

**PROPOSED CROSS-BORDER INSOLVENCY PROTOCOL  
FOR THE LEHMAN BROTHERS GROUP OF COMPANIES**

This cross-border insolvency protocol (the “Protocol”) shall govern the conduct of Lehman Brothers Holdings Inc. (“LBHI”) and its affiliated debtors worldwide that are parties hereto (collectively, the “Debtors” and, collectively with their non-debtor affiliates, “Lehman”) in the Proceedings, as such term is defined herein.

**Background**

**A. The Proceedings**

Commencing on September 15, 2008 and periodically thereafter (as applicable, the “Commencement Dates”), the Debtors commenced (or in some cases, had initiated against them) plenary insolvency, administration, liquidation, receivership, or like proceedings (“Plenary Proceedings”) in different jurisdictions (the “Plenary Fora”) and before different courts and governmental, regulatory, or administrative bodies (the “Tribunals”), as well as proceedings that are secondary or ancillary to a Plenary Proceeding (“Limited Proceedings,” and together with the Plenary Proceedings, the “Proceedings”).

In certain of these proceedings, the Debtors remain authorized to operate their businesses and manage their properties as “Debtors in Possession,” while in others, liquidators, administrators, trustees, custodians, or curators have been appointed to manage the Debtors’ affairs and represent their insolvency estates (collectively, with Debtors in Possession, the “Official Representatives”). Furthermore, in certain of these Proceedings, one or more statutory committee of creditors or equity holders has or have been appointed (the “Committees”).

**B. Lehman’s Global Business**

Lehman was a truly global group of companies. Prior to the events leading up to these Proceedings, Lehman was the fourth largest investment bank in the United States, and one of the largest financial services firms in the world. For more than 150 years, Lehman was a leader in the global financial markets by serving the financial needs of corporations, governmental units, institutional clients and individuals worldwide. Its headquarters in New York and regional headquarters in London and Tokyo were complemented by a network of offices in North America, Europe, the Middle East, Latin America and the Asia Pacific region.

To manage their businesses efficiently, Lehman utilized a centralized cash management system to collect and transfer the funds generated by its operations and disburse those funds to satisfy the obligations required to operate their businesses. The cash management system facilitated Lehman’s cash monitoring, forecasting, and reporting, while ensuring compliance with the regulatory requirements of various jurisdictions. Furthermore, prior to the commencement of the Proceedings, LBHI and its direct and indirect subsidiaries continuously worked together and shared information in unison. This information was spread across 2,700

different software applications and dispersed throughout ledger accounts in its subsidiaries across the globe.

**C. The Need for a Protocol**

Given the integrated and global nature of Lehman's businesses, many of the Debtors' assets and activities are spread across jurisdictional borders and require administration in more than one forum. Consequently, the Debtors are no less dependent on each other today than they were prior to the commencement of these Proceedings. The efficient administration of each of the Debtors' individual Proceedings naturally depends upon cooperation among the Debtors' Official Representatives. In addition, effective case management and consistent judgments require cooperation and communication among Tribunals.

Accordingly, this Protocol is designed to facilitate the coordination of these Proceedings, and to enable the Tribunals and Official Representatives to operate efficiently and effectively in the interest of all of the Debtors' creditors.

**Terms**

**1. Purpose and Aims**

**1.1.** The parties hereto agree to the terms of this Protocol, representing a statement of intentions designed to minimize the costs and maximize fair recoveries for all creditors of these Proceedings, by promoting the sharing of information among the parties and the international coordination of activities in the Proceedings, while respecting the separate interests of creditors and other interested parties to each Proceeding, and the independence, sovereignty, and authority of each Tribunal.

