

Our Ref DJD/OGH/PXP/JXM/N00239/PF/7

## **TO THE CREDITORS AND MEMBERS**

19 November 2014

Dear Sir/Madam

### **Recovery and Reorganisation**

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## **NDF Administration Limited (the Company) - In Liquidation**

### **1 Introduction**

**1.1** Following the appointment of Martin Ellis and I as Joint Liquidators of the Company on 21 September 2012 in accordance with Section 104A of the Insolvency Act 1986, and Martin Ellis's subsequent resignation on 27 June 2014, I now report on the progress of the liquidation for the year ended 20 September 2014 and attach:

- Appendix A, an account of my receipts and payments for the duration of the liquidation and year ended 20 September 2014.
- Appendix B, a statement of the remuneration charged and expenses incurred by the liquidator in the period 21 September 2013 to 20 September 2014.
- Appendix C, an analysis of time costs as required by Statement of Insolvency Practice 9.
- Appendix D, an extract from the Insolvency Rules 1986 relating to creditors' rights to request additional information from the liquidator (rule 4.49E).
- Appendix E, an extract from the Insolvency Rules 1986 relating to creditors' rights to challenge the liquidator's remuneration or expenses if excessive (rule 4.131).

Please note that I am authorised by the Insolvency Practitioners Association to act as an insolvency practitioner.

### **2 Statutory information**

**2.1** The Company's statutory details are as follows:

Registered number 01955637

Registered office c/o Grant Thornton UK LLP, 30 Finsbury Square, London, EC2P 2YU

#### **Chartered Accountants**

Member firm within Grant Thornton International Ltd  
Grant Thornton UK LLP is a limited liability partnership registered in England and Wales: No.OC307742. Registered office: Grant Thornton House, Melton Street, Euston Square, London NW1 2EP  
A list of members is available from our registered office.

Grant Thornton UK LLP is authorised and regulated by the Financial Conduct Authority.

A list of personnel permitted by Grant Thornton to accept appointments as insolvency practitioners and of their respective authorising bodies may be inspected at the above address.

### **3 Progress report**

#### **3.1 Assets**

No statement of affairs has been prepared for the liquidation. The only asset transferred to the Company from the administration estate was a cash balance of £155,051 and the potential recoveries of certain taxes previously paid by the Company.

As explained in my previous progress report, tax refunds from HMRC were received in the sum of £13,585 and £1,060,269 following a detailed review of the Company's historical tax affairs.

#### **3.2 Liabilities**

As you are aware, the Company's insolvency arose as a result of claims made by investors that the Company's literature, in respect of structured products in which Lehman Brothers (Lehman) entities acted as counter-party, did not adequately warn investors as to the risks of counter-party failure.

#### **3.3 Creditors**

You will also be aware that, in dealing with investors' claims for compensation, the Financial Services Compensation Scheme (FSCS) has drawn a distinction between 'capital secure' and 'capital at risk' products. The legal advice I have received from Counsel has drawn no such distinction. Therefore, I consider that investors in both plans are unsecured creditors. This results in significant unsecured creditors arising as a result of the failure of Lehman entities, amounting to a theoretical maximum of c.£36m.

Over and above investor claims, I have received unsecured trade claims totalling £157,962. The likelihood of sufficient funds being available to facilitate a dividend to the unsecured creditors in this case is unknown. The protracted nature of the winding up of the various Lehman Brothers estates, to which the Company is intrinsically linked, and which are likely to continue for the foreseeable future, reduces the possibility of residual funds being available for the unsecured creditors.

This does not affect the future recovery and distribution of dividends received from the Lehman Brothers estates, which are ring-fenced client monies and will continue to be distributed to affected investors in due course.

There are no preferential creditors in this matter.

## **4 Lehman backed financial products**

**4.1** As explained previously, investors in Lehman backed financial products are also unsecured creditors in the following Lehman entities:

- The Lehman entities providing the underlying securities on which the value of the investments was based. This could be one or a combination of three entities in respect of each plan: Lehman Brothers Securities N.V. (LBS), Lehman Brothers Treasury Co B.V. (LBT) and Lehman Brothers Bankhaus AG (LBBAG); and
- Lehman Brothers Holdings Inc (LBHI) on the grounds that LBHI guaranteed all securities issued by LBS, LBT and LBBAG.

