Complaints Commissioner

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Dear Complainant

Complaint against the Financial Conduct Authority
Reference Number: FCA00166

Thank you for your email of 4 February 2017. I have now reviewed the information sent to me by you, the co-ordinator of the Lloyds ECN group complaint Mark Taber, and the Financial Conduct Authority (FCA), and am able to write to you. I am sorry that it has taken longer than I would have liked – the reasons for this were explained in my colleague's email of 11th May.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the FCA's Complaints Team. If I disagree with their decisions, I can recommend that the FCA should apologise to you, take other action to put things right, or make a payment.

What we have done since receiving your complaint

I have reviewed all the papers you and the regulator have sent to my office. Both you and the FCA, as well as Mr Taber, have had the opportunity to comment in response to my preliminary decision. I have carefully considered the points made and, where appropriate, make further reference to them below.

Your complaint

On 18 February 2016 you wrote to the FCA to complain that its predecessor body the FSA had made a number of serious mistakes and failed to exercise proper care in reviewing and approving the Prospectus for Lloyds Banking Group (LBG) Enhanced Capital Notes (ECNs) and in satisfying itself that the prospectus complied with all requirements. In November 2009 you had agreed to exchange a holding in 9.375% Halifax/Bank of Scotland Perpetual Subordinated bonds for 7000 Lloyds ECNs based on the the LBG Exchange Offer Memorandum (EOM), dated 3 November 2009. You then held £20,000 par value of these ECNs until they were redeemed without notice while you were on holiday in early 2016.

On 3 March 2016 the FCA wrote to you setting out its understanding of your complaint and confirmed that it was accepted for investigation under the Complaints Scheme (the Scheme). The FCA categorised your complaint as an allegation that the Financial Services Authority (the FSA) made a mistake and exercised a lack of care in its approval of the three versions of the ECN prospectus: the EOM, a subsequent prospectus published in December 2009 which related to a separate issue of ECNs, and a supplementary prospectus that related to this prospectus. The specific allegations that the FCA considered were:

1. The FSA failed to ensure that the prospectus was accurate and presented in a form which was easily analysable and comprehensible;
2. The FSA approved a prospectus which contained a material mistake; and
3. The FSA approved a prospectus which contained material omissions which the FSA should have been aware of;

the result being that the prospectus failed to comply with the Prospectus Directive and the Prospectus Rules.

On 31 January 2017, the FCA Complaints Team informed you that it had not upheld your complaint. The FCA's complaint response said that:

1. Element 1 was not upheld because the FCA was satisfied the UK Listing Authority (UKLA) had not made a mistake, or acted with a lack of care in approving the EOM.
2. Element 2 of your complaint was not upheld because the FCA was satisfied that the 'material mistake' referred to by the Court of Appeal was not something the UKLA/FSA should have been aware of and should not have stopped the EOM from being approved.
3. Element 3 of your complaint was not upheld because the FCA had not found "sufficient evidence" to show that the FSA was, or should have been, aware that the effect of the changes proposed by Basel to the capital adequacy requirements were such that it would trigger the Capital Disqualification Event (CDE) clause.

You are dissatisfied with this response and have asked me to investigate. In particular, you have asked me to consider the following matters:

a) Unlike the FSA, the FCA has the statutory duty to protect consumers (which includes retail investors in ECNs). Its stance on the ECNs has not been in keeping with this and other public statements about its mission and purpose.

b) In the timescale allowed by Lloyds for considering the exchange, no reasonable investor could have understood, from the documents, the significance of what LBG have since maintained to be the basis of a CDE. Although there were provisions for early redemption at par, when you purchased them, the relevant information was so buried and dispersed within the document (and elsewhere) that you did not appreciate what they meant. The subsequently admitted drafting error made it impossible for you to have picked all this up. When reading the prospectuses, you focussed on whether the conversion trigger was likely to occur - not on any risk of a CDE.

   Regarding a possible CDE (a separate risk), at the time you thought this concerned whether ECNs might become ineligible in future for treatment as part of the entity's capital, perhaps in the same way as preference shares have been reclassified as debt many years ago, or that a future restructuring of the entity (such as might well occur with a take-over, for instance) might also mean that the ECNs would cease to be treated as qualifying capital (whether in stress tests or otherwise). It never occurred to you that there was a real possibility of a CDE on the basis subsequently claimed by Lloyds. In this respect you took comfort from the facts that (1) the FSA (with its mandates of investor protection) had been involved in the design of these instruments and (2) such a risk as supposedly occurred was not highlighted in the risks summary approved by the FSA. If you had understood the real possibility of such a risk crystallising, you very much doubt you would have agreed to the exchange.

