS holders. Therefore I do say it was a clandestine
 7 arrangement.
 8 MR JUSTICE HILDYARD: I understand your anxiety, and you put
 9 it very forcefully. But where does it go?
 10 MS HILLIARD: It doesn't go ---
 11 MR JUSTICE HILDYARD: Is this going to be a matter on which
 12 I have to take a view?
 13 MS HILLIARD: No, it is all right, because the distribution
 14 application is now going to be heard at the same time as
 15 everything else. So ---
 16 MR JUSTICE HILDYARD: So that has all gone, because it was
 17 actually (inaudible --- overspeaking) to time.
 18 MS HILLIARD: I am still a bit concerned about the
 19 joint administrators effectively doing things which have
 20 a direct effect on us and announcing it after the event.
 21 I don't think it is ---
 22 MR JUSTICE HILDYARD: I completely understand that, if that
 23 was the turn of events.
 24 MS HILLIARD: That was.
 25 MR JUSTICE HILDYARD: It is just when you are dealing with

1 people who have been in the saddle for some time and who
 2 are professional people, on the whole they do get a bit
 3 itchy about it being said they are behaving improperly
 4 and then the question is why is that being said. If it
 5 is being said to no purpose then it shouldn't be said.
 6 If it is being said to some purpose, I would like to
 7 know what it was. And you have explained it was really
 8 in order to --- in case the peace, as it were, was not
 9 brokered and you had to make ---
 10 MS HILLIARD: Exactly so, my Lord.
 11 MR JUSTICE HILDYARD: --- some timing issues.
 12 MS HILLIARD: Exactly so. The final point I want to address
 13 you on is the point about the proof of debt which was
 14 lodged with reservation and without prejudice. The
 15 reason why it was done that way is again in the context
 16 of the distribution application. Our concern was that
 17 the rules, the Insolvency Rules 14.32 provide that
 18 an office-holder is not obliged to deal with a late
 19 proof of debt unless they want to. It gives them
 20 complete discretion. So what we wanted to guard against
 21 was the risk, because clearly --- clearly LBHI, and
 22 possibly LBL, have their agenda as creditors of the
 23 joint administrators and GP1 has its agenda for the
 24 benefit of the ultimate holders of the ECAPS, and what
 25 we wanted to do was just guard against an unholy row

1 that we hadn't lodged a proof of debt in time and
 2 therefore the joint administrators shouldn't deal with
 3 it in the --
 4 MR JUSTICE HILDYARD: I can understand. It's a two-faced
 5 problem, isn't it?
 6 MS HILLIARD: Yes.
 7 MR JUSTICE HILDYARD: One is you wanted to put something in
 8 which foreclosed that argument but you wanted to caveat
 9 it in case it was held against you in terms of what the
 10 period of your claim is.
 11 MS HILLIARD: Yes, exactly. And you are right --
 12 MR JUSTICE HILDYARD: So I understand it. But you have
 13 resolved that.
 14 MS HILLIARD: Exactly. You are right, those issues have all
 15 gone because peace has notionally broken out and
 16 everything will be heard together in October.
 17 MR JUSTICE HILDYARD: Yes.
 18 MS HILLIARD: I just wanted to clarify those points and in
 19 particular explain why we were so concerned about this
 20 agreement that we knew nothing about.
 21 MR JUSTICE HILDYARD: Yes. Okay, thank you. Yes,
 22 Ms Tolaney.
 23 MS TOLANEY: My Lord, I have nothing to add, unless
 24 your Lordship has any questions of me.
 25 MR JUSTICE HILDYARD: That is very helpful. Mr Beltrami?

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1 MR BELTRAMI: My Lord, I feel I have to come back on
 2 something. I hadn't got into, given the circumstances,
 3 these allegations which were made in writing and in my
 4 learned friend's skeleton.
 5 MR JUSTICE HILDYARD: Mr Beltrami, I understand that, but
 6 the thing is they are not being withdrawn.
 7 MR BELTRAMI: No, they haven't been withdrawn and therefore
 8 I have to make it quite clear they are entirely
 9 rejected, each and every one of them, on the basis that
 10 frankly they should never have been made, I want to make
 11 that absolutely clear. The suggestion that an agreement
 12 to which they were not even a party was called
 13 "clandestine" because they didn't know about it, is
 14 frankly bizarre, I don't understand the basis on which
 15 it could be said they ought to have been told in advance
 16 and therefore if they weren't, it should be called
 17 "clandestine".
 18 The allegation that something has been engineered to
 19 their disadvantage, in the skeleton and repeated orally,
 20 is incoherent in circumstances in which we have made it
 21 clear we will not be distributing until the court has
 22 dealt with the application. Each of those allegations
 23 made in the skeleton we submit should not have been
 24 made, ought to have been withdrawn today, and certainly
 25 ought not to have repeated.

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1 I didn't want to go into that, I didn't want to
 2 raise the temperature, but as it has been raised I ought
 3 to make my clients' position clear. And I hope that is
 4 the end of it. Enough said.
 5 MR JUSTICE HILDYARD: I think that is enough said. I quite
 6 understand why you wish to put that on the record.
 7 I think the less I say about this the better. I note
 8 both the reason for putting that language, which was
 9 advanced, and your firm statement that it is without
 10 foundation. I don't think I am invited to or should
 11 seek to resolve that. It has become an irrelevance
 12 except that you must -- it is right you should have
 13 clarified the record.
 14 MR BELTRAMI: My Lord, thank you. My Lord, nothing else
 15 on ...
 16 MR JUSTICE HILDYARD: Ms Hilliard, I quite understand the
 17 vehemence of your submissions but, without evidence and
 18 without crystallising a point, you may feel that that is
 19 the sort of point which shouldn't be advanced, as it
 20 were, in a way which is bound to crystallise fury,
 21 really. I just leave it at that. I think we have
 22 enough on our plate without this and it has been
 23 dissolved out of the process.
 24 MR BELTRAMI: My Lord, thank you. You did raise earlier the
 25 2.11 issue, I don't know whether you want to get into

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1 that today.
 2 MR JUSTICE HILDYARD: No, subject to one point, which I will
 3 come to. The point which Ms Hilliard made which does
 4 bother me is in the range of low and high, she has
 5 explained that the mathematics are that the
 6 proportionality or even sense of disputing some of these
 7 points would go if the low estimate proved to be the
 8 right estimate. I think I ought to know a little bit
 9 more about this before setting the good ship sailing to
 10 an early date.
 11 MR BELTRAMI: They wouldn't all go. They wouldn't all go.
 12 What we have called issue 1, where statutory interest
 13 comes in the waterfall, if that is the right term, would
 14 be a live issue, even on the low case. Issue 2, which
 15 is concerned with the figure upon which you calculate
 16 statutory interest, may become redundant on the base
 17 case. I don't know the exact figure, but I can see that
 18 may be so. And issue 3, as to the date on which the
 19 statutory interest starts, that also appears to be live
 20 even on the base case.
 21 So if it is a base case point, and I think this is
 22 what they said in their skeleton, and I think it is
 23 right, it would on the face of it affect issue 2 only.
 24 Now, whether the base case is the right case or high
 25 case, I don't know --

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1 MR JUSTICE HILDYARD: What are the parameters? Have they
2 been explained in the various statements issued to
3 creditors by the administrators?
4 MR BELTRAMI: The only figure or specific figures given, if
5 your Lordship wants to go to tab 3, page 672 —
6 MR JUSTICE HILDYARD: Yes, I will. But I am going to draw
7 stumps for the moment, because I would like just to
8 touch base with listing. Sorry to keep you all, but
9 I am going to have to come back and make some enquiries,
10 because I think we have probably — I would like to hear
11 from you a little bit on that, Mr Beltrami, just so
12 I have better grip on but I think it may be a convenient
13 moment to see whether I can get hold of listing, and
14 settle our nerves as to whether the second week of
15 October is available.
16 MR BELTRAMI: My Lord, yes.
17 MR JUSTICE HILDYARD: Then we will come back and finish it
18 off.
19 (11.40 am)
20 (A short break)
21 (11.56 am)
22 MR JUSTICE HILDYARD: Sorry about the delay. I was just
23 getting hold of the relevant people. You have a hearing
24 between the 9th and the end of that week, five days,
25 that is it, no more. And that, I hope, will perfect

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1 your very welcome sort of consensus on the procedural
2 steps.
3 MR BELTRAMI: Thank you very much, we are very grateful for
4 accommodating us.
5 MR JUSTICE HILDYARD: Not at all. I think I should say that
6 I would have taken some persuading to bifurcate these
7 hearings in any way because I think it would have been
8 a short route to a long way. I think this is a much
9 better solution, it will enable us to work all the
10 points out. From my point of view, as I have said, and
11 I am sorry to repeat it, like Frank Sinatra, there are
12 many, many farewell performances and it would be nice to
13 hear by the end of July whether there are any matters
14 which are in the pipeline so we can work out how to deal
15 with them.
16 MR BELTRAMI: My Lord, yes.
17 MR JUSTICE HILDYARD: Yes. You were going to explain high,
18 low and criteria and —
19 MR BELTRAMI: I am not sure I was going to explain very
20 much. I was going to show you what the statement
21 indicated.
22 MR JUSTICE HILDYARD: Yes.
23 MR BELTRAMI: Which is tab 3, page 672. Volume 1 —
24 volume 2, I think. Volume 2, tab 3, page 672. This is
25 a statement of the April —

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1 MR JUSTICE HILDYARD: I have —
2 MR BELTRAMI: There are two numbers. It's the bottom
3 right-hand number.
4 MR JUSTICE HILDYARD: Bottom right-hand number. Yes,
5 "provide with updated illustrative financial outcomes".
6 MR BELTRAMI: Yes, just to put this in context. You see on
7 672, you see it is dated April 2022.
8 MR JUSTICE HILDYARD: Yes.
9 MR BELTRAMI: And we have in the bundle elsewhere
10 the April 2023 statement.
11 MR JUSTICE HILDYARD: Where is that?
12 MR BELTRAMI: That is tab 36, I think the same — no. Next
13 bundle. Volume 4 I think. Sorry, volume 3, tab 36.
14 MR JUSTICE HILDYARD: Shall we look at that?
15 MR BELTRAMI: If you just want to see it just — it begins
16 on page 1401, which is the administrators' progress
17 report to 14 March, dated 13 April.
18 MR JUSTICE HILDYARD: Okay.
19 MR BELTRAMI: In that statement page 1410, again bottom
20 right-hand corner, right-hand column first main
21 paragraph it says:
22 "Since the April 2022 update, there have been no
23 material changes to the level of estimated" —
24 MR JUSTICE HILDYARD: Sorry, I am being — I have it, yes.
25 MR BELTRAMI: 1410, right-hand column.