Please note that depending on how the claims are dealt with by the respective Lehman entities the direct creditor may be the legal holder of the issued security. However, investors should be aware that this does not affect their position as the ultimate beneficial creditor of any subsequent distribution from Lehman entities.

### **4.2 Plans invested in LBS and LBT Securities**

Some of you will have now received the first and second interim dividend representing distributions received from the respective trustees of LBS, LBT and LBHI. For those investors who did not receive a distribution, I advise that you either failed to return a completed questionnaire sent to the investors of the Company on 19 June 2013 which enabled me to determine your eligibility for a distribution, you have previously been compensated by the FSCS, or your plan was invested in LBBAG issued securities (see below).

### **4.3 Lehman Entities distribution summary**

Please find detailed below a summary of distributions received by the Company as at the date of this report:

- LBHI: £6,979,684.21 (representing all LBHI distributions 1-6)
- LBT: £6,314,318.41 (representing all LBT distributions 1-3)
- LBS: £2,028,220.93 (representing all LBS distributions 1-3)

To date I have returned £10,909,564.06 (less cost) to the respective investors, broken down as follows:

- LBHI: £4,570,578.15 (representing LBHI distributions 1-4)
- LBT: £4,883,484.96 (representing LBT distribution 1-2)
- LBS: £1,455,500.95 (representing LBS distribution 1-2)

The balance which amounts to £4,412,659.49, represents distributions recently received.

### **4.4 Claims in LBBAG**

LBBAG has not been prepared to correspond with the Joint Administrators and are only willing to speak directly with the individual investors. It was the Joint Administrators'

understanding at the time that this affects c.80 investors and the Directors of the Company have previously advised that all of these individuals have been contacted by the Company prior to the Joint Administrators' appointment and have lodged claims in the LBBAG insolvency.

#### **4.5 Action to be undertaken**

I will continue to liaise with LBHI, LBS and LBT to monitor the timeframe and quantum of likely distributions and to communicate to investors.

In relation to monies in hand, I have instigated proceedings for calculating and distributing these monies to investors, by way of my third distribution, which I anticipate will be completed in early 2015.

#### **4.6 Non-responder funds**

As you will be aware from previous reports, I currently hold c.£2 million of funds in client accounts relating to matured investor funds that have never been claimed. I have endeavoured to return those funds to matured investors where possible.

Furthermore, I advise that I am continuing to liaise with my legal advisors with respect to determining the appropriate way of dealing with non-responder funds.

### **5 Remuneration**

#### **5.1 Joint Administrators' remuneration and expenses**

At a meeting of creditors held on 23 December 2009, a resolution was passed approving the basis of remuneration to be time costs in relation to work completed by the Joint Administrators' and their staff.

The receipts and payments account attached at Appendix A details that the sum of £511,813 with respect to the time incurred by the Joint Administrators that has been billed during the liquidation period.

I advise that given both the timing of approval received for the Joint Administrators' remuneration and the Company subsequently being placed into liquidation, the Joint Administrators' remuneration was billed during the liquidation period and accordingly appears in the receipts and payments disclosed in Appendix A.

In addition, £1,473 of expenses was drawn during the liquidation period.

#### **5.2 Joint Liquidators' remuneration and expenses**

In accordance with the Statement of Insolvency Practice (SIP 9), I attached at Appendix C a summary of my liquidation time costs incurred in the sum of £330,125 during the period 21 September 2012 to 20 September 2014 and a summary of tasks completed by the Liquidator and his staff.

The amount shows total time costs representing 1,267 hours at an average of £260.57 per hour.

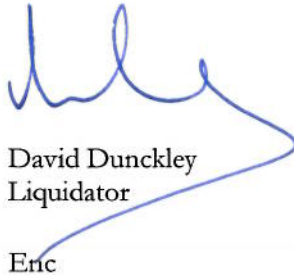
Total time costs incurred for this period, 21 September 2013 to 20 September 2014, are £128,652.

