

Our Ref WGS/OGH/ALH/N00112/PF7

## TO THE CREDITORS

**Grant Thornton UK LLP**  
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7 December 2009

Dear Sirs

### **Defined Returns Limited - In Administration (the Company) High Court of Justice, Chancery Division, Companies Court Ref 19594 of 2009**

#### **1 INTRODUCTION**

- 1.1. Following the appointment of Martin Ellis and I as joint administrators of the Company by the Directors on 14 October 2009, I am submitting my proposals pursuant to paragraph 49(1) of Schedule B1 to the Insolvency Act 1986 for achieving the objectives of the administration.
- 1.2. This report contains the information required by Rule 2.33 of the Insolvency Rules 1986.
- 1.3. In accordance with paragraph 100 (2) of Schedule B1 to the Insolvency Act 1986 the functions of the administrators are to be exercised by any or all of them.

#### **2 STATUTORY INFORMATION**

- 2.1. The Company's statutory details are as follows:

##### **Defined Returns Limited**

Registered number	04991156
Date of incorporation	10 December 2003
Registered office	30 Finsbury Square London EC2P 2YU
Former trading address	39 Alma Road St Albans AL1 3AT

##### **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 Services Authority for investment business.

<b>Directors</b>	<b>Shareholding</b>
Paul Bispham	nil
John Waller	1.9%
<b>Company Secretary</b>	
Versec Secretaries Limited	nil

- 2.2. The administration constitutes "main proceedings" under the EC Regulation on Insolvency Proceedings.

### **3 BACKGROUND TO ADMINISTRATORS' APPOINTMENT**

- 3.1. I was first consulted by the directors of the Company on 22 September 2009 to provide advice on the financial position of the Company in light of a large number of investor claims lodged with the Financial Ombudsman Service (FOS).
- 3.2. The claims arose as a result of the failure of Lehman Brothers Holdings Inc and associated European entities (together the Leman Entities) who acted as counter-party for a number of structured products offered by the Company. The claims alleged that the Company's marketing literature did not adequately warn investors of the risks associated with counter-party failure.
- 3.3. Prior to that consultation, neither I nor the firm, had acted for the Company, its directors or company secretary.
- 3.4. The firm carried out a brief investigation into the Company's financial position and produced an Independent Business Review (IBR) dated 2 October 2009 for the directors consideration.
- 3.5. Having given consideration to the Company's assets and trading position as well as the legal advice obtained by the directors in respect of the Company's marketing literature, the IBR concluded that, in the absence of a significant third party injection of capital, the Company's potential contingent liabilities arising from the failure of the Lehman Entities rendered the Company insolvent on a balance sheet basis.
- 3.6. Having contemplated all of the options available to the Company the directors came to the decision that there was no alternative other than to place the Company into administration. Subsequently, on 14 October 2009, the directors made the direct appointment of administrators.
- 3.7. The objective of the administration is to rescue the Company as a going concern or to achieve a better result for the Company's creditors as a whole than would be likely if the Company was wound up.

### **4 ASSETS AND LIABILITIES**

- 4.1. The directors have prepared a statement of affairs in respect of the Company, which is attached at Appendix A.

## **Assets**

### 4.2. **Cash at bank on appointment**

The Company had cash at bank of c.£157k at the date of my appointment (excluding client account monies).

### 4.3. **Book debts**

The Company books and records indicated book debts amounting to c.£10k at the date of my appointment. It is not yet clear as to the quantum of these book debts that may be recoverable given potential set-offs.

### 4.4. **Client Account Monies**

We will be investigating the Company's client accounts to identify the identity of any matured investments where the investor cannot be traced. Also the client account needs to be reviewed to identify what company funds remain trapped.

### 4.5. **Possible claims in the insolvency of the Lehmans Entities**

I have submitted a contingent claim in the insolvency of Lehman Brothers Inc and I am currently preparing contingent claims in the insolvencies of other European Lehman Entities.

These claims would only crystallise in the event that the Financial Services Compensation Scheme (FSCS) determines that some claims against the Company in respect of the mis-selling of structured products backed by Lehman Entities are valid. The extent to which the FSCS pays any compensation to the investor and takes an assignment of the debt, subsequently making a corresponding claim in the insolvency of the Company may give rise to a contingent claim for the Company against the respective Lehman Entities.

## **Liabilities**

4.6. There are no charges over the Company's assets. Therefore, after the discharge of administration expenses, I anticipate that there will remain sufficient net asset realisations to enable a dividend to unsecured creditors.