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1 MR JUSTICE HILDYARD: Yes, I have it.
2 MR BELTRAMI: "Since the April 2022 update ..."
3 Your Lordship can read that:
4 " ... no material changes to the level of estimated
5 recoveries and as such the Administrators have not
6 provided an updated estimate outcome at this time."
7 So that is the updated statement which takes us back
8 to 672.
9 MR JUSTICE HILDYARD: Thank you.
10 MR BELTRAMI: 672 identifies, as you see on the second half
11 of that page, the base case and it concludes at the last
12 sentence of the base case an estimated recovery for the
13 subordinated creditors of £219 million, and the high
14 case last sentence, has £403 million. That is then
15 factored into the table at 673, and just to explain the
16 table, there are various assumptions which make up the
17 table and the assumptions are set out — the principal
18 assumptions are set out in the first little paragraph
19 immediately after the table which, without pre-judging
20 the issue for the court, at least reflect the basis on
21 which the administrators have made their calculations.
22 So the assumptions are LB GP1's statutory interest
23 is calculated on discounted claims — so that is one of
24 our issues: do you calculate it on the discounted claim
25 or the face value claim? That is the first basis.

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1 The second basis is assumed to rank in priority
 2 ahead of LBHI's principal claim. That is issue
 3 number 1: who gets priority between the principal and
 4 the statutory interest .
 5 And:
 6 "... for the purpose of this illustration , is
 7 assumed to accrue for 17 years from the date LBH entered
 8 into administration."
 9 That is issue 3.
 10 So for each of those issues the administrators had
 11 proceeded on a basis as set out, notwithstanding the
 12 fact that each basis is now in dispute. Those bases,
 13 just to indicate, reflect varying positions between the
 14 parties. So of the three I have mentioned, the
 15 discounted claim point, GP1 disputes that and claims
 16 that it ought to be on the face value not the discounted
 17 amount. The priority issue, LBHI disputes that one and
 18 says it should have priority over statutory interest .
 19 And for the date of accrual point, LBHI disputes that
 20 one because it says it should be from the date of
 21 proving not the date of administration.
 22 So on the basis of those assumptions, the
 23 administrators have dealt with the high and low case.
 24 I have explained how much goes to which party and you
 25 will see on the basis of those assumptions the bulk of

1 the --- all of the base case goes to GP1, and the bulk of
 2 the high case goes to GP1. But of course that
 3 is dependent on how you treat the assumptions, either
 4 way. We haven't done tables for all the different
 5 assumptions and all the different permutations.
 6 The reality is, my Lord, the administrators wouldn't
 7 be bringing these applications to court unless they
 8 thought there was something worth fighting about. So in
 9 a sense it is a slightly circular question, if no money
 10 were at stake we wouldn't need to ask the questions, we
 11 are not asking the questions for the sake of the
 12 development of the law, we are asking the questions
 13 because, on the basis of these projections, the
 14 administrators consider that the questions matter or may
 15 matter and, therefore, need determination.
 16 What I can't show you from this report is how these
 17 base case figures or high case figures are made up, nor,
 18 with respect, will I, unless the court absolutely
 19 determines it. The ECAPS, for example, are traded on
 20 the market, therefore there is information behind base
 21 numbers, et cetera, and the administrators are careful
 22 as to what they do and don't say in respect of what they
 23 put in their projections. So there is no more detail
 24 I can give as to how they are reached but, as I say, the
 25 figures on my instructions haven't changed,

1 notwithstanding that judgment.
 2 I can't --- I asked specifically but I can't go any
 3 further in relation to that because the more one delves
 4 into the detail , the more one gets into other issues
 5 which we don't want to address. But standing back from
 6 that, the administrators are still of the belief that
 7 the questions that are raised matter given the amounts
 8 projected on the high and low case basis.
 9 MR JUSTICE HILDYARD: Yes. I suppose people do participate
 10 in litigation by quantifying how much of that is --- but
 11 there we are, you can't help me. And it follows, does
 12 it, you can't help me --- supposing LBIE, which
 13 I understand to have been the claimant in the New York
 14 proceedings adjudicated, supposing LBIE had succeeded in
 15 those claims, would that have affected the cases, high
 16 and low, in PLC's administration?
 17 MR BELTRAMI: I don't think I am going to venture an answer
 18 to that question.
 19 MR JUSTICE HILDYARD: Well, it seems odd in a way,
 20 Mr Beltrami, I understand your individual position but
 21 it seems odd that there is absolutely no guidance on how
 22 that would have or not have affected. I can't remember
 23 quite what the flows of money are. Your company is
 24 downstream of LBIE, as it were ---
 25 MR BELTRAMI: Yes.

1 MR JUSTICE HILDYARD: --- but it seems odd that it wasn't
 2 affected at all .
 3 MR BELTRAMI: They are different questions. I am not
 4 talking at the moment with any better knowledge, but
 5 there are different questions as to how it affects .
 6 Because losing would affect if winning were included.
 7 Winning could affect even if it wasn't included in the
 8 calculations. So it is not quite symmetrical either
 9 way.
 10 MR JUSTICE HILDYARD: That is why I asked it that way round,
 11 which was the other way round than I had asked
 12 previously .
 13 MR BELTRAMI: Yes. Instinctively one would imagine that
 14 could make a difference, but I simply don't want to go
 15 where I can't go in relation to that. But what I am
 16 told is that the judgment which was given has not made
 17 a difference in the administrators' current assessment
 18 of those numbers.
 19 MR JUSTICE HILDYARD: Right, and it has not made any
 20 difference to the likelihood or not of either base or
 21 higher --- low or high? Estimates?
 22 MR BELTRAMI: Well, I am not sure ---
 23 MR JUSTICE HILDYARD: In the events that have happened since
 24 April 2022 you are no further forward in determining
 25 which is the more likely, low or high case?

1 MR BELTRAMI: Well, again, one has to be careful as to where
 2 I can and can't go. These numbers identify low and high
 3 case, they don't deal with the probabilities of one or
 4 the other.
 5 MR JUSTICE HILDYARD: No.
 6 MR BELTRAMI: So I don't think I can go into assessment of
 7 probability versus one --
 8 MR JUSTICE HILDYARD: The margins are not tightened over the
 9 year.
 10 MR BELTRAMI: Yes, exactly, the margins are the same.
 11 MR JUSTICE HILDYARD: Those margins are affected by the
 12 assumptions, some of which you have outlined to me.
 13 MR BELTRAMI: Yes.
 14 MR JUSTICE HILDYARD: Right. Thank you.
 15 MR BELTRAMI: My Lord, that --
 16 MR JUSTICE HILDYARD: Does anyone want to add or caveat any
 17 of this? Ms Hilliard?
 18 MS HILLIARD: Just a tiny point -- just because, on behalf
 19 of my clients, I am still slightly perplexed by all of
 20 this. It's obviously supposed to be a transparent
 21 process, and if one looks at page 639 of the estimated
 22 outcome, in April 2022, in the second paragraph it says:
 23 "Two illustrative outcomes have been prepared on an
 24 assumed base case and high case driven largely by
 25 additional recoveries at LBIE. Notably neither figure

1 represents an extreme of outcome and the high recovery
 2 estimate is materially dependent upon significant
 3 recoveries derived from LBIE's remaining litigation
 4 matters."
 5 So where does the 495 million fit into that? That's
 6 -- and it is significant because if, actually, as
 7 a result of all of this there is not going to be enough
 8 money to pay GP1 interest on the discount -- all the
 9 interest even on a discounted basis, well then, we do
 10 need to reflect on what we are arguing about and it may
 11 well be that we will be able to negotiate some of these
 12 issues away. It's a simple point, but it is one that is
 13 perplexing and I am surprised that there isn't an answer
 14 to it.
 15 MR JUSTICE HILDYARD: I rather share being perplexed. I
 16 mean, LBIE has one or two outstanding issues, but even
 17 by the standards of this administration the prospect of
 18 recovering 495 million must be captured within that
 19 paragraph, if I can put that way, and is stated to
 20 affect at least the high case. You say it doesn't?
 21 MR BELTRAMI: Those are my instructions. Whether what
 22 Ms Hilliard wants is a confirmation -- as I say, there
 23 is a concern about delving into the detail, even in
 24 respect of ongoing litigation, of which I think my
 25 client doesn't have any visibility anyway, there are