Time is charged in units of 6 minutes. Background information regarding the fees of liquidators can be found at <http://www.insolvency-practitioners.org.uk> (navigate via 'Regulation and Guidance' to 'Creditors Guides to Fees').

Alternatively, I will supply this information by post on request. Although the basis of my remuneration was agreed in the administration, the nature of the insolvency regulations require me to obtain new approval in the liquidation.

Should you require any further assistance, please contact Will Bowden at the address detailed at the start of this report, by telephone on 0161 953 6392, or by email at [will.j.bowden@uk.gt.com](mailto:will.j.bowden@uk.gt.com).

Yours faithfully  
for and on behalf of NDF Administration Limited



David Dunckley  
Liquidator  
Eric

## A Abstract of the Joint Liquidators' receipts and payments

NDF ADMINISTRATION LIMITED - IN LIQUIDATION (THE COMPANY)		
ACCOUNT OF RECEIPTS AND PAYMENTS FOR THE PERIOD		
21 SEPTEMBER 2012 TO 20 SEPTEMBER 2014		
	Period from 21 September 2013 to 20 September 2014	Total to 20 September 2014
<b>RECEIPTS</b>		
Administration Surplus	-	155,052
Tax Refund	-	13,586
Bank/ISA Interest Gross	204	778
Misc Refunds	-	80
Corporation Tax Refund	-	1,060,269
<b>TOTAL RECEIPTS</b>	<b>204</b>	<b>1,229,764</b>
<b>PAYMENTS</b>		
Bank Charges	46	126
Joint Administrators' Fees	-	511,813
Joint Administrators' Expenses	-	1,473
Liquidators' Fees	236,523	236,523
Liquidators' Expenses	1,435	1,435
Agents Fees	750	2,509
Legal Fees	1,650	32,460
Creditor Portal and Helpline Expenses	1,650	2,950
Stationery & Postage	9,286	9,747
Statutory Advertising	488	564
Corporation Tax	1,239	1,239
VAT Irrecoverable	51,239	160,730
<b>TOTAL PAYMENTS</b>	<b>304,307</b>	<b>961,570</b>
<b>BALANCE IN HAND AT 20 SEPTEMBER 2014</b>		<b>268,194</b>

**Note:** All expenses solely attributable to individual investors' Lehman distributions have been reallocated as costs to these Lehman distributions, and not as costs to the Company and its' general creditors.

## B Remuneration charged and expenses incurred by the Joint Liquidators in the period

	Charged/incurred in period 21 September 2013 to 20 September 2014	Cumulative charged/incurred to 20 September 2014	Of which paid to 20 September 2014
	£	£	£
<b>Joint Liquidators' fees:</b>	128,652	330,125	236,523
Expenses	36	1,471	1,435
<b>Legal fees</b>			
Osborne Clarke	-	27,181	27,181
Daw Law	1,650	5,278	5,278
<b>Agents – Former Plan Administrators</b>			
OPAL	750	2,509	2,509

Note: All expenses solely attributable to individual investors' Lehman distributions have been reallocated as costs to these Lehman distributions, and not as costs to the Company and its' general creditors.

## C SIP 9 information

### Introduction

The following information is provided in connection with the administrators' remuneration and disbursements in accordance with SIP 9.

Explanation of Grant Thornton UK LLP charging and disbursement recovery policies

### Time costs

All partners and staff are charged out at hourly rates appropriate to their grade, as shown on the attached schedule. Details of the hourly charge-out rates are made available to creditors or committees at the time of fixing the basis of our fees. Support staff (ie secretaries, cashiers and filing clerks) are charged to the case for the time they work on it.

	From 01/07/09	From 01/07/10	From 01/07/11	From 01/07/12	From 01/07/13	From 01/07/14
	£	£	£	£	£	£
Partners up to	510	535	560	580	600	615
Managers up to	385	405	425	440	455	470
Administrators up to	275	285	300	310	320	330
Assistants and support staff up to	190	195	205	210	220	230

### Disbursements

Out of pocket expenses are charged at cost. Mileage is charged at standard rates which comply with HM Revenue and Customs limits or AA recommended rates. VAT is added to disbursement charges as necessary.



