

INFORMAL TRANSLATION OF DUTCH TEXT

WRITTEN OPINION

Written opinion pursuant to Article 140 of the Dutch Bankruptcy Act by Mr R.J. Schimmelpenninck and Mr F. Verhoeven ("Trustees") on the Composition Plan ("Composition Plan ") submitted by Lehman Brothers Treasury Co. B.V. ("LBT") to its creditors, a draft of which was submitted with the Amsterdam District Court registry on 10 December 2012.

4 March 2013

1. Introduction

- 1.1. The Trustees are of the opinion that the Composition Plan provides a mechanism which effects payments to LBT's creditors in the quickest and most efficient manner without prejudicing the position of creditors under the Dutch Bankruptcy Act.
- 1.2. The Composition Plan provides for distributions to holders of LBT notes by means of the existing payment systems on the basis of the LBT note valuations.
- 1.3. Three reasons justify the method of settlement chosen in the Composition Plan. First, there can be no distributions to holders of LBT notes prior to a valuation of the notes issued by LBT. Second, a multitude of creditors and parties with economic interests were involved in the bankruptcy of LBT, many of whose identity is unknown to the Trustees. These parties can only be reached through various intermediaries; this is the only way of making distributions to the aforementioned financial instruments. Third, the financial interests involved in this bankruptcy are so enormous that even the slightest delay in distribution would cause considerable detriment (to give an idea, the first distribution will be at least USD 2.5 billion).
- 1.4. The Composition Plan – which in fact is nothing more than an agreement between the bankrupt and its (ordinary) creditors – provides a mechanism for settlement which is appropriate to all of the aforementioned circumstances.
- 1.5. This Composition Plan cannot be isolated from the actual context in which it was formed, therefore this Opinion starts with a brief summary of the relevant facts. All of the factual information contained in this Opinion can also be found in the public reports published by the Trustees in recent years.

2. Events leading up to the Composition Plan

- 2.1. Prior to its bankruptcy, LBT issued financial instruments ("**Notes**") under four programmes in various countries within and beyond the European Union. Approximately 95% of the Notes were issued under the "*USD 100,000,000,000 Euro Medium Term Note Programme*" ("**EMTN-programme**"). LBT issued the majority of the Notes to financial institutions, which often sold, these Notes (or interests therein) to their respective clients.
- 2.2. The Notes were issued in series. A series ("**Series**") is a particular type of Note with the same important characteristics such as currency, maturity, underlying values (if relevant) and interest. The Notes in a Series could be issued at different times; the economic and commercial conditions for each Series are documented in separate terms and conditions ("**Terms and Conditions**"). The Notes issued by LBT varied from relatively simple (plain vanilla) to extremely complex.
- 2.3. At the bankruptcy date 3,789 Series were outstanding under all of the programmes, with a nominal value of USD 33.7 billion. The nominal value of each Series varies from several hundred thousand euros to several hundred million euros.
- 2.4. The division of Series of Notes into individual marketable financial instruments with lower denominations enabled private investors to invest in Notes. Although the total number of individual marketable LBT Notes on the market is not known, estimates put the number of individual marketable Notes issued as at the bankruptcy date at approximately 3 million.
- 2.5. A multitude of parties were involved in the issue and trading of Notes. This Opinion is confined to a short description of the most important parties who also play an important part in the submission of claims and voting on the Composition Plan.

Parties involved in the issue and trading of Notes

- 2.6. The Notes were issued and traded through the so called clearing institutions ("**Clearing Institutions**"). Large financial institutions generally have an account with one or more Clearing Institutions to facilitate trading in securities for themselves and their clients. Such institutions are also known as "Direct Participants".
- 2.7. Small and medium-sized financial institutions do not usually have their own direct access to the Clearing Institutions, but they use accounts with Direct Participants to facilitate transactions in Notes. They are known as "**Intermediary Parties**".
- 2.8. The legal or natural person (the end investor) with the ultimate beneficial interest in the Notes is also known as the ultimate beneficial owner ("**UBO**"). The UBO can be the same party as the Direct Participant.