1 issues, but there is a concern broadly about the
 2 underlying information in relation to this. Whether
 3 Ms Hilliard's client wishes a confirmation of the
 4 position, I don't know, but I am not sure I can offer
 5 much more than that. I can't offer ...
 6 MR JUSTICE HILDYARD: The administrators are in court?
 7 MR BELTRAMI: Yes.
 8 MR JUSTICE HILDYARD: And they must know what they meant --
 9 don't they?
 10 MR BELTRAMI: I assume they do.
 11 MR JUSTICE HILDYARD: Yes. So although I sympathise very
 12 much with your personal position, and whilst I don't
 13 think Ms Hilliard is necessarily pressing for
 14 a revelation now which may be disorderly, it may be
 15 something which should be, sooner rather than later,
 16 clarified in order that GP can assess whether they
 17 should press for negotiations -- I don't know whether
 18 that is realistic or whether that is forensic. I am
 19 sure it's realistic. But I think it should be
 20 clarified. Because it has been stated and appears to
 21 capture the LBIE recoveries, put another way it would be
 22 surprising if it didn't, given the weight of the claim,
 23 but no one can tell me any more about it, nor them.
 24 MR BELTRAMI: My Lord, as I say, the administrators are in
 25 court, and no doubt listened to what you have said about

1 that, and to the extent that they are able to give
 2 clarification I am sure they will aim to do so.
 3 MR JUSTICE HILDYARD: Yes. Because Ms Hilliard makes a fair
 4 point, which is why I was so shocked in a sense by her
 5 more aggressive point on "clandestine", is that this is
 6 a dispute, subject to Deutsche Bank, between
 7 professional administrators, as it were, doing the best
 8 for their various constituencies, and I think it assists
 9 everyone if there is transparency.
 10 MR BELTRAMI: My Lord, yes.
 11 MR JUSTICE HILDYARD: And less heat (inaudible) without
 12 evidence.
 13 MR BELTRAMI: My Lord, yes. I am sure they have heard what
 14 you said and will look at it to the extent that ...
 15 MR JUSTICE HILDYARD: Thank you. All right. Shall we leave
 16 it this way, and you tell me where I have been
 17 incomplete: together you will compile an agreed draft
 18 order incorporating the additional features you have
 19 described to me and also, though this is a minor point
 20 because it's entirely procedural, any timing for
 21 a bundle in order to focus minds before the summer
 22 sweeps us all away.
 23 Second, you have your hearing date for the 9th for
 24 five days including one day's reading.
 25 Third, I am the Lehman--assigned judge but there is

1 the outside possibility that some other preoccupation
 2 would get in the way, in which case Mr Justice
 3 Marcus Smith or some other judge who is familiar with
 4 Lehman matters and not conflicted, which does reduce the
 5 field actually, will deal with it. I am very much
 6 hoping to be able to deal with it myself and see you all
 7 again then but I just wanted to caveat.
 8 Fourth, you will before the summer term ends make
 9 all reasonable efforts to see whether there are points
 10 which sensibly ought to have been or be decided along
 11 with this, and can be accommodated within the hearing
 12 the timetable of five days and if they are not,
 13 explaining the reason why, so that we can know roughly
 14 when things are going to end. That will be important
 15 anyway because these administrations have been
 16 repeatedly extended, I think yours lasts until 2025,
 17 does it, so you have a bit more lead time, but some are
 18 already expiring and it will be interesting to know what
 19 the position is.
 20 Fifth, I have made my point about not making rude
 21 remarks, inflammatory remarks without evidence or at all
 22 in this sort of context.
 23 Sixth, I have suggested that of the points made
 24 prima facie the one which caught my eye as possibly one
 25 which the Court of Appeal would have been surprised to

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1 learn about if it hadn't -- if it wasn't then before it,
 2 which is the clause 2.11 point. So I will need
 3 particular help as to why that wouldn't then run
 4 a decision of the Court of Appeal, whatever its merits.
 5 I will want to deal with the merits in any event. That
 6 seems to me a more difficult point, if I can put it that
 7 way, than the statutory interest point, given that the
 8 statutory interest in its application to subordinates
 9 after the unsubordinates seems to me interesting.
 10 MR BELTRAMI: My Lord, it's all interesting but ...
 11 MR JUSTICE HILDYARD: Does that deal with all the points?
 12 MR BELTRAMI: I think that does deal with all the points.
 13 MR JUSTICE HILDYARD: It's a very strong cast so I am very
 14 grateful to all of you and to all those who helped you
 15 and particularly grateful you were able to reach this
 16 consensus, which is really, really helpful. You will
 17 get that minute of order, and I will have it sealed,
 18 unless I have any further points. If other points
 19 arise, my availability in July is very limited and so
 20 get on with it.
 21 MR BELTRAMI: My Lord, thank you very much.
 22 MR JUSTICE HILDYARD: Thank you very much.
 23 (12.18 pm)
 24 (The Hearing Concluded)
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LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION) (“PLC”)

Term sheet: Resolution of certain issues in relation to PLC’s estate

WITHOUT PREJUDICE

SUBJECT TO CONTRACT

LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION) (“PLC”)

Term sheet: Resolution of certain issues in relation to PLC’s estate

This term sheet represents the current understanding of the Parties with respect to the terms of the proposed resolution of certain issues in relation to the estate of PLC. Save for the section headed “Binding terms”, this term sheet: (i) does not constitute an offer by any party capable of acceptance by any other Party (and shall not become legally binding on, or otherwise enforceable by or against, any Party); (ii) is not intended to create, evidence or imply any legal relationship or contract between the Parties; (iii) does not represent an exhaustive list of matters to be incorporated into the framework agreement to be entered into between the Parties (the “**Framework Agreement**”); and (iv) is strictly without prejudice and subject to contract and the Framework Agreement being agreed and executed by the Parties.

	Date:	21 September 2023
1	Parties:	<p>(1) The current joint administrators of PLC, being Edward John Macnamara, Gillian Eleanor Bruce, and David James Kelly (the “PLC Administrators”)</p> <p>(2) PLC</p> <p>(3) LB GP No.1 Limited (in liquidation) as general partner of each of the ECAPS Issuers (“GP1”)</p> <p>(4) The current joint liquidators of GP1, being Bruce Alexander Mackay and Matthew Robert Haw (the “JLs”)</p> <p>(5) The ECAPS Issuers (as defined below)</p> <p>(6) Lehman Brothers Holdings Inc. (“LBHI”)</p> <p>(7) LB Investment Holdings Ltd (“PLP”)</p> <p>(8) Deutsche Bank A.G. (London Branch) (“DB”)</p> <p>The non-Parties who receive certain releases in the Framework Agreement shall have the benefit of those releases as third parties, but shall not be required to consent to any termination or variation of that agreement.</p> <p>For the avoidance of doubt, any reference to a Party shall include that Party’s successors and assigns.</p> <p>The Individual Respondents (defined below) other than the PLC Administrators shall not be party to the Framework Agreement but shall be party to the separate 7(f) Application Settlement (as defined below).</p>
2	Definitions	<p>Terms bearing initial capitals shall have the meanings given to them by this Term Sheet, including the following not otherwise defined herein:</p> <p>“Affiliate”, with respect to LBHI, means LBHI’s controlled affiliates.</p>

	<p>“Beneficial ECAPS Interest Holder” means anyone who is for the time being shown in the records of any ECAPS Account Holder as holding an interest in any ECAPS;</p> <p>“ECAPS” means the Enhanced Capital Advantaged Preferred Securities issued by each of the ECAPS Issuers;</p> <p>“ECAPS Holders’ Committee” means the ad-hoc committee of ECAPS Holders who are subject to non-disclosure and common interest privilege agreements with GP1;</p> <p>“ECAPS Deeds of Guarantee” means:</p> <ol style="list-style-type: none">i. the subordinated guarantee understood to have been given by PLC in relation to the issuance of ECAPS by LP I;ii. the subordinated guarantee given by PLC and dated 21 September 2005 in relation to the issuance of ECAPS by LP II; andiii. the subordinated guarantee given by PLC and dated 22 February 2006 in relation to the issuance of ECAPS by LP III; <p>“ECAPS Issuers” means Lehman Brothers UK Capital Funding LP (“LP I”), Lehman Brothers UK Capital Funding II LP (“LP II”), and Lehman Brothers UK Capital Funding III LP (“LP III”);</p> <p>“ECAPS Account Holders” means each person (other than Euroclear and Clearstream, Luxembourg) who is from time to time shown in the records of Euroclear and Clearstream, Luxembourg as the holder of an interest in any ECAPS (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the number of ECAPS standing to the account of any person shall be conclusive and binding for all purposes);</p> <p>“ECAPS Holder” means the ECAPS Account Holders, the registered holder of the ECAPS (being, as at the date of this Term Sheet, The Bank of New York Depository (Nominees) Limited) and the Beneficial ECAPS Interest Holders;</p> <p>“Effective Date” means the date and time at which the Framework Agreement becomes unconditionally effective;</p> <p>“Gross-up Arguments” means any and all rights and arguments in respect of Condition 8 (Taxation) of the PLC Sub-Notes and its consequences (if any) for the admitted amount of GP1’s claims under the PLC Sub-Notes;</p>
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		<p>“Individual Respondents” means each of Steven Anthony Pearson, Anthony Victor Lomas, Derek Anthony Howell, Julian Guy Parr, Ian David Green, Russell Downs, Edward John Macnamara, Gillian Eleanor Bruce, and David James Kelly;</p> <p>“Letter of Support” means a letter of support in similar form to that attached at Schedule 1;</p> <p>“Partial Discharge Issue” means the application (if any) of the Court of Appeal’s decision in <i>Re LB Holdings Intermediate 2 Ltd</i> [2021] EWCA Civ 1523 to the claims of unsubordinated creditors whose claims have been admitted in the administration of PLC and have also received payments from LBHI as guarantor of such claims;</p> <p>“Priority Legal Issues” are as numbered in the ECAPS 2 Application; and</p> <p>“Winter Garden – LBL Claim” means the claim asserted in a proof of debt submitted by Winter Garden Inc. in the administration of LBL in the amount of £1,028,934.10 which is yet to be adjudicated by the LBL Administrators.</p>
<p>3</p>	<p>Agreement as to distributions to subordinated creditors of PLC and the ECAPS Account Holders (the “Agreed Distributions”)</p>	<p>The Parties will agree that the PLC Administrators will distribute the funds of PLC available for distribution to subordinated creditors of PLC (“Available Funds”) according to the following scheme:</p> <ul style="list-style-type: none"> i. Tier X: (Subject to the Tier X Distribution Conditions below) the first £187.4m of Available Funds shall be distributed to GP1 and LBHI in the order of priority and the proportions set out below (the “Tier X Distributions”): <ul style="list-style-type: none"> a. First, GP1 to be paid 92% (the “GP1 Tier X Distribution”); and b. Second, LBHI to be paid 8% (the “LBHI Tier X Distribution”). ii. Tier Y: (Subject to the Tier Y Distribution Conditions below) the Parties agree that the next £225m of Available Funds after payment of the Tier X Distributions in full shall be distributed to GP1 and LBHI as applicable <i>pro rata</i> between GP1 and LBHI as and when funds become available for distribution by the PLC Administrators, (the “Tier Y Distributions”): <ul style="list-style-type: none"> a. If GP1 and/or DB prevail in relation to Priority Legal Issue 1 (in the form of a final and non-