**1.2.** Official Representatives should coordinate with each other and cooperate in all aspects of the Proceedings, subject in appropriate cases to bilateral protocols and protocols for communication among Tribunals and Committees, in order to meet the aims of this Protocol.<sup>1</sup>

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<sup>1</sup> Text based on Principle 4 of the Concordat ("Each forum should coordinate with each other, subject in appropriate cases to a governance protocol"); ALI Procedural Principle 14 ('Cooperation'), ("The administrators in parallel proceedings should cooperate in all aspects of the case"); and Wessels, Guideline 12.1 ("Liquidators are required to cooperate in all aspects of the case"). See also Order Approving the Stipulation Regarding Cross-Border Insolvency Protocol, In re Everfresh Beverages, Inc., Case No. 95-B-45405-06, United States Bankruptcy Court for the Southern District of New York; Order Approving Cross-Border Insolvency Protocol, In re Everfresh Beverages, Inc., Court File No. 32-077978 (the "Everfresh Protocol") ("The Debtors and the Interim Receiver will (i) have regard to the proceedings initiated by Everfresh under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and under the Act in the Canadian Court; (ii) co-operate with actions taken in both the Bankruptcy Court and the Canadian Court; and (iii) take steps to coordinate their respective administrations under the Bankruptcy Code and the Act in the Bankruptcy Court and the Canadian Court.").

Ontario Court of Justice (General Division)

1.3. The aims of this Protocol are:

- 1.3.1. **Coordination** – To promote international cooperation and the coordination of activities in the Proceedings; and to provide for the orderly, effective, efficient, and timely administration of the various Proceedings in order to reduce their cost and maximize recovery for creditors.
- 1.3.2. **Communication** – To promote communication among Official Representatives and Committees; and to provide, wherever possible, for direct communication among Tribunals.
- 1.3.3. **Information and Data Sharing** – To provide for the sharing of information and data among Official Representatives in order to promote effective, efficient, and fair administrations, and to avoid duplication of effort and activities by the parties.
- 1.3.4. **Asset Preservation** – To identify, preserve, and maximize the value of the Debtors' worldwide assets for the collective benefit of all creditors and other interested parties.
- 1.3.5. **Claims Reconciliation** – To avoid the unfair treatment of creditors by coordinating the claims process; and in particular, to provide for a consistent and measured approach to the calculation and adjudication of intercompany claims that avoids unnecessary intercompany litigation.
- 1.3.6. **Fair Distribution** – To cooperate in marshalling the assets of the Debtors in order to obtain a fair distribution of funds and maximize recovery for all of the Debtors' creditors.
- 1.3.7. **Comity** – To maintain the independent jurisdiction, sovereignty, and authority of all Tribunals.

2. Notice

2.1. The Official Representatives in each forum, as well as any Committees established in each Proceeding, shall receive notice of all matters in which they have an interest in all Proceedings, by email if possible, otherwise by overnight mail delivery service or fax.

2.2. Notice of any meetings, court hearings, or statutory deadlines shall be provided by each Official Representative to all other Official Representatives by email as far in advance as possible.

### 3. Rights of Official Representatives and Creditors to Appear

3.1. Official Representatives shall have the right to appear in all of the Proceedings, whether before a Tribunal or in statutory meetings convened pursuant to applicable law. If required in a particular forum, an exequatur or similar proceeding may be utilized to implement recognition of the Official Representative.

3.2. The Official Representatives shall be subject to jurisdiction in all fora for any matter related to the Proceedings, provided, however, that appearing in a forum shall not subject an Official Representative to jurisdiction for any other purpose except to the extent otherwise set forth herein to the contrary.<sup>2</sup>

3.3. If an Official Representative cannot be present before the Tribunal, the parties hereto shall consent to the Official Representative's communication of any observations to the Tribunal prior to any order being made, provided that such communication is made in

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<sup>2</sup> Text based on Committee J Cross-Border Insolvency Concordat, Sept. 17, 1995, International Bar Association Section on Business Law (the "Concordat"), Principle 3A:

(A) If there is more than one forum, the Official Representatives appointed by each forum shall receive notice of, and have the right to appear in, all proceedings in any fora. If required in a particular forum, an exequatur or similar proceeding may be utilized to implement recognition of the Official Representative. An Official Representative shall be subject to jurisdiction in all fora for any matter related to the insolvency proceedings, but appearing in a forum shall not subject him/her to jurisdiction for any other purpose in the forum state.