### 4.7. **Preferential Creditors**

All of the Company's work was carried out by the employees of NDF Administration Limited (in administration). As such, there are no preferential creditors.

### 4.8. **Unsecured Creditors**

Unsecured liabilities are estimated to total £39,929 and consist of c.8 creditors. This does not include the potential contingent liabilities arising from the Lehman Entities backed structured products.

### 4.9. **Contingent Creditors**

As set out in section 3 there are significant contingent creditors arising as a result of the failure of the Lehman Entities. These contingent claims amount to a theoretical maximum of c.£23 million in unsecured claims. The FSCS, having taken over from the FOS in assessing the claims in respect of mis-selling, will be adjudicating on these claim in due course.

## **5 CONDUCT OF THE ADMINISTRATION**

- 5.1. There were a number of issues which required immediate attention following my appointment, notably, the Primary Pooling Event affecting client monies, the ongoing administration of the product books and liaising with the FSA to obtain waivers in relation to various rules governing insolvency processes.
- 5.2. Aside from the products backed by Lehman Entities the Company has a small number of clients who hold an investment in plans with alternative counter parties. I have also been in negotiations with a number of parties in an attempt to secure a replacement plan manager in respect of these products.

### **Primary Pooling Event**

- 5.3. My appointment triggered a 'Primary Pooling Event' (PPE) under FSA rules. This effectively provided a requirement for me to reconcile all monies in the Company's client accounts. Given the sensitivity of client monies I tackled the task of reconciling the client accounts as a matter of priority following my appointment.
- 5.4. This reconciliation process has now been completed and I am happy to confirm that no errors or omissions were noted.

### **Administration of the Product Books**

- 5.5. The Company's commission in relation to its structured products book, deducted from investments in order to meet the plan manager's costs and fees to provide scheme administration services which the Company sub-contracts to Outsourced Professional Administration Limited (OPAL), are front end loaded.
- 5.6. Upon my appointment I entered into discussions with OPAL, who have agreed to continue to provide scheme administration services into the new year. I subsequently entered into discussions with a number of parties who indicated an interest in acting as plan manager going forward. Negotiations with these parties are now at an advanced stage and I am confident that the long term administration of the products will be secured.

### **FSA Waivers**

- 5.7. Given the structure of the Company, the mechanism of returning client monies, certain waivers of FSA rules were required to avoid technical breaches.
- 5.8. I began the process of discussing the waiver with the FSA on 30 October 2009. I am delighted to report that the required direction was received from the FSA on 30 November 2009. This direction has enabled the Company to continue trading as normal under my direction, for investment maturities and cancellations to be returned to investors and for the payment of income in relation to certain structured products to be re-instated.

### **Discussions with interested parties**

- 5.9. As mentioned above I have secured an agreement from OPAL which secures the scheme administration of the structured products book into the new year.
- 5.10. Having entered into discussions with a number of parties who had expressed an interest in acting as plan manager in respect of the Company's structured products, I am now in advanced negotiations with these parties and hope to be able to conclude a deal shortly. This will ensure the ongoing scheme administration for non-Lehman Entity backed products through to their respective maturities.

### **Investor Communications**

- 5.11. Immediately following my appointment I prepared and distributed an initial letter to c.2,000 individuals who had made an investment in a product offered by the Company. I also set up a dedicated helpline and website to provide information to investors.
- 5.12. Following the receipt of the FSA directions, allowing me to trade the Company as normal, I have written a more specific letter to investors outlining how my appointment has affected them and what action, if any, they should take.

### **Receipts & Payments**

- 5.13. My receipts and payments account covering the period 14 October 2009 to 3 December 2009 is attached (Appendix B).

## **6 PROPOSALS FOR ACHIEVING THE OBJECTIVE OF THE ADMINISTRATION**

- 6.1. The administrator will pursue the objective of a rescue of the Company or of achieving a better result for the Company's creditors as a whole than would be likely if the Company was wound up.
- 6.2. Initially I had entered into discussions with some parties who had expressed an interest in purchasing all of the business and assets of the Company. However, it now appears more likely that better value will be realised for the creditors with a more piecemeal disposal of the Company's assets.
- 6.3. Therefore I propose that I continue to explore interest in the Company's structured product book (including the related database of investors).
- 6.4. I will also, where possible, continue to realise capital from the Company's other assets.
- 6.5. The administrator will continue the Company's defence to proceedings brought against the Company, so far as he believes appropriate, bearing in mind the objective of selling the Company's assets and being mindful of the need to balance the costs of continuing the

defence against the potential detriment to creditors of abandoning the defence if it appears that funds may be available to the creditors following the conclusion of the administration.