		<p>appealable order or decision of the court/appellate court having the effect that statutory interest payable on the claim in respect of the PLC Sub-Notes (“Claim D”) falls to be paid in priority to the principal amount of the PLC Sub-Debt (“Claim C”) (an “ECAPS Outcome”), to be applied:</p> <ul style="list-style-type: none">i. 94% to GP1; andii. 6% to LBHI. <p>b. If LBHI prevails in relation to Priority Legal Issue 1 (in the form of a final and non-appealable order or decision of the court/appellate court having the effect that the principal amount of Claim C falls to be paid in priority to statutory interest payable on Claim D) (an “LBHI Outcome”), 100% to LBHI.</p> <p>Once Tier Y Distributions in respect of (a) or (b) above have been made which total £225m (the “Maximum Tier Y Distributions”), any further distributions shall be Tier Z Distributions (defined below).</p> <p>iii. Tier Z: (subject to the Tier Z Distribution Condition) any and all further Available Funds after payment of the Tier X Distributions and the Maximum Tier Y Distributions in full will be distributed by the PLC Administrators as follows:</p> <ul style="list-style-type: none">a. If there is an ECAPS Outcome in relation to Priority Legal Issue 1, to be split 42% (GP1) and 58% (LBHI);b. If there is an LBHI Outcome in relation to Priority Legal Issue 1, to be split 12% (GP1) and 88% (LBHI); <p>(the “Tier Z Distributions”).</p> <p>The Parties will use reasonable endeavours to agree and incorporate into the Framework Agreement provision as to the economic split of Tier Y and Tier Z in the event that, at the conclusion of the current court directions application process (including any appeals) there is neither an ECAPS Outcome nor an LBHI Outcome to Priority Legal Issue 1. If the Parties are unable to agree such split by the time of signing the Framework Agreement, the Framework Agreement shall include a provision requiring the Parties in such a scenario to consult and negotiate in good faith to reach agreement as to the distribution of Tier Y and Tier Z consistent with the Framework Agreement and any judgment or order which the court/appellate court may have made on Priority Legal Issue 1.</p>
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		<p>Distribution Conditions</p> <p>Tier X Distribution Conditions:</p> <ul style="list-style-type: none">iv. The PLC Administrators shall cause the GP1 Tier X Distribution to be paid promptly (allowing for such time as is reasonably required to take the necessary administrative and practical steps to effect such payments) to GP1 following the Effective Date without deduction or withholding (save for any applicable taxes) and notwithstanding that statutory interest payable to PLC’s unsecured creditors may not have been distributed at such date.v. GP1 shall cause an amount equal to the GP1 Tier X Distribution less any amounts subject to the Reserve and Reimbursement Agreement to be promptly (allowing for such time as is reasonably required to take the necessary administrative and practical steps to effect such payment) distributed to the ECAPS Account Holders without deduction or withholding (save for any applicable taxes) (the “ECAPS Tier X Distribution”).vi. For the avoidance of doubt, the GP1 Tier X Distribution and the ECAPS Tier X Distribution shall be paid promptly notwithstanding that remaining statutory interest payable to PLC’s unsecured creditors may not have been distributed at such time.vii. All Parties shall agree and acknowledge that they will not take any step which may have the direct or indirect effect of preventing, impeding or delaying (i) the GP1 Tier X Distribution to GP1; (ii) the ECAPS Tier X Distribution to ECAPS Account Holders without deduction or withholding (save for any applicable taxes); (iii) any payment by ECAPS Account Holders to Beneficial ECAPS Interest Holders; or (iv) the LBHI Tier X Distribution, and all Parties shall agree to use all reasonable endeavours to resolve any issues which prevent, impede or delay (or may prevent, impede or delay) the distributions referred to in (iv)-(vi) of this section.viii. The Parties agree that the LBHI Tier X Distribution will be made 35 days after the date the GP1 Tier X Distribution is made, unless [**] of DB (as an ECAPS Account Holder) provides notice to LBHI, GP1 and PLC that it has not received payment through the clearing systems of its pro-rata share of the ECAPS Tier X Distribution (after deducting the amount of any reserves) within 30 days of the GP1 Tier X Distribution. If DB gives such notice DB
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		<p>and GP1 shall provide details of the steps taken to ensure that DB receives its share of the ECAPS Tier X Distribution and DB shall notify PLC and LBHI promptly, and in any event within 2 days of receipt, of such distribution. Payment of the LBHI Tier X Distribution shall not be conditional upon any payments having been made to any other ECAPS Account Holder or any Beneficial ECAPS Interest Holders. For the avoidance of doubt the LBHI Tier X Distribution shall be paid in accordance with this paragraph viii, notwithstanding that remaining statutory interest payable to PLC's unsubordinated creditors may not have been distributed at such time.</p> <p>ix. GP1 will retain a reserve of £20,747,680 from GP1 Tier X Distributions, as further described in Schedule 2.</p> <p>x. If the Parties so agree prior to the date of distribution of the GP1 Tier X Distribution, an amount of GP1 Tier X Distributions not exceeding £4.4m may be retained by the PLC Administrators for distribution to GP1 at a time to be agreed by the Parties (being no later than the time of any Tier Y Distribution). For the avoidance of doubt, the retention of any such amount shall not delay the distribution of the LBHI Tier X Distribution.</p> <p>xi. Also pursuant to the Reserve and Reimbursement Agreement, following receipt of the GP1 Tier X Distribution, certain payments will be made among the ECAPS Issuers in accordance with the Reserve and Reimbursement Agreement as further set out in Schedule 2.</p> <p>xii. PLC, the PLC Administrators, LBHI and PLP to agree to release all and any rights or claim to the GP1 Tier X Distribution, the ECAPS Tier X Distribution or any partnership assets of the ECAPS Issuers or their proceeds in the hands of any ECAPS Account Holder, Beneficial ECAPS Interest Holder, GP1, the JJs or any ECAPS Issuer, including any claim under Clause 2.11 or any other clause of the ECAPS Deeds of Guarantee or otherwise, subject to Section 4(viii) (for the avoidance of doubt, the cessation of the effectiveness of any Party's release of an ECAPS Holder as a result of Section 4(viii) is limited to the release of the specific ECAPS Holder who brings any claim as described in that Section and is without prejudice to any other ECAPS Holder). GP1 and DB to agree to release all and any rights or claim to the LBHI Tier X Distribution.</p>
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For the avoidance of doubt each of the Tier X Distribution conditions are without prejudice to the matters stated in section 5 (Claims to Continue) below.

Tier Y Distribution Conditions

All Parties to agree that no Tier Y Distribution will be made before:

- xiii. PLC's senior creditors' remaining entitlement to statutory interest (subject to and if necessary adjusted for the resolution of the Partial Discharge Issue) has been satisfied in full; and
- xiv. an ECAPS Outcome or an LBHI Outcome or the parties otherwise agree a settlement in writing, in respect of Priority Legal Issue 1. Any settlement agreed in respect of Priority Legal Issue 1 must include an agreement as to the distribution of Tier Y.

Tier Z Distribution Conditions

All Parties to agree that no Tier Z Distribution will be made before an ECAPS Outcome or an LBHI Outcome, or the Parties otherwise agree a settlement in writing, in respect of Priority Legal Issue 1. Any settlement agreed in respect of Priority Legal Issue 1 must include an agreement as to the distribution of Tier Z.

Tier Y and Z Distribution Conditions

- i. If there is an ECAPS Outcome, PLC will retain the first £8.063m (the "**Joint Reserve**") of any Tier Y Distribution (for the avoidance of doubt, 94% of the Joint Reserve to be from Tier Y Distributions otherwise payable to GP1 and the remaining 6% from Tier Y Distributions otherwise payable to LBHI), to be applied towards the costs and expenses (including legal fees) of the Parties of defending any ECAPS Prohibited Action, such costs to have been incurred after the Effective Date but whether before or after the establishment of the Joint Reserve. No Party shall be entitled to any amount of the Joint Reserve in respect of costs and expenses it incurs in relation to any ECAPS Prohibited Action in circumstances where that Party has encouraged, assisted or incited the relevant ECAPS Holder to take such action.