Cf. Protocol in *In re Everfresh Beverages, Inc.*, No. 95-B-45405 (Bankr. S.D.N.Y. 1995) and No. 32-077978 (Ont. Ct. 1995) (Can.) (the "Everfresh Protocol");

2. The Debtors, the Creditors' Committee and the Interim Receiver, and any other official representative that may be appointed by the Bankruptcy Court or the Canadian Court, shall receive notice of all proceedings in accordance with the practices of the respective Courts, and have the right to appear in all proceedings in any for a, whether in the Bankruptcy Court or the Canadian Court.... The Debtors and the Interim Receiver shall be subject to jurisdiction in both for a for any matter related to the insolvency proceedings, but appearing in a forum shall not subject him/her to jurisdiction for any other purpose in the forum estate, except to the extent otherwise set forth herein to the contrary.

See also BOB WESSELS & MIGUEL VIRGÓS, EUROPEAN COMMUNICATIONS AND COOPERATION GUIDELINES FOR CROSS-BORDER INSOLVENCY 37 (INSOL Europe 2007) ("Wessels"), Guideline 17.1 ("Notice of any court hearing or the making of any order by a court should be given to each of the liquidators at the earliest possible point in time where the hearing or order is relevant to that liquidator"); Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries, by the American Law Institute at Washington D.C. (May 16, 2000) ("ALI Procedural Principles"), Principle 16 ("Notice of any court hearing or the making of any order by a court should be given to each of the administrators at the earliest possible time, if the hearing or order is relevant to that administrator. Notice and approval should always be in advance of such an action if possible or if required by applicable law.").

writing and copies of such communication are delivered to all interested parties or filed on the Tribunal's public records.<sup>3</sup>

**4. Communication and Access to Data and Information Among Official Representatives**<sup>4</sup>

**4.1.** Each of the Official Representatives shall keep all other Official Representatives fully apprised of their activities and all relevant information and material developments in matters involving the Debtors and their Proceedings.<sup>5</sup>

**4.2.** To the extent permitted, non-public information available to the Official Representatives shall be shared with other Official Representatives, subject to appropriate confidentiality arrangements and all privileges under the applicable rules of evidence.<sup>6</sup>

**4.3.** Official Representatives agree to share information regarding the Debtors, and their assets and liabilities, which each may lawfully share with the other; provided, however, that with respect to work product or other privileged information, Official Representatives may, but are not obliged, to share such information with each other.

**4.4.** Official Representatives agree that each shall not (and shall direct their respective agents and representatives not to) provide any non-public information received from

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<sup>3</sup> Text based on Wessels, Guideline 17.2 (“Where a liquidator cannot be present in person before the court, the court is advised to invite the liquidator to communicate any observations to the court prior to any order being made.”).

<sup>4</sup> See, generally, Cross-Border Insolvency Protocol in Re Manhattan Investment Fund Limited between United States Bankruptcy Court for the Southern District of New York (Hon. Burton R. Lifland), Case No. 00-10922BRL, (April 2000) and High Court of Justice of the British Virgin Islands (Chief Justice Austin Ward), Case No. 19 of 2000, (April, 2000) and Supreme Court of Bermuda (Mr. Justice Kenneth A. Benjamin), Case No. 2000/37, (April 2000) (the “Manhattan Inv. Fund Protocol”) ¶¶ 9 - 12.

<sup>5</sup> Similar provisions can be found in the European Union Convention on Insolvency Proceedings, opened for signature Nov. 23, 1995, (the “EU Convention”) (did not come into force) art. 31 (“Subject to the rules restricting the communication of information, the liquidator in the main proceedings and the liquidators in the secondary proceedings shall be duty bound to communicate information to each other. They shall immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.”); and the European Convention on Certain International Aspects of Bankruptcy, opened for signature June 5th, 1990, Europ. T.S. No. 136 (the “Istanbul Convention”), art. 25 (“The liquidators in the main and secondary bankruptcies shall promptly communicate to each other any information which might be relevant to the other proceedings, in particular all measures aimed at terminating the procedures.”)