- 2.9. A UBO that is not a Direct Participant may only exercise rights attaching to Notes through the intermediary of the relevant Direct Participant(s) and – if applicable – Intermediary Parties. How a UBO exercises its rights is not only dependent on the relevant Terms and Conditions under which the Series was issued, but also on the relationship between the UBO and the intuitions through whose intermediary he holds the interest in the Note in question.
- 2.10. The (EMTN) programme documentation covers only the relationship between LBT and the Direct Participants. Terms and Conditions applicable to the further division of the Notes are not covered by the (EMTN) programme documentation. Applicable law and the substance of the legal relationship between various underlying links in the chain vary from one case to the next. In the majority of cases, LBT has no knowledge of the identity of the UBOs.

Valuation of the Series

- 2.11. Given the complexity of the Terms and Conditions applicable to the Series, the number of Notes issued under the various Series, the (frequently complex) character of the Series of Notes and the huge number of UBOs, the Trustees decided that the Notes should be valued in the first instance by the LBT estate. This was the only way of ensuring a balance between the valuations so that creditors were treated as equally as possible, thereby minimising the risk of lengthy, costly and extensive proceedings.
- 2.12. The Trustees, in consultation with a number of active institutional and private parties who hold different types of Notes and with the aid of valuation experts, formulated principles for valuing the Series of Notes. These principles were formulated on the basic premise that they must meet generally-accepted economic principles and that they reconcile as much as possible with the (outdated) Articles 128 to 133 of the Dutch Bankruptcy Act and the conditions applicable to the Series. This is consistent with the basic premise that the Dutch Bankruptcy Law in no way prejudices existing agreements or agreements that ensue from them.
- 2.13. The Provisional Valuation Principles were published in the 9th public report dated 22 July 2009. The Final Valuation Principles were published in the 10th public report dated 11 November 2011. The Trustees have used the valuation principles since January 2012 to establish the value – expressed in euros – at which each Series (also referred to as "ISINs") can be admitted to the bankruptcy. Valuations were published on the LBT website in batches of several hundreds of Series from the end of January 2012. Each publication was accompanied by an announcement in a public report and on the LBT website. Creditors and beneficiaries who had duly applied to the Trustees were informed by e-mail of important developments in the bankruptcy,

including the publication of various public reports. The e-mail list contains approximately 17,580 addressees.

- 2.14. The value at which the Trustees determined that a Series (ISIN) could be admitted in the bankruptcy is also referred to as the "*admissible amount*". These amounts are also expressed for ease of reference in a percentage of the nominal value of each Series (the "**Admissible Amount Percentage**").

Opportunity for reporting Manifest Errors

- 2.15. Following publication of the Admissible Amount Percentages, UBOs were given an opportunity to object to the published valuations by submitting a '*manifest error notification*' ("**Manifest Error Notification**"). The entitlement to submit a Manifest Error Notification was announced in the 13th public report dated 1 October 2012.¹ A SWIFT message was also sent at the end of September 2012 to Direct Participants to contact as many UBOs as possible and inform them of the publication of the valuation and the opportunity to submit Manifest Error Notifications.
- 2.16. Manifest Error Notifications were received for valuations of 15 Series, nine of which are still being processed.

Valuation Support Agreements

- 2.17. A number of active UBOs and Direct Participants with leading positions in the bankruptcy explicitly endorsed the valuation criteria applied. The portfolios of these UBOs vary from plain vanilla Notes to extremely complex Notes. The support was manifested in "Valuation Support Agreements" ("**VSAs**") in which the UBOs confirm that they support the valuation principles. A total of 37 UBOs in leading positions signed a VSA (see Annex III to the Composition Plan). The aforesaid UBOs jointly represent over 50% of the total nominal amount outstanding in Notes as at the bankruptcy date. Lehman Brothers Holdings Inc. ("**LBHI**") and Lehman Brothers Special Financing Inc. ("**LBSF**") also expressly declared their support for the Composition Plan (see Annex IV to the Composition Plan). It is relevant in this context that LBSF has a recognised claim of approximately USD 1 billion on LBT.
- 2.18. Parties which affirmed their support of the Composition Plan would not be favoured by the Composition Plan – if it will approved– or otherwise treated differently from parties which did not express their support from the outset.