		<p>The Parties will negotiate and provide for the detailed terms by which the Joint Reserve will operate and any payments from it will be made in the Framework Agreement.</p> <p>For the avoidance of doubt, the Joint Reserve will be separate from and will not affect any reserves which the PLC Administrators may consider it appropriate to maintain from time to time (without prejudice to the agreed timing of the Tier X Distributions under the Framework Agreement).</p> <p>ii. The Joint Reserve shall be reduced by £806,300 for each 5% (calculated by reference to the face value of ECAPS held of the total ECAPS in issue across all ECAPS Issuers) of additional ECAPS Holders across all ECAPS Issuers that execute a Letter of Support in the form appended hereto (or are or become bound by the Framework Agreement or terms equivalent thereto) beyond 50% (so, for example, if 80% by value of ECAPS Holders of all ECAPS in issue across all ECAPS Issuers executed Letters of Support or are or become bound by the Framework Agreement, the Joint Reserve would reduce to £3,225,200), subject to a floor of the aggregate costs and expenses incurred at the relevant date.</p> <p>iii. The Joint Reserve shall be immediately released on the earlier of:</p> <ul style="list-style-type: none">a. the effective date of any scheme of arrangement, restructuring plan, corporate action, consent solicitation or other agreement, resolution, compromise or arrangement, that has the effect of binding all ECAPS Holders to terms equivalent to the Framework Agreement or which otherwise has the effect of preventing ECAPS Holders from validly taking any ECAPS Prohibited Actions; andb. the later of:<ul style="list-style-type: none">i. two years from the Effective Date; andii. one year from the last communication (occurring after the Effective Date) from an ECAPS Holder threatening or asserting any ECAPS Prohibited Action, provided that no claim or action has been filed, is pending or ongoing, that has not been irrevocably dismissed, withdrawn or determined in the form of a final and
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		<p>non-appealable order or decision of the court/appellate court or other final settlement.</p> <p>iv. “ECAPS Prohibited Action” means any action taken by an ECAPS Holder (and strictly in its capacity as an ECAPS Holder) after the Effective Date against LBHI, DB, GP1, the JLs, PLC, the PLC Administrators, a UK Affiliate or a LBLIS Group Entity or any of their respective past or present office holders, directors or officers that would have been prohibited by the releases and other provisions in the Framework Agreement, if the relevant ECAPS Holder had been a party to the Framework Agreement on similar terms to DB (or, if the relevant ECAPS Holder takes action against DB, on similar terms to LBHI and PLC) and for the avoidance of doubt does not include any action taken by an ECAPS Holder in circumstances where that ECAPS Holder’s interest in ECAPS is unrelated to the relevant action.</p> <p>v. For the avoidance of doubt, if an ECAPS Holder takes an ECAPS Prohibited Action against PLC or the PLC Administrators after the Effective Date, the PLC Administrators retain all of their rights to discharge their costs and expenses from the PLC estate.</p> <p>vi. All Parties to agree that promptly (allowing for such time as is reasonably required to take the necessary administrative and practical steps to effect such payment) following the payment of any amount to GP1 in respect of a Tier Y Distribution or Tier Z Distribution (the “GP1 Tier Y/Z Distribution”), GP1 shall cause an amount equal to such amounts less any amounts subject to the Reserve and Reimbursement Agreement to be distributed to the ECAPS Account Holders without deduction or withholding (save for any applicable taxes) (the “ECAPS Tier Y/Z Distribution”).</p> <p>vii. All Parties shall agree and acknowledge that they will not take any step which may have the direct or indirect effect of preventing, impeding or delaying (i) the GP1 Tier Y/Z Distribution to GP1; (ii) the ECAPS Tier Y/Z Distribution to ECAPS Account Holders without deduction or withholding (save for any applicable taxes); (iii) any payment by ECAPS Account Holders to Beneficial ECAPS Interest Holders; or (iv) payment to LBHI of LBHI’s share of the Tier Y Distribution or the Tier Z Distribution (the “LBHI Tier Y/Z Distribution”), without prejudice to</p>
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		<p>the right to take any steps or actions with the intention of increasing the funds available for those distributions under Section 4 xb or 4xc, or as otherwise permitted under Section 4 xb or 4xc.</p> <p>viii. PLC, the PLC Administrators, LBHI and PLP to agree to release all and any rights or claim to the GP1 Tier Y/Z Distribution, the ECAPS Tier Y/Z Distribution or any partnership assets of the ECAPS Issuers, or their proceeds in the hands of any ECAPS Account Holder, Beneficial ECAPS Interest Holder, GP1, the JLs or any ECAPS Issuer including any claim under Clause 2.11 or any other clause of the ECAPS Deed of Guarantee or otherwise, subject to Section 4(viii) (for the avoidance of doubt, the cessation of the effectiveness of any Party’s release of an ECAPS Holder as a result of Section 4(viii) is limited to the release of the specific ECAPS Holder who brings any claim as described in that Section and is without prejudice to any other ECAPS Holder).</p> <p>ix. GP1 and DB to agree to release all and any rights or claim to the LBHI Tier Y/Z Distribution.</p> <p><i>For the avoidance of doubt each of the Tier Y and Z Distribution Conditions are without prejudice to the matters stated in section 5 (Claims to Continue) below.</i></p> <p>x. Pursuant to the Reserve and Reimbursement Agreement the first £11.4m of GP1 Tier Y/Z Distribution shall be paid to DB and applied in reimbursement of certain costs incurred by members of the ECAPS Holders’ Committee.</p> <p>xi. For the avoidance of doubt, none of the GP1 Tier Y/Z Distribution, the ECAPS Tier Y/Z Distribution, the payment by ECAPS Account Holders to Beneficial ECAPS Interest Holders in respect of the ECAPS Tier Y/Z Distribution or the LBHI Tier Y/Z Distribution shall be conditional or dependent on the other.</p>
<p>4</p>	<p>Rights and claims to be settled / released / covenant not to sue:</p>	<p>As a consequence of the Parties’ agreement in respect of distributions to PLC’s subordinated creditors (as outlined above):</p> <p><u>Existing Applications</u></p> <p>i. The Parties to the ECAPS 2 Application will sign a consent order (the “ECAPS 2 Consent Order”) to (among other things):</p>