<sup>6</sup> Text based on the Concordat, Principle 3(D) (“Information publicly available in any forum shall be publicly available in all fora. To the extent permitted, non-public information available to an official representative shall be shared with other official representatives.”) Cf. Everfresh Protocol ¶ 5 (“Information publicly available in any forum shall be publicly available in both fora. To the extent permitted, non-public information shall be made available to official representatives of the Debtors, including any official committee appointed in these cases and shall be shared with other official representatives, subject to appropriate confidentiality arrangements and all privileges under the applicable rules of evidence.”).

the other to any third party, unless such information is (i) agreed to by the other party, (ii) required by applicable law, or (iii) required by order of any Tribunal.<sup>7</sup>

**4.5.** The entry of an order approving this Protocol shall constitute the recognition by each Tribunal and Official Representative that communications among Official Representatives and their respective professionals, employees, agents, and representatives are subject to, and do not waive any attorney-client, work-product, legal, professional, or other privileges recognized under any applicable law.<sup>8</sup>

**4.6.** Each Official Representative shall cooperate in the gathering of certain data and share analysis of certain transactions by:

**4.6.1.** sharing, via free, read-only access, all information and data relating to (i) material interest holders of an asset, (ii) re-appointment transactions, and (iii) information that assists an Administrator to fulfill his duties, except where (x) litigation has commenced (or is contemplated), or (y) statutory or regulatory requirements prohibit disclosure;

**4.6.2.** coordinating the investigations of pre-filing activities, so long as the interests of the Official Representatives coordinating such investigations do not diverge; and

**4.6.3.** liaising on matters (i) in which multiple Debtors have a significant mutual interest, and (ii) relating to a significant strategy to exit from a Proceeding.

**4.7.** Any sharing of information and data shall not include automatic access to (i) documents relating to a Debtor's post-filing transactions, or (ii) working papers, summaries, or other work product drafted by an Official Representative, and any professionals retained in the course of a Proceeding.

## **5. Communication Among Tribunals**

**5.1.** The Guidelines Applicable to Court-to-Court Communication in Cross-Border Cases (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this protocol in whatever form they are formally adopted by each Tribunal, in whole or in part and with or without modifications (if any). Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

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<sup>7</sup> Text based on Manhattan Inv. Fund Protocol ¶ 12.

<sup>8</sup> Text based on Manhattan Inv. Fund Protocol ¶ 10.

**6. Communication Among Committees**

**6.1.** To the extent permitted, non-public information available to the Committee in any forum shall be shared with other Committees, subject to appropriate confidentiality arrangements and all privileges under the applicable rules of evidence.<sup>9</sup>

**7. Asset Preservation**

**7.1.** Each forum should administer the assets within its jurisdiction, except to the extent otherwise set forth herein to the contrary.<sup>10</sup>

**7.2.** Official Representatives will analyze assets under their respective control in the ordinary course of the Proceedings to realize value for assets under their control.

**7.3.** If, during the course of such analysis, an Official Representative learns or believes that another Debtor could have a material interest in a particular asset that is (i) under threat, (ii) not being dealt with, or (iii) diminishing in value, such Official Representative should notify that Debtor's Official Representative that may have such material interest of the condition of the asset.

**7.4.** Furthermore, if, during the course of a Proceeding, an Official Representative learns or believes that another Debtor could have a material interest in a particular asset, such Official Representative shall, where practical, consult with the Official Representative of the Debtor that may have such material interest prior to: (i) the sale, abandonment, or any disposition of such asset; (ii) the termination, suspension, or other transition of any employees managing such asset; or (iii) the commencement of any judicial, or non-judicial, proceeding affecting such asset.