¹ SWIFT, or the *Society for Worldwide Interbank Financial Telecommunications*, is an institution which supplies secure financial messaging services. In excess of 8,000 financial institutions in approximately 200 countries are members of SWIFT.

3. The Composition Plan – object and necessity

3.1. The principal object of the Composition Plan is to facilitate distributions to creditors by:

- (i) bindingly implement the LBT Note valuations as final valuation of that Series;
- (ii) making it binding that distributions based on the aforementioned valuations are effected using existing payment systems through the Clearing Institutions.

The latter is important because the only way of ensuring that payment actually reaches the UBOs is by effecting payment through the Clearing Institutions. The Composition Plan also provides for distribution on the Notes in the currencies for which they were issued. This method of distribution corresponds most closely with the Terms and Conditions and therefore prevents UBOs from suffering damage as a result of non-predetermined conversions.

3.2. Another object of the Composition Plan is to prevent (a potential multitude of) claims validation procedures (*renvooioprocedures*). Such proceedings on complex financial instruments such as this will irrevocably lead to major and costly delays in distributions.

3.3. This is particularly relevant in light of the fact that proceedings relating to a single Note in one Series will block distribution to *all* holders of Notes (UBOs) in that Series. Clearing Institutions are not practically capable of effecting partial payments on a Series of Notes or of paying a different percentage to one or more UBOs which hold Notes that are part of the same Series. Given that LBT is often unaware of the identity of the UBOs, payment cannot be made them directly.

The Advantages of the Composition Plan over a standard settlement

3.4. The advantage of the Composition Plan over standard liquidation pursuant Article 173 of the Bankruptcy Act is that the Composition Plan is binding on all ordinary creditors, irrespective of whether their claims are admitted, disputed or provisionally admitted and irrespective of whether they voted for or against the Composition Plan. As stated above, the bankruptcy of LBT involves 3,789 Series of Notes, a great many of which are extremely complex and cannot be valued without the aid of experts. Valuation is further complicated by the fact that the conditions relating to the Series are governed by foreign law and validation of the claims is governed by Dutch law – by provisions that are not tailored to LBT, parts of which are open to more than one interpretation.

- 3.5. The Composition Plan provides the basis for an efficient, transparent and adequately safeguarded procedure to arrive at a balanced valuation of the Series of Notes and expedite distribution to the creditors. The Composition Plan will avoid chaotic and uncontrolled liquidation of the bankruptcy which could potentially involve many lengthy and dilatory claims validation procedures.

4. Provision of information to creditors

- 4.1. The Composition Plan is the result of years of talks with important holders of LBT Notes, other creditors, supervisory judge and various other parties involved (including the Clearing Institutions). In the run-up to the Composition Plan, the Trustees were supported by several experts. The various phases of the preparations for the Composition Plan (drafting the valuation principles, the outcome of the Note valuations, the Manifest Error procedure, the claims admission and voting procedure, the draft Composition Plan) were communicated at all times in public reports and via the LBT website. Interested parties were also able to register on a mailing list: everybody on the list was informed by e-mail of important developments in the bankruptcy and the Composition Plan. The Trustees also organised informative meetings for holders of LBT Notes.

5. Presentation of the Composition Plan by LBT

- 5.1. The Composition Plan – which was drafted in close consultation with Trustees and the aforementioned experts – was presented by the LBT Board in accordance with the requirements of Article 138 of the Bankruptcy Act.
- 5.2. The LBT Board consists of Stichting Lehman Brothers Treasury (the "**Foundation**"). The Foundation is also the sole shareholder of LBT. The board of the Foundation consists in turn of the Trustees and Mr De Haan.² As an (indirect) director of LBT, De Haan will provide his own advise on the Composition Plan at the claims admission meeting.