- 6.6. It is proposed that the administration will end by the Company going into creditors voluntary liquidation, or if there are no monies available for unsecured creditors, by the dissolution of the Company. If the Company is placed into creditors voluntary liquidation it is proposed that Martin Ellis and I will be appointed joint liquidators. However, creditors may nominate a different liquidator if nomination to that effect is received before the approval of these proposals.

## **7 ADMINISTRATORS' REMUNERATION AND DISBURSEMENTS**

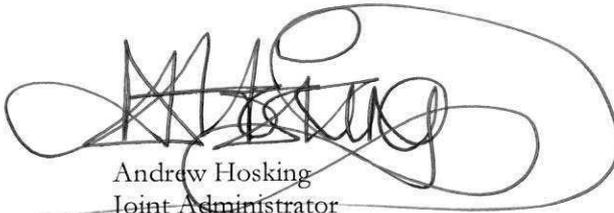
- 7.1. The creditors' committee, if appointed, should determine the basis of the administrator's remuneration. If no committee is appointed, a resolution of the creditors will be required.
- 7.2. Background information regarding the fees of administrators can be found at <http://www.insolvency-practitioners.org.uk> (navigate via 'Regulation and Guidance' to 'Creditors Guides to Fees'). Alternatively I will supply this information by post on request.
- 7.3. The administrators will request that their remuneration be calculated according to the time properly given by the administrators and their staff in attending to matters arising in the administration.
- 7.4. The administrator will charge out of pocket expenses 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.
- 7.5. Payments of the administrator's remuneration and disbursements are to be met from funds held in the administration in priority to the claims of creditors, and, after approval of the basis, the administrator may draw sums on account.
- 7.6. Time costs up to 30 November 2009 amount to £9,746. Further details, including a breakdown by category of staff and work done are provided at appendix C.

## **8 CONDUCTING THE BUSINESS OF THE INITIAL MEETING OF CREDITORS BY CORRESPONDENCE**

- 8.1. The business of the initial meeting of creditors pursuant to paragraph 51 of Schedule B1 to the Insolvency Act 1986 will be conducted by correspondence in accordance with paragraph 58 of Schedule B1 to the Insolvency Act 1986. Formal notice of the postal vote is enclosed.
- 8.2. The following resolutions are proposed:
- 8.3. Resolution 1: For the acceptance of the Joint Administrators proposals as set out in their Statement of 7 December 2009.

- 8.4. Resolution 2: That, if a creditors committee is not appointed, the basis of the Joint Administrators remuneration be agreed by reference to the time properly given by the Joint Administrators and their staff in carrying out their functions in accordance with the proposals.
- 8.5. Resolution 3: The Joint Administrators, on the approval of Resolution 2, be entitled to draw sums on account.
- 8.6. Resolution 4: For the appointment of Andrew Hosking and Martin Ellis of Grant Thornton UK LLP as Joint Liquidators of Defined Returns Limited should the Company move in to liquidation.
- 8.7. Under Rule 2.48(7) any single creditor, or group of creditors, of the Companies whose debts amount to at least 10% of the total debts may, within 5 business days from the date of sending out these proposals, require me to summon a meeting of creditors to consider the resolutions above. Please let me know as soon as possible if you propose to follow this course of action, in any event within 5 business days from the date of sending out these proposals, following Rule 2.37 of the Insolvency Act 1986.
- 8.8. Attached is formal notice of the conduct of the business by correspondence in place of an initial meeting of creditors, Form 2.25B. Creditors are requested to consider our proposals under paragraph 49, Schedule B1 of the Insolvency Act 1986.
- 8.9. Please note that in order for your vote to count you must return Form 2.25B indicating whether you are in favor or against each of the resolutions set out at the end of the proposals and statement by 12:00pm on 23 December 2009. Please ensure you attach a statement of debt to Form 2.25B.

Yours faithfully  
for and on behalf of Defined Returns Limited



Andrew Hosking  
Joint Administrator

*\*The affairs, business and property of Defined Returns Limited are being managed by Andrew Hosking and Martin Ellis, appointed as joint administrators on 14 October 2009.*

**Defined Returns Limited - In Administration**

**Appendix A**

**Statement of Affairs**

## Statement of affairs

Name of Company Defined Returns Limited	Company number 04991156
In the High court of Justice Chancery Division Companies Court	Court case number 19594 of 2009

(a) Insert name and address of registered office of the company

Statement as to the affairs of (a) Defined Returns Limited, 39 Alma Road, St Albans, Hertfordshire AL1 3AT

on the (b) 14 October 2009, the date that the company entered administration.