**7.5.** In the event that property which does not belong to a particular Debtor is transferred to, or received by, that entity, the Official Representative of such entity shall cooperate, with the Official Representative of the Debtor from whose estate such property was transferred, in:

**7.5.1.** Assessing the ownership of such transferred property and provide all information, to the extent not otherwise restricted, allowing each Administrator to ascertain ownership of the property;

**7.5.2.** Promptly returning such transferred property to the Official Representative of the Debtor establishing its right to such property, taking into account any applicable legal requirements; and

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<sup>9</sup> Text based on the Everfresh Protocol ¶ 5.

<sup>10</sup> Text based on Principle 4B of the Concordat ("Each forum should administer the assets within its jurisdiction...").

**7.5.3.** Refraining (to the extent an Official Representative may do so) from transferring or co-mingling property once another Official Representative establishes ownership of such transferred property.

**7.6.** Each Official Representative shall cooperate to realize the value of assets for which multiple Debtors have an interest. In the event an Official Representative of a Debtor chooses to fund (the “Funding Estate”) an asset in which it has an existing interest, but such asset is, at the time of such funding, a part of another Debtor’s estate (the “Funded Estate”), the Funded Estate’s Official Representative shall allow and acknowledge such funding if: (i) the Funding Estate has provided the Funded Estate with information sufficient to establish a *prima facie* case that the Funding Estate has an existing interest in an asset; and (ii) such funding does not materially impair, and remains neutral to, the Funded Estate.

**7.7.** Should the Funded Estate, after appropriate consultation with the Funding Estate and after obtaining any necessary approval in an applicable Insolvency Proceeding, (i) dispose of the asset receiving funds from the Funding Estate, and (ii) receive proceeds in respect of such disposition, then the Funding Estate shall receive a fair allocation of share of such proceeds.

**7.8.** Should a Funded Estate realize a tax savings as a result of actions taken by a Funding Estate, then the Funded Estate shall share the savings with the Funding Estate.

## **8. Claims**

**8.1.** To the extent that there are two or more Proceedings pending as to the same Debtor, those being one Plenary Proceeding and one or more Limited Proceedings, a claim should be filed only in the Plenary Proceeding. If a claim is filed in more than one forum, distribution must be adjusted so that recovery is not greater if the claim were filed in only one forum.<sup>11</sup>

**8.2.** If a claim against one or more Debtors is subject to a guarantee issued by another Debtor (the “Direct Claim”), the Official Representatives shall seek to adjust distribution so that (i) recovery is first made against the Direct Claim, and (ii) if there is subsequent recourse on the guarantee, that recovery does not exceed the full amount of the claim.

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<sup>11</sup> This is known as the “hotchpot” rule. The text is based in part on the Concordat, Principle 4 (“A claim should be filed in one, and only one, plenary forum, at the election of the holder of the claim. If a claim is filed in more than one plenary forum, distribution must be adjusted so that recovery is not greater if the claim were filed in only one forum.”). Cf. the Everfresh Protocol ¶ 7 (“Any creditor of Everfresh may file a proof of claim in both the Bankruptcy Court or in the Canadian Proceeding. However, if a creditor files a claim in both the Bankruptcy Court and the Canadian Proceeding, then distribution to such creditor will be adjusted so that recovery is not greater than if the claim were filed in only one forum.”).

**8.3.** Official Representatives shall endeavor to coordinate notice procedures and establish the same deadlines for the filing of claims in their respective Proceedings, and in all other matters regarding the filing, reviewing and objecting to claims.<sup>12</sup>

**9. Special Procedures for Intercompany Claims**

**9.1.** Intercompany claims shall be measured as of a certain date, to be determined by the Procedures Committee (as defined in section 9.4).

**9.2.** Official Representatives shall not object to claims filed by other Official Representatives on the basis of (i) the allocation of overhead or expense from one Debtor to another Debtor, (ii) the flow of funds from one Debtor to another Debtor, (iii) the incurrence of a liability by one Debtor on behalf of another Debtor, or (iv) a transaction between Debtors (collectively, “Intercompany Claims”), provided that the Official Representative who filed the claim has shown (i) a document or accounting record to or for the benefit of an affiliate for such claim, (ii) the basis for the claim or substance to the transaction that gives rise to the claim, and (iii) an identifiable affiliate.