		<p>a. withdraw Priority Legal Issues 2, 3, 4 and 5 from the directions application made by the PLC Administrators on 14 March 2023 (the “ECAPS 2 Application”);</p> <p>b. withdraw Priority Legal Issues 4 and 5 from DB’s application dated 27 April 2023 to strike out certain issues in the ECAPS 2 Application (the “Strike Out Application”); and</p> <p>c. withdraw the PLC Administrators’ further application dated 25 April 2023 (the “Distribution Application”).</p> <p>The PLC Administrators agree to then apply to the High Court or otherwise contact the High Court to seek approval of the consent order.</p> <p>ii. GP1 will release its claims against the Individual Respondents (including the PLC Administrators) in respect of GP1’s application dated 8 April 2022 (the “7(f) Application”), and GP1 and the Individual Respondents (including the PLC Administrators) agree to enter into a consent order confirming the discontinuance of the proceedings with no order made as to costs (the “7(f) Consent Order”, see further below).</p> <p>In that context, a separate settlement agreement to be entered into in relation to the 7(f) Application and the 7(f) Issue (as defined below), entry into which is a condition to the effectiveness of the Framework Agreement (the “7(f) Application Settlement”).</p> <p>The Individual Respondents and their advisers and agents and their firms, staff and personnel are to be released by GP1, the ECAPS Issuers, LBHI, DB, PLP, and PLC from any and all claims related to, arising out of or in any way connected with the facts and matters which are the subject of the 7(f) Application (the “7(f) Issue”) in their capacity as current or former administrators of PLC or as current or former administrator, liquidator or insolvency officeholder of any other UK Affiliate (as defined below) (the “Individual Respondents Released Claims”). Each releasing party shall also covenant not to sue in respect of the Individual Respondents Released Claims or the 7(f) Issue and shall undertake not to and shall procure that their affiliates shall not commence, continue, prosecute, pursue, encourage, assist or threaten any such suit against any person.</p> <p>LBL, the LBLIS Group Entities (as defined below) and LBUKH and their respective current and former officers, directors administrators, liquidators and/or other insolvency officeholders</p>
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	<p>(including their respective advisers and agents and their firms, staff and personnel) are to be released by GP1, the ECAPS Issuers, LBHI, DB, PLP, and PLC from any and all claims related to, arising out of or in any way connected with the 7(f) Issue (the “EMEA Affiliate Released Claims”). Each releasing party shall also covenant not to sue in respect of the EMEA Affiliate Released Claims or the 7(f) Issue and shall undertake not to and shall procure that their affiliates shall not commence, continue, prosecute, pursue, encourage, assist or threaten any such suit against any person. Each releasing party shall also covenant not to sue in respect of the Individual Respondents Released Claims and shall undertake not to and shall procure that their affiliates shall not commence, continue, prosecute, pursue, encourage, assist or threaten any such claim against any person.</p> <p>Where any Individual Respondent or UK Affiliate takes action against LBHI, GP1, the JLs or any ECAPS Issuer or DB that would be prohibited by the terms of the Framework Agreement, if that Individual Respondent or UK Affiliate had signed the Framework Agreement on similar terms as PLC, LBHI’s, GP1’s, the JLs’, the ECAPS Issuers’ or DB’s release and covenant not to sue pursuant to the above will cease to be effective as against that specific person or entity only (and, for the avoidance of doubt, the remaining release in favour of the other persons and entities would remain in full force and effect).</p> <p>Provision shall be made for third party enforcement rights in relation to the Individual Respondents Released Claims and EMEA Affiliate Released Claims for parties who take the benefit of the releases and covenants not to sue but are not signatories to the agreement.</p> <p>GP1, the JLs, the ECAPS Issuers, the Individual Respondents, the PLC Administrators, PLC, DB and PLP agree that the 7(f) Application shall be discontinued on the basis set out in the 7(f) Application Settlement and agree that each party shall meet its own costs in connection with the 7(f) Application, including the 7(f) Application Settlement, subject in the case of the PLC Administrators to paragraph 6 below.</p> <p>GP1, the JLs, the Individual Respondents and the PLC Administrators undertake to take all reasonably necessary steps to secure the discontinuance of the 7(f) Application.</p> <p><u>Other claims and rights</u> <i>UK Affiliates and LBLIS Group Entities</i></p> <ol style="list-style-type: none">i. GP1, the JLs, the ECAPS Issuers, DB, LBHI and PLP to release all claims, challenges, rights and/or causes of
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		<p>action to which any of them are entitled as at the Effective Date in respect of actions and matters occurring prior to the Effective Date against any of the “UK Affiliates” (including PLC) or the “LBLIS Group Entities” (as each of those terms is defined in the 2011 Lehman US/UK settlement agreement), but except for, subject and without prejudice to:</p> <ul style="list-style-type: none">a. Any claim, challenge, cause of action, right, entitlement or interest in relation to and the full pursuance of actions or assertion of rights or arguments in relation to the matters stated in <i>Claims to continue</i> below;b. In respect of LBHI and PLP, any rights arising under any agreements entered into after 15 September 2008 to which PLC and/or the PLC Administrators, and/or another UK Affiliate and/or LBLIS Group Entity, on the one hand, and LBHI and/or PLP on the other, are a party or are otherwise currently bound;c. In respect of DB, GP1, the JLS and the ECAPS Issuers, any rights arising under any agreements entered into after 15 September 2008 to which DB and/or GP1 and/or the JLS and/or the ECAPS Issuers on one hand, and PLC and/or the PLC Administrators, and/or another UK Affiliate and/or LBLIS Group entity and/or officeholders of any UK Affiliate and/or LBLIS Group Entity on the other, are a party or are otherwise currently bound;d. Any entitlements under claims that have been admitted to proof in the administration or liquidation of any UK Affiliate or LBLIS Group Entity as at the Effective Date or has otherwise been agreed, accepted or admitted by a UK Affiliate or LBLIS Group Entity in the amount admitted to proof (or in the amount so agreed, admitted or accepted), or any entitlements to be paid interest (including statutory interest) on such claims, as well as any entitlements under the PLC Sub-Notes claim, the PLC Sub-Debt claim and the ECAPS Deeds of Guarantee (in each case subject to the Agreed Distributions but in the latter case without prejudice to the full release of claims pursuant to the ECAPS Deeds of Guarantee against GP1 and ECAPS Holders and their respective distributions set out above);e. The Winter Garden – LBL Claim;
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		<p>f. For the avoidance of doubt, the Parties intend that no releasing Party's claims as the holder of common or preferred stock are released;</p> <p>g. Claims, causes of action, rights or challenges arising in respect of any matters or actions occurring after the Effective Date except the Agreed Distributions or actions otherwise contemplated by the Framework Agreement; and</p> <p>h. Where any UK Affiliate (other than PLC) or LBLIS Group Entity takes action against LBHI, PLP, the Jls, GP1, the ECAPS Issuers or DB that would be prohibited by the terms of the Framework Agreement, if that UK Affiliate or LBLIS Group Entity had signed the Framework Agreement on similar terms as PLC, LBHI's, PLP's, GP1's, the JL's, the ECAPS Issuers' or DB's release and covenant not to sue pursuant to the above will cease to be effective as against that specific UK Affiliate or LBLIS Group Entity only (and, for the avoidance of doubt, the remaining release in favour of the other UK Affiliates and LBLIS Group Entity would remain in full force and effect).</p> <p><i>Past or present officeholders and officers of UK Affiliates and LBLIS Group Entities</i></p> <p>ii. GP1, the ECAPS Issuers, the Jls, DB, LBHI and PLP to release all claims, challenges, rights and/or causes of action to which any of them are entitled as at the Effective Date in respect of actions and matters occurring prior to the Effective Date against any of the past or present office holders, directors or officers of each of the UK Affiliates and LBLIS Group Entities (including the PLC Administrators) in their capacity as such and arising out of or with respect to their role and capacity as office holders, directors or officers of the relevant UK Affiliate or LBLIS Group Entity, but except for, subject and without prejudice to:</p> <p>a. Any claim, challenge, cause of action, right, entitlement or interest in relation to, and the full pursuance of actions or assertion of rights or arguments in relation to, the matters stated in <i>Claims to continue</i> below;</p> <p>b. In respect of LBHI and PLP, any rights arising under any agreements entered into after 15 September 2008 to which PLC and/or the PLC Administrators, and/or another UK Affiliate and/or LBLIS Group Entity, on one hand, and</p>
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		<p>LBHI and/or PLP on the other, are a party or are otherwise currently bound;</p> <ul style="list-style-type: none">c. In respect of DB, GP1, the JLS and the ECAPS Issuers, any rights arising under any agreements entered into after 15 September 2008 to which DB and/or GP1 and/or the JLS and/or the ECAPS Issuers on one hand, and PLC and/or the PLC Administrators, and/or another UK Affiliate and/or LBLIS Group entity and/or officeholders of any UK Affiliate and/or LBLIS Group Entity on the other, are a party or are otherwise currently bound; andd. Claims, causes of action, rights or challenges arising in respect of any matters or actions occurring after the Effective Date except the Agreed Distributions or actions otherwise contemplated by the Framework Agreement. <p><i>LBHI</i></p> <ul style="list-style-type: none">iii. PLC, GP1, the ECAPS Issuers and DB, to release all claims, challenges, rights and/or causes of action to which any of them are entitled as at the Effective Date in respect of actions and matters occurring prior to the Effective Date against LBHI but except for, subject and without prejudice to:<ul style="list-style-type: none">a. Any claim, challenge, cause of action, right, entitlement or interest in relation to, and the full pursuance of actions or assertion of rights or arguments in relation to, the matters stated in <i>Claims to continue</i> below;b. Any claim that has been allowed under LBHI's Chapter 11 Plan or has otherwise been agreed, accepted or admitted by LBHI;c. In respect of PLC, any rights arising under any agreements entered into after 15 September 2008 to which PLC and/or the PLC Administrators on one hand, and LBHI on the other, are a party or are otherwise currently bound;d. In respect of DB, GP1, the JLS and the ECAPS Issuers, any rights arising under any agreements entered into after 15 September 2008 to which DB and/or GP1 and/or the JLS and/or the ECAPS Issuers on one hand, and LBHI, PLC and/or the PLC Administrators on the other, are a party or are otherwise currently bound; ande. Claims, causes of action, rights or challenges arising in respect of any matters or actions occurring after the Effective Date except the
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		<p>Agreed Distributions or actions otherwise contemplated by the Framework Agreement.</p> <p><i>DB</i></p> <p>iv. LBHI, PLC, the PLC Administrators and PLP to release all claims, challenges, rights and/or causes of action to which any of them are entitled as at the Effective Date in respect of actions and matters occurring prior to the Effective Date against DB but except for, subject and without prejudice to:</p> <ul style="list-style-type: none">a. Any claim, challenge, cause of action, right, entitlement or interest in relation to, and the full pursuance of actions or assertion of rights or arguments in relation to, the matters stated in <i>Claims to continue</i> below;b. In respect of LBHI, PLP, PLC and the PLC Administrators, any rights arising under any agreements entered into after 15 September 2008 to which LBHI, PLP, PLC and/or the PLC Administrators on the one hand, and DB on the other, are a party or are otherwise currently bound; andc. Claims, causes of action, rights or challenges arising in respect of any matters or actions occurring after the Effective Date except the Agreed Distributions or actions otherwise contemplated by the Framework Agreement. <p><i>GP1, the Jls and the ECAPS Issuers</i></p> <p>v. LBHI, PLC, the PLC Administrators and PLP to release all claims, challenges, rights and/or causes of action to which any of them are entitled as at the Effective Date in respect of actions and matters occurring prior to the Effective Date against GP1, the Jls and each of the ECAPS Issuers but except for, subject and without prejudice to:</p> <ul style="list-style-type: none">a. Any claim, challenge cause of action right, entitlement or interest in relation to, and the full pursuance of actions or assertion of rights or arguments in relation to, the matters stated in <i>Claims to continue</i> below;b. In respect of LBHI, PLP, PLC and the PLC Administrators, any rights arising under any agreements entered into after 15 September 2008 to which LBHI, PLC, PLP and/or the PLC Administrators on the one hand, and GP1, the Jls and/or the ECAPS Issuers on the other, are a party or are otherwise currently bound; and
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		<p>c. Claims, causes of action, rights or challenges arising in respect of any matters or actions occurring after the Effective Date except the Agreed Distributions or actions otherwise contemplated by the Framework Agreement.</p> <p><i>ECAPS Holders</i></p> <p>vi. LBHI, PLC, the PLC Administrators and PLP to release all claims, challenges, rights and/or causes of action to which any of them are entitled as at the Effective Date in respect of actions and matters occurring prior to the Effective Date against the ECAPS Holders arising out of or in connection with their holding of ECAPS and rights arising thereof but except for, subject and without prejudice to:</p> <p>a. Any claim, challenge, cause of action, right, entitlement or interest in relation to, and the full pursuance of actions or assertion of rights or arguments in relation to, the matters stated in <i>Claims to continue</i> below;</p> <p>b. In respect of LBHI, PLP, PLC and the PLC Administrators, any rights arising under any agreements entered into after 15 September 2008 to which LBHI, PLP, PLC and/or the PLC Administrators on the one hand, and any ECAPS Holder(s) on the other, are a party or are otherwise currently bound; and</p> <p>c. Claims, causes of action, rights or challenges arising in respect of any matters or actions occurring after the Effective Date except the Agreed Distributions or actions otherwise contemplated by the Framework Agreement.</p> <p>vii. Provision to be made for third party enforcement rights for the ECAPS Holders.</p> <p>viii. Where any ECAPS Holder brings a claim that is an ECAPS Prohibited Action against LBHI, PLP, PLC or the PLC Administrators, the applicable Party's release pursuant to the above will cease to be effective as against that specific ECAPS Holder only (and, for the avoidance of doubt, the remaining release in favour of the other ECAPS Holders would remain in full force and effect).</p> <p><i>Admitted claims</i></p> <p>ix. Without prejudice to the releases elsewhere agreed, each Party further agrees not to take any steps or pursue</p>
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any actions that would or might reasonably undermine or interfere with any admitted claims in the administration or liquidation of any UK Affiliate (including PLC) or any LBLIS Group Entity, subject and without prejudice only to the right of full pursuance of actions or assertion of rights or arguments in relation to the matters stated in *Claims to continue* below.