(b) Insert date

### Statement of Truth

I believe that the facts stated in this statement of affairs are a full, true and complete statement of the affairs of the above named company as at 14 October 2009 the date that the company entered administration.

Full name PAUL BISPHAM / JOHN WALLER  
 Signed   
 Dated 27/11/09

# A – Summary of Assets

Assets

Assets subject to fixed charge:

Assets subject to floating charge:

Uncharged assets:

Trade Debtor =  
Cash

Estimated total assets available for preferential creditors

Book Value £	Estimated to Realise £
N.I	
N.I	
10 000	10 000
157 099	157 099
167 099	167 099

Signature



Date

27/11/09

# A1 – Summary of Liabilities

	Estimated to realise £
<b>Estimated total assets available for preferential creditors (carried from page A)</b>	£
<b>Liabilities</b>	
Preferential creditors:-	£ 2.1
<b>Estimated deficiency/surplus as regards preferential creditors</b>	£ 167 099
Estimated prescribed part of net property where applicable (to carry forward)	£ -
<b>Estimated total assets available for floating charge holders</b>	£
Debts secured by floating charges	£ -
<b>Estimated deficiency/surplus of assets after floating charges</b>	£
Estimated prescribed part of net property where applicable (brought down)	£ -
<b>Total assets available to unsecured creditors</b>	£
Unsecured non-preferential claims (excluding any shortfall to floating charge holders)	£ 5095 34 743 200 000
<b>Estimated deficiency/surplus as regards non-preferential creditors (excluding any shortfall to floating charge holders)</b>	£ 7 239 838
Shortfall to floating charge holders (brought down)	£ (7 072 739)
<b>Estimated deficiency/surplus as regards creditors</b>	£ (7 072 739)
Issued and called up capital	£ 21 04
<b>Estimated total deficiency/surplus as regards members</b>	£ 7 074 843

Signature ✓ Date 29/11/04

Date: 30/11/2009

Time: 11:02:41

Defined Returns Limited  
Aged Creditors Analysis (Summary)

Page: 1

Report Date: 30/11/2009  
Include future transactions: No  
Exclude Later Payments: No

Supplier From:  
Supplier To: ZZZZZZZZ

\*\* NOTE: All report values are shown in Base Currency, unless otherwise indicated \*\*

<u>A/C</u>	<u>Name</u>	<u>Credit Limit</u>	<u>Turnover</u>	<u>Balance</u>	<u>Future</u>	<u>Current</u>	<u>Period 1</u>	<u>Period 2</u>	<u>Period 3</u>	<u>Older</u>
ABBEY	Abbey Press	£ 0.00	327.00	376.05	0.00	0.00	0.00	0.00	0.00	376.05
ABBEYM	AbbeyMac	£ 0.00	35.00	40.25	0.00	0.00	0.00	0.00	0.00	40.25
ADMIN	NDF Administration Ltd	£ 0.00	18,702.50	30,492.17	0.00	0.00	3,927.83	15,840.76	496.00	10,227.58
KPMG	KPMG Audit Plc	£ 0.00	21,400.00	575.00	0.00	0.00	0.00	575.00	0.00	0.00
OPAL	Outsourced Professional Admin	£ 0.00	720.00	2,895.61	0.00	0.00	0.00	0.00	828.00	2,067.61
OSBORNE	Osborne Clarke LLP	£ 0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ROYAL	Royal Mail Group Plc	£ 0.00	90.69	90.69	0.00	0.00	90.69	0.00	0.00	0.00
SYNERGY	Synergy Financial Products Ltd	£ 0.00	0.00	364.17	0.00	0.00	0.00	0.00	0.00	364.17
<b>Totals:</b>				<u>41,275.19</u>	<u>34,833.94</u>	<u>0.00</u>	<u>4,018.52</u>	<u>16,415.76</u>	<u>1,324.00</u>	<u>13,075.66</u>

Creditors 34834

Con Donated Tax 5095

39929

**Shareholders' Details****DRL  
ORD**

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DBS Management Ltd 600  
Burleigh House  
Salford Priors  
Worcestershire  
WR11 8SP

Nigel H Elliott 709  
31 Box Lane  
Boxmoor  
Hemel Hempstead  
Hertfordshire  
HP3 0DL

Noria Investment Ltd Partnership 366  
33 La Noria  
Orinda 94563  
California  
USA

Mrs Helen Elliott 24  
31 Box Lane  
Boxmoor  
Hemel Hempstead  
Hertfordshire  
HP3 0DL