6. Voting procedure

- 6.1. The voting procedure for creditors whose claims are based on the Notes is described in the Consent Solicitation Memorandum ("**CSM**"). The CSM also sets out the rules to file claims.

² H.P. de Haan is a registered accountant and was a partner with Ernst & Young Accountants until 1 October 2000. He is (or was) a trustee in the bankruptcies of Van der Hoop Bankiers and Indover Bank. He is currently also a member of the supervisory board of directors of ABN Amro Bank N.V.

- 6.2. The CSM provides that the Composition Plan will be put to a vote at the claims admission meeting using a power of attorney issued to Deutsche Bank AG (the "**Consent Agent**").
- 6.3. The supervisory judge approved the CSM in a decision on 6 December 2012, declaring it applicable to the filing claims and voting on the Composition Plan (at the meeting) by voters wishing to submit a claim on the basis of one of the four LBT Note programmes.
- 6.4. The CSM offers a clear and transparent procedure for submitting claims and voting on the Composition Plan and furthermore provides Direct Participants with a simple means of consulting their clients about the proposed Composition Plan. Thus the CSM also reflects the interests of the UBOs.
- 6.5. The CSM imposes no restrictions on the rights of creditors or economic beneficiaries who are not creditors. For example, the CSM does not affect the power of creditors to submit claims for a different amount or the right of creditors to dispute the claims of other creditors.

7. What follows court approval of the Composition Plan

- 7.1. The bankruptcy ends as soon as court approval of the Composition Plan becomes final and conclusive (cf. Article 161 of the Bankruptcy Act).
- 7.2. The Composition Plan provides that the Foundation adopts a shareholders' resolution to wind up LBT (pursuant to the provisions of Article 2:19 of the DCC) as soon as the approved (*gehomologeerd*) Composition Plan becomes final and conclusive, with the appointment of the Trustees as liquidators.
- 7.3. LBT will continue to exist insofar as it is necessary to meet the obligations which ensue from the Composition Plan. In this context the liquidators are authorised to represent and bind the company insofar as it is necessary to comply with obligations arising from the Composition Plan.
- 7.4. The liquidators' primary activity after court approval will be to arrange distributions twice a year on the Series of Notes falling under the Composition Plan. Payment will be effected using existing payment structures and will be based on the value of each Note established in the Composition Plan. Such payments will also benefit UBOs who did not come forward in the bankruptcy, who voted against the Composition Plan or whose claims are disputed by another creditor but have been provisionally admitted. Of course payments will also be made to other ordinary creditors.

7.5. The liquidators will provide creditors with a quarterly progress report. The format of these reports (which will be published on the LBT website) will be identical to current public reports.

7.6. The liquidators will be remunerated for their work in accordance with the rates applied by the Court for this bankruptcy.

8. Supervision of management and liquidation after court approval

8.1. Following court approval of the Composition Plan there will be independent supervision of the management and liquidation of LBT's assets. After the court approval decision becomes final and conclusive the Trustees will resign from the board of the Foundation and will be replaced by two independent directors.

8.2. The articles of association provides for the establishment of a board of advisors. For a description of the tasks and powers of the advisory board the Trustees refer to the articles of association.

8.3. The liquidators are bound in the performance of their work by the relevant provisions on liquidation that are laid down in Book 2 of the Dutch Civil Code.

9. Financial position of LBT

9.1. With regard to the financial position of LBT, the Trustees refer to their 15th public report.

10. Conclusion

10.1. In light of the foregoing, the Trustees are of the opinion that the Composition Plan provides an efficient, transparent and adequately safeguarded procedure to expedite liquidation of the LBT estate and expedite distribution to the creditors. The Trustees are not aware of any grounds as provided for in Article 153 of the Dutch Bankruptcy Act which would preclude court approval of the Composition Plan by the District Court.