Agreed Distributions

- x. The Parties agree not to take or pursue any actions or assert any rights that are inconsistent with the Agreed Distributions or would have the effect of preventing, impeding or delaying the Agreed Distributions, save for:
 - a. the pursuance of actions or assertion of rights in relation to Priority Legal Issue 1, the Gross-up Arguments or the Partial Discharge Issue;
 - b. in respect of the Tier Y Distributions and the Tier Z Distributions only, in the case of the PLC Administrators or the JLS, any actions that they reasonably consider to be necessary or appropriate to take or pursue, or rights to assert, in the due and proper discharge of their duties and functions as office holders (including having regard, amongst other things, to PLC, the PLC Administrators', GP1 and the JLS' rights and obligations under the Framework Agreement); and/or
 - c. without prejudice to or in any way limiting b. immediately above, actions taken by (i) the PLC Administrators or (ii) LBHI (only insofar as such actions are taken together with and with the approval of the office holders of the relevant UK Affiliates) which may result in a necessary and proportionate delay to Tier Y Distributions or Tier Z Distributions, but which are taken in good faith with the intention and reasonably held expectation of increasing the overall amount of Tier Y Distributions and/or Tier Z Distributions. In relation to any significant outstanding matters in the estates PLC and its direct and indirect subsidiaries, LBHI, PLC, GP1 and DB agree to use reasonable endeavours to enter into a common interest agreement pursuant to which the Parties may consult and cooperate with regards to such matters.
- xi. The Parties will agree (a) that LBHI has valid title to the PLC Sub-Debt and (b) not to assert and undertake to

		<p>procure that no affiliate shall assert otherwise in the future.</p> <p>For the avoidance of doubt:</p> <ul style="list-style-type: none"> i. the above releases, withdrawals and undertakings are in no way to affect, release or discharge the claims and/or rights and/or arguments specified in the section headed “<i>Claims to continue</i>” below; and ii. no action taken in compliance with the Framework Agreement will form the basis of a potential claim against any of Parties. <p>All releases and covenants not to sue shall expressly prevent the releasing parties from encouraging, assisting or inciting any other party to take any action that the releasing party will be precluded from taking itself under the Framework Agreement.</p> <p>The Framework Agreement will include a recital recording that the purpose of the agreement is to resolve all disputes between the parties and the released parties, except those disputes that have been expressly preserved, on the basis of the agreed economic division set out with respect to Tiers X, Y and Z, with a view to accelerating distributions in accordance with that economic division for the benefit of all parties.</p>
5	Claims to continue:	<p>The Framework Agreement shall expressly preserve and not waive, compromise, prejudice, settle or dispose of any rights, arguments or causes of action subsisting or available to any of the Parties in respect of:</p> <ul style="list-style-type: none"> i. Priority Legal Issue 1 of the ECAPS 2 Application; ii. the Strike Out Application insofar as it relates to Priority Legal Issue 1; iii. the Partial Discharge Issue; iv. any claim for breach of the Framework Agreement or the Reserve and Reimbursement Agreement; and v. the Gross-up Arguments.
6	Costs:	<p>Continuing claims: in respect of Priority Legal Issue 1 and the Partial Discharge Issue, no agreement as to costs (i.e. normal costs principles to apply).</p> <p>Settled claims: in respect of the claims/rights/issues released, withdrawn or undertaken not to be pursued in sections 3 and 4 above, parties to bear their own costs and agree not to pursue them further, subject (as between GP1 and DB) to any arrangements in the Reserve and Reimbursement Agreement,</p>

		and subject to the PLC Administrators' rights for their costs and expenses to be paid from the PLC estate.
7	Conditions:	<ul style="list-style-type: none"> i. Entry into a reserve and reservation agreement between GP1 and DB (the "Reserve and Reimbursement Agreement") regarding DB's and GP1's ongoing and historic legal costs and exposure to adverse costs. ii. Each of: <ul style="list-style-type: none"> a. Indications of approval of GP1 entering into the Framework Agreement and Reserve and Reimbursement Agreement by ECAPS Account Holders constituting a majority of ECAPS in issue of each of LP I, LP II, and LP III; and b. GP1 circulating the Term Sheet to ECAPS Account Holders (giving 14 days' clear notice of a deadline for any comments or objections) before the start of the hearing in the ECAPS 2 Proceedings listed for 9-13 October 2023. iii. Entry into the 7(f) Application Settlement (as defined above).
8	Consent orders	<p>ECAPS 2 Consent Order: agreed form to be included in a schedule to the Framework Agreement. All parties to sign the consent order, and Hogan Lovells to apply or otherwise contact the Court asking the Court to formally enter the order.</p> <p>7(f) Consent Order: agreed form to be included as a schedule to the 7(f) Application Settlement. GP1, PLC Administrators and the other Individual Respondents to sign, and Charles Russell Speechlys to apply or otherwise contact the Court asking the Court to enter the order.</p> <p>The ECAPS 2 Consent Order and 7(f) Consent Order each to provide that each party to the relevant application(s) will bear its own costs relating to the withdrawal of the relevant application/issue(s).</p>
9	Further assurance / undertakings	<p>Successors: The Framework Agreement shall provide that:</p> <ul style="list-style-type: none"> i. GP1 shall not assign, transfer or dispose of its interest in the PLC Sub-Notes; ii. LBHI shall not assign, transfer or dispose of the PLC Sub-Debt: <ul style="list-style-type: none"> o until 15 December 2024, in any circumstances; and o after 15 December 2024, unless (i) the assignee or transferee has agreed to be bound by the terms of the Framework Agreement; and (ii) GP1 and DB (in the case of DB if it holds 10% or more

		<p>of ECAPS) have consented, such consent not to be unreasonably withheld or delayed. The Parties agree that it shall not be reasonable to withhold or delay consent if the proposed transfer or assignment by LBHI of the PLC Sub-Debt is for value, unless there is a genuine demonstrable risk that the assignment or transfer could undermine the Framework Agreement or that the assignee intends to breach, undermine or take action inconsistent with the Framework Agreement);</p> <p>iii. DB shall not assign, transfer or dispose of its interests in the ECAPS, including in the ECAPS Deeds of Guarantee, unless the relevant assignee or transferee has agreed to be bound by the terms of the Framework Agreement.</p> <p>iv. If DB acquires any right, title and interest to any additional ECAPS or ECAPS Deeds of Guarantee, then such additional holdings will be subject to the terms and conditions of the Framework Agreement, as if DB held them on the Effective Date.</p> <p>PLC estate – information / reporting undertakings</p> <p>i. Creditors’ committee observer: ECAPS Account Holders (acting by the ECAPS Creditors’ Committee of GP1) to have the right to appoint an observer (the “Observer”) to PLC’s creditors’ committee.</p> <p>a. Observer to have full information rights of a member of the creditors’ committee, subject to signing a non-disclosure agreement pursuant to which (amongst other things) all information obtained as Observer may be shared confidentially with GP1’s ECAPS Holders’ Committee.</p> <p>ii. Meeting of creditors’ committee: PLC Administrators to meet at least twice per year, and at such meetings PLC Administrators to provide detailed updates in respect of the PLC estate including, without limitation (but subject to not being required to share information which the PLC Administrators are not entitled to share):</p> <p>a. detailed information regarding the material direct and indirect subsidiary estates;</p> <p>b. detailed information regarding reserves (including the substance of matters in respect of which reserves are held);</p> <p>c. prospective inflows and outflows to the estate;</p> <p>d. claims against the estate; and</p>
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		<ul style="list-style-type: none"> e. detailed breakdown of costs and expenses (broken down for PLC and its material direct and indirect subsidiaries). iii. Creditor queries: PLC Administrators to undertake to answer all questions and information reasonably raised or requested by GP1 with respect to PLC and its direct and indirect subsidiaries at any time (but subject to not being required to share information which the PLC Administrators are not entitled to share), as soon as reasonably practicable following such question or request, with answers/information provided to both GP1 and the Observer (and onwards disclosure by the Observer to the ECAPS Holders' Committee confidentially permitted). iv. Permitted withholding of information: PLC Administrators may withhold strategically sensitive information that as office holders they reasonably consider ought not to be or cannot practicably be disclosed under the terms of a non-disclosure agreement and/or common interest principles, and/or information which the PLC Administrators are not entitled to share. v. Information sharing with ECAPS Account Holders (outside of ECAPS Creditors' Committee): PLC Administrators to undertake to publish a semi-annual update in respect of the estimated outcome for the estate, giving significantly more detail (including as to the variables driving the range of predicted recoveries) than those published to date. <p>Efficiency</p> <p>The Parties shall use reasonable endeavours to ensure that the Agreed Distributions shall be paid without deductions or withholding and to mitigate or eliminate any such risk, including liaising with or seeking guidance from any authority if and to the extent appropriate.</p>
<p>10</p>	<p>Binding terms</p>	<p>Confidentiality:</p> <p>The substance of all negotiations in connection with the term sheet, are confidential to the Parties and their advisers, who shall not disclose or otherwise communicate them to any third party without the written consent of the other Parties other than:</p> <ul style="list-style-type: none"> i. the final agreed term sheet may be sent to ECAPS Account Holders and Beneficial ECAPS Interest Holders who are not party thereto and in that process may also be circulated by the JLS via RNS;