**9.3.** Subject to the provisions of section 9 of this Protocol, the Official Representatives shall endeavor to negotiate in good faith to attempt to reach a consensual resolution of any differences in their accounting of Intercompany Claims. Only to the extent that Official Representatives certify that they are unable to consensually resolve in good faith any differences in their accounting of Intercompany Claims, the Official Representatives shall resort to adjudication by the Tribunal holding jurisdiction over such claims.

**9.4.** The Official Representatives shall establish a committee (the “Procedures Committee”), whose members shall be jointly appointed by the Official Representatives and the Committees (where applicable), and confirmed by the Tribunals overseeing each Proceeding, to consensually resolve in good faith any differences in the accounting of Intercompany Claims to be filed in their respective Proceedings.

**9.5.** The Procedures Committee shall propose the procedures and accounting methodologies that it intends to use in its calculation and consensual resolution of Intercompany Claims (the “Accounting Procedures”). Furthermore, if two or more Debtors were counterparties to a derivative contract in which the contractual obligations are keyed to one or more underlying assets or indices of asset values and subject to movements in the financial markets (such as contracts for the purchase, sale, or loan of securities; forward contracts; repurchase agreements; or swap agreements; and in some cases, multiple such agreements governed by a master agreement) (the “Intercompany Derivative Contracts”), and if an Intercompany Derivative Contract has been rejected, terminated, liquidated, or accelerated by any of the Debtor counterparties thereto, any damages (the “Intercompany Derivatives Claims”) that arise shall be measured and fixed by the Procedures Committee, pursuant to a methodology to be agreed upon by the members of the Procedures Committee (the “Derivatives Methodology”).

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<sup>12</sup> Text based on the Everfresh Protocol ¶ 7.

**9.6.** As soon as is practicable after the Procedures Committee has agreed upon its Accounting Procedures and Derivatives Methodology, the Official Representatives shall seek approval from their respective Tribunals for the use of the Accounting Procedures and Derivatives Methodology in their respective Proceedings.

**9.7.** The Official Representatives shall endeavor to submit the findings of the Procedures Committee (the “Procedures Committee Findings”) in a form substantially similar to each other for approval by their respective Tribunals.

**9.8.** To the extent that creditors or other interested parties object to (i) the application of the Accounting Methodology, or (ii) the application of the Derivatives Methodology, or (iii) any of the Procedures Committee Findings, all Official Representatives shall endeavor to coordinate a response to such objections.

**10. Submission of Winding-Up Plan, Plan of Reorganization or Liquidation, or Deed of Company Arrangement**

**10.1.** The Official Representatives shall endeavor to submit a winding-up plan, plan of reorganization or liquidation, or deed of company arrangement (a “Plan”) in each of their respective Proceedings substantially similar to each other, and the Official Representatives shall endeavor to coordinate all procedures in connection therewith, including, without limitation, all solicitation proceedings relating to their plans. All voting procedures, the treatment of creditors, and the classification of claims shall be established by the Official Representatives after consultation with each other, unless otherwise ordered by the Tribunals of their respective fora.

**10.2.** In order to coordinate the contemporaneous filing of each Debtors’ plan of reorganization, the Official Representatives shall take the actions necessary to seek extensions from time-to-time of the date for the filing of the plan, and shall take the actions necessary from time-to-time to seek extensions of the exclusive time period during which only the Official Representatives may file a plan of reorganization pursuant to the laws of their respective fora.<sup>13</sup>

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<sup>13</sup> Text based on the Everfresh Protocol, ¶ 13:

To the extent permitted by the laws of the respective jurisdictions and to the extent practicable, the Interim Receiver and the Debtors shall endeavor to submit a proposal in Canada and a plan of reorganization in the United States substantially similar to each other and the Debtors, the Interim Receiver and the Trustee shall endeavor to coordinate all procedures in connection therewith, including, without limitation, all solicitation proceedings relating thereto, and all procedures regarding voting, the treatment of creditors, classification of claims, and the like, will either be established by the Debtors after consultation with the Trustee of the Proposal or be dealt with pursuant to a further order of the Bankruptcy Court and or the Canadian Court. In order to coordinate the contemporaneous filing of the Proposal and the plan of reorganization, the Debtors shall take the actions necessary to seek extensions from time-to-time of the date for the filing of the Proposal, and the Debtors shall take the actions necessary from time-to-time to seek extensions of the exclusive time period during which only the Debtors may file a plan of reorganization pursuant to Section 1121 of the Bankruptcy Code.

This provision is consistent with Principles 4A (“Each forum should coordinate with each other, subject in appropriate cases to a governance protocol”) and 4E (“Classification of common claims should be coordinated

## 11. Comity

11.1. The parties hereto agree that each Tribunal is an independent, sovereign Tribunal, entitled to preserve its independent jurisdiction and authority with respect to matters before it and the conduct of the Official Representatives.<sup>14</sup>

11.2. Each Tribunal shall have sole jurisdiction and power over the conduct of the Proceeding in that forum; the appointment of the Official Representatives and their professionals, their retention, tenure in office, and compensation; and the hearing and determination of matters arising in that forum.<sup>15</sup>

11.3. Nothing in this Protocol is intended to interfere with the exercise of jurisdiction by each of the Tribunals in these Proceedings, or to interfere with the natural rules or ethical principles by which an Official Representative is bound according to applicable national law and professional rules.<sup>16</sup>

## 12. Amendment

12.1. This Protocol may not be waived, amended, or modified orally or in any other way or manner (including, without limitation, pursuant to a plan of reorganization) except by a writing signed by a party to be bound and approved by order of the Tribunal with jurisdiction over that party. Notice of any proposed amendment or modification to this Protocol shall be provided via email by the party or parties hereto proposing such to all Official Representatives, and their respective Committees. The Protocol may be supplemented from time to time by the parties hereto as circumstances require with any supplementing stipulations as approved by the Tribunals of each forum.

12.2. Subject to the agreement of the parties hereto, and the entry of an order by each of the Tribunals, additional parties may be added to this Protocol.

## 13. Execution and Application

13.1. This Protocol shall not prejudice the rights of the Official Representatives to seek the substantive consolidation of their proceedings in accordance with applicable law.

13.2. This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators,

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among plenary fora. Distributions to common claims should be pro-rata regardless of the forum from which a claim receives a distribution”) of the Concordat. See Nielsen, supra n. 18 at 560.

<sup>14</sup> Text based on Manhattan Inv. Protocol ¶ 25.

<sup>15</sup> Text based on the Everfresh Protocol, ¶ 15.

<sup>16</sup> Text based on Wessels, Guideline 3.

trustee, receivers, custodians, or curators, as the case may be. Nothing herein shall create a right for any entity that is not a party to the Protocol.

**13.3.** Any request for the entry of an order which is contrary to the provisions of this Protocol must be made on notice to all Official Representatives and their respective Committees by the proponent of the order.

**13.4.** Each party represents and warrants to the other that its execution, delivery, and performance of this Protocol are within the power and authority of such party and has been duly authorized by such party, except to the extent that Tribunal approval is required.

**13.5.** This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by facsimile signature, which shall be deemed to constitute an original signature.

**13.6.** The Tribunals of each forum shall retain jurisdiction over the parties for the purpose of enforcing the terms and provisions of this Protocol or approving any amendments or modifications thereto.

**13.7.** The parties hereto are hereby authorized to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate this Protocol.

**13.8.** This Protocol shall be deemed effective upon its approval by the Tribunals of each forum where a Proceeding is pending.

**IN WITNESS WHEREOF**, the parties hereto have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorized.

Dated:        [], []  
                  [] [], 2009