John Waller 39  
3 Marconi Way  
St Albans  
Hertfordshire  
AL4 0JG

Andy Forster 366  
P.O. Box 40666  
Eugene  
Oregon 97404

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**2104**

Appendix B

Defined Returns Limited - In Administration

Receipts and Payments

14 October 2009 to 04 December 2009

Receipts

Total (£)

Cash at Bank

157,003.53

Bank/ISA InterestGross

1.72

157,005.25

Payments

0

	Partner			Manager			Executive			Administrator			Total		
	Hrs	£	Avg. Hrly Rate	Hrs	£	Avg. Hrly Rate	Hrs	£	Avg. Hrly Rate	Hrs	£	Avg. Hrly Rate	Hrs	£	Avg. Hrly Rate
Administration and Planning	-	-	-	0.50	225.00	450.00	2.20	605.00	275.00	21.75	3,580.00	164.60	24.45	4,410.00	180.37
Creditors	-	-	-	0.30	135.00	450.00	-	-	-	2.25	315.00	140.00	2.55	450.00	176.47
Hiatus period	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Investigations	-	-	-	-	-	-	-	-	-	1.00	140.00	140.00	1.00	140.00	140.00
Realisation of Assets	-	-	-	-	-	-	14.10	3,877.50	275.00	3.75	525.00	140.00	17.85	4,402.50	246.64
Trading	-	-	-	-	-	-	1.25	343.75	275.00	-	-	-	1.25	343.75	275.00
<b>Total</b>	-	-	-	<b>0.80</b>	<b>360.00</b>	<b>450.00</b>	<b>17.55</b>	<b>4,826.25</b>	<b>275.00</b>	<b>28.75</b>	<b>4,560.00</b>	<b>158.61</b>	<b>47.10</b>	<b>9,746.25</b>	<b>206.93</b>

## Notice of conduct of business by correspondence

Name of Company Defined Returns Limited	Company number 04991156
In the High Court of Justice, Chancery Division, Companies Court  [full name of Court]	Court case number 19594 of 2009

- (a) Insert full name(s) and address(es) of the administrator(s)  
Notice is hereby given by (a) Andrew Lawrence Hosking and Martin Gilbert Ellis of Grant Thornton UK LLP, 30 Finsbury Square, London EC2P 2YU
- (b) Insert full name and address of registered office of the company  
to the creditors of (b) Defined Returns Limited, c/o Grant Thornton UK LLP, 30 Finsbury Square, London, EC2P 2YU.
- (c) Insert number of resolutions enclosed  
that, pursuant to paragraph 58 of Schedule B1 to the Insolvency Act 1986, enclosed are (c) four resolutions for your consideration. Please indicate below whether you are in favour or against each resolution.
- (d) Insert address to which form is to be delivered  
This form must be received at (d) Grant Thornton UK LLP 30 Finsbury Square, London, EC2P 2YU
- (e) Insert closing date  
by 12.00 hours on (e) 23 December 2009 in order to be counted. It must be accompanied by details in writing of your claim. Failure to do so will lead to your vote(s) being disregarded.
- Repeat as necessary for the number of resolutions attached
- Resolution (1): For the acceptance of the Joint Administrators proposals as set out in their Statement of 7 December 2009. I am \*in Favour / Against
- Resolution (2): That, if a creditors committee is not appointed, the basis of the Joint Administrators remuneration be agreed by reference to the time properly given by the Joint Administrators and their staff in carrying out their functions in accordance with the proposals. I am \*in Favour / Against
- Resolution (3): The Joint Administrators, on the approval of Resolution 2, be entitled to draw sums on account. I am \*in Favour / Against
- Resolution (4): For the appointment of Andrew Hosking and Martin Ellis of Grant Thornton UK LLP as Joint Liquidators of Defined Returns Limited should the Company move in to liquidation. I am \*in Favour / Against

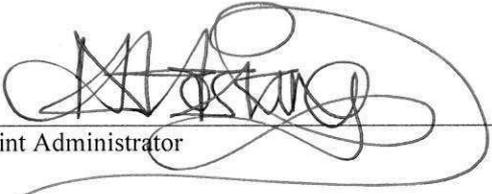
(\*Please delete as applicable)

TO BE COMPLETED BY CREDITOR WHEN RETURNING FORM:

Name of  
creditor: \_\_\_\_\_

Signature of  
creditor: \_\_\_\_\_

(If signing on behalf of creditor, state capacity e.g. director/solicitor)  
If you require any further details or clarification prior to returning your votes, please  
contact me / us at the address above.

Signed  \_\_\_\_\_  
Joint Administrator

Dated 7<sup>th</sup> December 2009 ,