		<ul style="list-style-type: none">ii. the final agreed term sheet may be sent by DB to ECAPS Account Holders and Beneficial ECAPS Interest Holders with a view to obtaining Letters of Support;iii. to the Parties' respective auditors, insurers (and their insurers/reinsurers), firm (in the case of the JLs and PLC Administrators), and their respective advisors, and lawyers on terms which preserve confidentiality;iv. pursuant to an order of a court of competent jurisdiction, or pursuant to any proper order or demand made by any competent authority or body where they are under a legal or regulatory obligation to make such a disclosure;v. the final agreed term sheet may be disclosed by the PLC Administrators or the JLs to the extent they reasonably consider necessary or appropriate in the performance of their functions as office holders;vi. pursuant to any express requirement under the rules of any listing authority or stock exchange on which a party's shares are traded; orvii. LBHI may publish the final agreed term sheet, and final settlement documentation (including the Framework Agreement and relevant consent orders), on the Bankruptcy Court docket and report and refer to the settlement terms in its quarterly reporting and discuss its terms with LBHI's creditors and investors. <p>Costs and expenses: All parties will pay their own costs and expenses (including legal fees) incurred in connection with the preparation, negotiation and execution of the Framework Agreement, whether or not the Framework Agreement is signed or comes into effect (and without prejudice to the PLC Administrators' costs and expenses being paid from the PLC estate).</p> <p>Without Prejudice: The parties agree to treat the publication or disclosure of this term sheet to the ECAPS Account Holders, Beneficial ECAPS Interest Holders who are not party or otherwise to any non-party as not affecting the without prejudice status of the settlement discussions such that without prejudice privilege is not waived and that no party will refer to the settlement discussions or without prejudice term sheet in court in a manner which would otherwise be contrary to the without prejudice principle.</p>
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SCHEDULE 1

Form of Letter of Support

To: LB GP No.1 Limited (in liquidation) (“**GP1**”)
RSM Restructuring Advisory LLP
9th Floor, 25 Farringdon Street
London EC4A 4AB
FAO: Bruce Alexander Mackay and Matthew Robert Haw, joint liquidators of GP1 (the “**JLs**”)

Dear Sirs

Resolution of certain issues in relation to the estate of Lehman Brothers Holdings PLC (in administration)

1. We refer to the term sheet contained in the Schedule to this letter (the “**Term Sheet**”). Capitalised terms used but not otherwise defined in this letter shall have the same meaning as in the Term Sheet. In this letter “we” shall mean the entities on whose behalf this letter is signed and any affiliate of those entities, including any funds or vehicles managed by such entities.
2. We confirm and represent that we are the holder of ECAPS issued by one or more of Lehman Brothers UK Capital Funding LP (“**LP I**”) (ISIN XS0215349357), Lehman Brothers UK Capital Funding II LP (“**LP II**”) (ISIN XS0229269856), and Lehman Brothers UK Capital Funding III LP (“**LP III**”) (ISIN XS0243852562).
3. We attach details of and proof of our holdings (our “**Holdings**”), which must be kept confidential, except that we consent to the following information being disclosed to the Parties (as defined in the Term Sheet):
 - a. Our name(s);
 - b. The fact we have provided this Letter of Support, along with a copy of it with our holdings redacted; and
 - c. The aggregate (but not individual) holdings of the ECAPS holders who have signed a Letter of Support for each of LPI, LPII and LPIII.
4. The Parties who are not party to this Letter of Support will have the benefit of and may rely on it as third parties.
5. We hereby confirm our support for the resolution of the relevant issues in relation to PLC’s estate in the manner described in the Term Sheet and confirm we have no objection to GP1 (acting by its

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JLs) entering into the Framework Agreement and other documents contemplated by the Term Sheet.

6. We further confirm that, from the effective date of the Framework Agreement (as may be notified by the JLs) (the “**Effective Date**”), we shall not take any action in our capacity as an ECAPS Holder which is inconsistent with the provisions of the Framework Agreement (or the other contemplated documents) as described in the Term Sheet, or which would be inconsistent if we were party to that agreement or document on similar terms as Deutsche Bank AG, London Branch.
7. We confirm that we will not transfer any or all of our Holdings until the earlier of (i) the Effective Date or (ii) 10 October 2023 (the “**Long Stop**”). If:
 - a. we acquire any more ECAPS (as defined in the Term Sheet), we agree that they will also be subject to this letter; and/or
 - b. we later transfer any of our Holdings, we will provide any transferee with a copy of this letter and require them to agree to be bound by its terms prior to transfer,

provided in each case that our obligations under sub-paragraphs (a) and (b) above shall terminate on the effective date of any scheme of arrangement, restructuring plan, corporate action, consent solicitation or other agreement, resolution, compromise or arrangement, that has the effect of binding all ECAPS Holders to terms equivalent to the Framework Agreement or which otherwise has the effect of preventing all ECAPS Holders from validly taking any ECAPS Prohibited Actions.

Yours faithfully,

.....

For and on behalf of:
[ENTITY NAME(S)]

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SCHEDULE TO LETTER OF SUPPORT

Term Sheet

SCHEDULE 2

Summary of Reserve and Reimbursement Agreement

The Reserve and Reimbursement Agreement shall provide (among other things) that:

1. The reserve of £20,747,680 retained from GP1 Tier X Distributions by GP1 shall be comprised of:
 - a. A reserve of £14,000,000 held by the JLs in relation to the costs, expenses (including legal expenses) and ongoing management of GP1 and the ECAPS Issuers (the “**JL Reserve**”);
 - b. An amount of £3,265,000 which shall be paid to DB towards reimbursement of previously incurred costs and expenses (including legal fees) incurred by DB between 1 December 2022 and the Effective Date in relation to its interest in ECAPS (the “**ECAPS 2 Reimbursement**”); and
 - c. A reserve of £3,482,680 which shall be held by GP1 and be applied towards (i) DB’s costs and expenses (including legal fees) incurred in connection with the negotiation and preparation of the Framework Agreement and related documents, or incurred after the Effective Date in connection with the conclusion of Priority Legal Issue 1, the Partial Discharge Issue, and the Gross-Up Arguments (including any subsequent costs proceedings) (the “**Ongoing Matters**”); and (ii) any potential liability to which DB may become exposed (such as adverse costs orders) in connection with its involvement in the Ongoing Matters (the “**DB Reserve**”).
2. If DB recovers any part of its costs and expenses incurred since 1 December 2022 from parties to the Ongoing Matters or otherwise in a manner that is final, irrevocable, and unappealable, it will turn over such recovered amounts to GP1 to be added to the balance of the DB Reserve.
3. The balance of the DB Reserve shall be retained (less any amounts paid to DB in accordance with the Reserve and Reimbursement Agreement) until the Ongoing Matters have been fully and finally determined in a manner which is non-appealable.
4. GP1 will cause LP I and LP II each to reimburse LP III an amount equal to an appropriate proportion of the total costs and expenses borne by LP III to the Effective Date (based on the benefit derived by LP I and LP II from such expenses), and that from the Effective Date, each of the ECAPS Issuers shall bear all costs and expenses in equal proportion.
5. GP1 shall pay to DB the first GBP £ £11,396,408 (the “**ECAPS 1 Reimbursement**”) of the GP1 Tier Y/Z Distributions, being an amount equal to duly invoiced costs and expenses of DB and the ECAPS Holders’ Committee. DB will distribute a proportion of such amount to the members of the ECAPS Committee in relation to their reasonable costs and expenses in such capacity.

Appendix 3.

Comparative Estimated Outcome Statement (“EOS”)

Comparative EOS

	Notes	Base Case Recovery £'m				High Case Recovery £'m			
Estimated surplus available to LBH subordinated creditors	1	233				490			
		LP I £'m	LP III £'m	LP III £'m	Totals £'m	LP I £'m	LP II £'m	LP III £'m	Totals £'m
Scenario 1 - GP1 wins all issues in ECAPS 2 Applications		51	78	103	233	107	165	217	490
Scenario 2 - GP1 loses all issues in ECAPS 2 Applications		-	-	-	-	-	-	-	-
Scenario 3 - GP1 wins issues 4 & 5 of ECAPS 2 Applications	2	41	63	84	188	41	63	84	188
Scenario 4 - Proposed terms implemented and GP1 wins issue 1	3	47	72	96	215	90	140	187	417
Scenario 5 - Proposed terms implemented and GP1 loses issue 1	4	37	58	77	172	39	61	82	182

Notes

1. Estimated funds available to LBH's subordinated creditors as per June 2023 estimated outcome statement. All calculations in scenarios 1 to 5 work on the basis that the funds available to LBH's subordinated creditors will be £233m in the 'Base' case and £490m in the 'High' case, which are subject to the assumptions set of in LBH's June 2023 update to creditors. GP1's realisations to date in respect of LP III are not reflected in the above calculations.
2. Scenario 3 - Estimated recoveries available to Account holders if GP1 wins Priority Legal Issue 4 and Priority Legal Issue 5 relating to the ECAPS Guarantees and Clause 2.11, but loses all other issues in the ECAPS 2 Applications.
3. Scenario 4 - Estimated recoveries available to Account holders if GP1 enters into the deal being proposed in the term sheet at Appendix 2, and GP1 wins Priority Legal Issue 1 in the ECAPS 2 Applications.
4. Scenario 5 - Estimated recoveries available to Account holders if GP1 enters into the deal being proposed in the term sheet at Appendix 2, and GP1 loses Priority Legal Issue 1 in the ECAPS 2 Applications.
5. The above calculations do not take costs (past or future) into consideration.