**NDF Administration Limited - In Liquidation (the Company)**  
**SIP 9 Time Cost Analysis from 21 September 2012 to 20 September 2014**

Task Description	Partner/Director		Manager		Executive		Administrator		Total	
	Hrs	£	Hrs	£	Hrs	£	Hrs	£	Hrs	£
Administration and Planning	7.60	4,722.00	84.85	33,246.50	416.88	111,617.20	404.12	96,111.02	913.45	245,696.72
Creditors	4.00	1,860.00	16.25	5,923.50	215.45	51,015.00	71.10	11,334.50	306.80	70,133.00
Realisation of Assets	-	-	43.10	13,607.00	2.00	440.00	1.60	248.00	46.70	14,295.00
<b>Grand Total</b>	<b>11.60</b>	<b>6,582.00</b>	<b>144.20</b>	<b>52,777.00</b>	<b>634.33</b>	<b>163,072.20</b>	<b>476.82</b>	<b>107,693.52</b>	<b>1,266.95</b>	<b>330,124.72</b>
<b>Average hourly rates by grade £ per hour</b>		567.41		366.00		257.08		225.86		260.57

**Administration & Planning**

Includes case planning; complying with statutory duties; general correspondence; meetings

**Creditors**

Includes correspondence with preferential and unsecured creditors; pensions and employees and members

**Realisation of Assets**

Includes dealing with the realisation of the Company's assets

## D An extract from the Insolvency Rules 1986 relating to creditors' rights to request additional information from the liquidator

Rule 4.49E edited for application to a progress report in a creditors' voluntary liquidation

- (1) If
  - (a) within the period mentioned in paragraph (2)
    - (i) a secured creditor, or
    - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
  - (b) with the permission of the court upon an application made within the period mentioned in paragraph (2), any unsecured creditor makes a request in writing to the liquidator for further information about remuneration or expenses set out in the progress report, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of a matter which was previously included in a progress report.
- (2) The period referred to in paragraph (1)(a) is 21 days of receipt of the progress report.
- (3) The liquidator complies with this paragraph by either -
  - (a) providing all of the information asked for, or
  - (b) so far as the liquidator considers that
    - (i) the time or cost of preparation of the information would be excessive, or
    - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
    - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information,
 giving reasons for not providing all of the information.
- (4) Any creditor, who need not be the same as the creditor who requested further information, may apply to the court within 21 days of -
  - (a) the giving by the liquidator of reasons for not providing all of the information asked for, or
  - (b) the expiry of the 14 days provided for in paragraph (1),
 and the court may make such order as it thinks just.
- (5) Without prejudice to the generality of paragraph (4), the order of the court under that paragraph may extend the period of 8 weeks provided for in Rule 4.131(1B) by such further period as the court thinks just.

## E An extract from the Insolvency Rules 1986 relating to creditors' rights to challenge the liquidator's remuneration or expenses if excessive

### Rule 4.131

- (1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4).
- (1A) Application by a creditor may be made on the grounds that -
  - (a) the remuneration charged by the liquidator,
  - (b) the basis fixed for the liquidator's remuneration under Rule 4.127, or
  - (c) expenses incurred by the liquidator,
 is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.
- (1B) The application must, subject to any order of the court under Rule 4.49E(5), be made no later than 8 weeks (or in a case falling within Rule 4.108, 4 weeks) after receipt by the applicant of the progress report or the draft report under Rule 4.49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").
- (2) The court may, if it thinks that no cause is shown for a reduction, dismiss the application; but it shall not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least 5 business days' notice, but which is without notice to any other party.  
If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly.

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- (3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.
- (4) If the court considers the application to be well-founded, it must make one or more of the following orders -
  - (a) an order reducing the amount of remuneration which the liquidator was entitled to charge
  - (b) an order fixing the basis of remuneration at a reduced rate or amount
  - (c) an order changing the basis of remuneration
  - (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation
  - (e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify
 and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.
- (5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the liquidation.