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Inside Story: The Lehman Brothers' Bankruptcy

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The Lehman Brothers Bankruptcy: Trustees of Dutch subsidiary announce claims filing date and publish composition plan

Introduction

On 8 October 2008, Lehman Brothers Treasury Co. B.V. ("**LBT**") was declared bankrupt by the Amsterdam District Court. By way of background, LBT financed the business activities of the Lehman Brothers group of companies by issuing structured notes through various intermediaries (the "**Notes**"), to financial institutions and individuals. The characteristics of the Notes varied from being relatively simple to more complex financial instruments tailored to the wishes of professional investors. Another important characteristic was that, in many cases, the repayment amount and the amount of interest on the Notes was linked to derivative market elements such as specific share prices or the prices of commodities such as gold and oil. Following LBT's bankruptcy, a note-holder may have claims towards both LBT and Lehman Brothers Holdings Inc. ("**LBHI**"), as LBHI was often a guarantor for the Notes.

Since the bankruptcy of LBT, its trustees (the "**Trustees**") have examined and assessed the value of the Notes according to Dutch law, in order to distribute proceeds to the note-holders. The Trustees have sought to comply with Dutch law in an efficient way but it is important to note that the Dutch Bankruptcy Act (the "**Act**"), which dates from 1896, is still ill-equipped to handle complex, international bankruptcies even though it has been amended several times.

The 14th public report of the Trustees (dated 30 November 2012) includes key information for note-holders, clearing agents and financial institutions. This information comprises (i) the proposal for a composition plan; (ii) filing and voting procedures; (iii) the filing date for claims; and (iv) details of the claims admission meeting.

Valuation of claims

On 28 June 2012 and 25 July 2012 respectively, the Trustees published the fourth and fifth list of valuations (the "**LBT Note Valuations**") on the LBT website. On 5 December 2012, the final list containing all LBT Note Valuations was published. This list contained the valuation of each Note according to the valuation principles set out in the Act.

Under the Act, creditors must file their claims with the trustees in order to receive a distribution out of the bankruptcy proceeds. The value of the claims must be assessed in order to determine the amount of the distribution. The trustee in bankruptcy will decide at the creditors' meeting if he (provisionally) acknowledges or disputes a claim. Whilst no obligation exists in the Netherlands for creditors to file their claims within a certain period of time following the declaration of bankruptcy, once a creditors' meeting has been scheduled it is important that claims are filed on time so that the trustee can value (and validate) the claims at the meeting.

The composition plan

The aim of the composition plan is to make distributions (through the "direct participants") for the benefit of both the note-holders and other ordinary creditors in an efficient and expeditious manner. It does this by establishing:

(i) the LBT Note Valuations as a fair and equitable basis for the pro-rata entitlement of note-holders to distributions from LBT and binding all ordinary creditors thereto; and

(ii) a distribution method that enables LBT to make distributions to direct participants by means of, and subject to, the existing payment and settlement systems.

Other ordinary creditors whose claims are acknowledged by the Trustees will receive payment pursuant to the provisions of the composition plan, which is voted upon.

Consequences of the composition plan

The filing of the note-holders' claims and the collection of voting instructions is directed through direct participants. The LBT composition plan will be put to a vote and once it is accepted (or deemed to be accepted) and the confirmation decision (*homologatiebeslissing*) of the Amsterdam District Court is no longer open to appeal, the plan will become effective and binding.

Consent solicitation period

The consent solicitation period is the period during which direct participants can submit the filing and voting instructions on their own behalf and/or on behalf of other note-holders. In respect of LBT, this period started with the publication of the composition plan and will expire on 25 January 2013 at 6 pm CET. The deadline for claims filing is also set on that date.

Each note-holder will be requested to vote by the consent agent, following which the claim will be filed for the value as described in the final valuation list. The Trustees have published a "consent solicitation memorandum" which explains the mechanism under (ii) above, by setting out the

procedures and requirements for the filing of claims and submission of voting instructions. Only direct participants (i.e. those who are shown in the records of clearing and settlement systems), as a holder of a particular nominal amount of Notes, are allowed to submit filing and voting instructions to the consent agent. Direct participants are therefore also requested, as far as applicable, to procure voting instructions from the institutional and private investors that hold an economic interest in the Notes.

Claims admission meeting

The actual note-holders' votes on the composition plan are cast by the relevant consent agent at the claims admission meeting (*'verificatievergadering'*).

The claims admission meeting in respect of LBT will take place at the Amsterdam District Court on 7 March 2013 at 10 am CET. At this meeting, to be chaired by the Supervisory Judge, each of the claims that have been validly filed by or on behalf of creditors will either be admitted or disputed. In addition, the LBT composition plan will be put to a formal vote.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. The relevant information mentioned above can be found on the LBT website www.lehmanbrotherstreasury.com.

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