The FCA's complaint response admits such difficulties for the reader, but says the prospectuses complied with UKLA's internal rules. However, since UKLA is now part of the FCA and bound by the policies and pronouncements of the FCA, you would like to know to what extent such matters as the Prospectus Directive have been updated and compared with the FCA's policy commitments to investors to ensure that it complies in full.

c) Given that judges at three different hearings had a wide disparity of views about the admitted mistake, and the FSA was unable to spot it too, how was it possible for the retail investor to have spotted it? Clearly that was a serious error by the issuer. LBG compounded their treatment of investors by failing to announce the error (and its implications) to investors as soon as they discovered it. Whatever the justification of the FSA for not spotting the error, that is not relevant to holding the issuer responsible for misleading investors when it came to their notice.

d) In view of the changes afoot under the critical December 2009 Basel Committee for Banking Standards Paper, of which FSA individuals had membership, the FSA had an even greater obligation to highlight in the relevant prospectuses the risk that early redemption could be triggered by an increase in the level of stress capital requirements such that it became higher than the trigger level for conversion of the ECNs (into shares) and so ECNs were deemed irrelevant to capital adequacy (although you dispute this argument). It is no excuse that there does not seem to have been the required communications between UKLA and senior members of the rest of the FSA on that matter. You also disagree with the FCA Complaints Team's contention that an announcement from LBG about the effect of all this on ECNs need not have been made by LBG much earlier than they eventually did. In your view this fails to take account of the effect of a false market in the value of ECNs during the delay, particularly since the total market value of ECNs was not small.

e) In your view the FCA (and its predecessor) have been found wanting in protecting investors in market instruments (complicated as they usually are), and spent too much time trying to justify why they have not acted when they should have done instead of learning from the experience and putting in place robust practical systems (and personnel).

My position

Substantive Complaint

In investigating your complaint, I have carefully considered the FCA's complaint file and supporting documents, as well as your submissions and those made by Mr Taber on the group complaint. I have also considered other relevant material, including the contents of the Exchange Offer Memorandum (EOM) and the Supreme Court Judgment dated 16 June 2016. My approach has been to consider the FCA's rationale for its decision-making and whether that and the FCA's complaint response can be considered reasonable in all the circumstances.

In relation to Element One of your complaint the FCA Complaints Team said:

Article 5.1 of the Prospectus Directive requires all prospectuses, including a non-equity retail prospectus, to be 'easily analysable and comprehensible'.

There isn't any guidance available from 2009 about what an 'easily analysable and comprehensible' prospectus should look like – but the FCA issued guidance in 2014, which can be found here: https://www.fca.org.uk/static/documents/ukla/knowledge-base/tn-632-1-final.pdf.

As an example, you allege the Prospectus is not easily analysable and comprehensible because the first attempt at explaining a CDE is on page 99 of the Prospectus with the definition on page 210. You also note the key information on LBG's claimed intention for the CDE clause would not be found until getting to page 1033 if all the documents incorporated by reference are read in order. The examples given are mostly related to where key information is placed in the Prospectuses, rather than the actual language used.

The UK Listing Authority (UKLA) is part of the FCA. It oversees the listing of shares and other securities on the UK Official List and, as the competent authority in the UK under the Prospectus Directive, reviews and approves prospectuses published by issuers and offerors. From the discussions I have had with the UKLA, the approach to approving a Prospectus as 'easily analysable and comprehensible' would have been the same in 2009 as is described in the guidance note from 2014.

In my opinion, relevant key terms are clearly explained and accessible in the documents. For example, in the EOM the CDE is defined first at page 99, but direction on where to find the definition is given as early as page 22 (in the Risk Factors section). In relation to the stress test threshold, this is explained in the LBG rights issue prospectus, which is published on the same day as the EOM and is incorporated by reference into the EOM. The information about the stress test threshold was, as it would normally be, in the capital and liquidity section of the LBG rights issue prospectus.

The Prospectus Directive and the Prospectus Rules do not set a numerical limit on the number of pages that can be incorporated by reference and so it would seem arbitrary and inconsistent with the approach of other competent authorities for the UKLA to seek to do so. I also note that the Prospectus clearly states it is to be read in conjunction with the documents incorporated by reference, which is permitted by the Prospectus rules.

I appreciate the point about the number of pages involved in finding definitions of certain key terms, such as the CDE and the stress test threshold, but this, in itself, is not a breach of the Prospectus Directive. The 'easily analysable and comprehensible' requirements cannot always be readily applied to legal language without potentially changing the meaning of what is being said. Overall, I am satisfied that the UKLA's judgement that the Prospectus was easily analysable and comprehensible was a reasonable one in the circumstances.

In response to the FCA's decision on this element of your complaint, Mr Taber has made the following points:

- There was guidance, in the form of the EU Prospectus Directive (required to be incorporated into national law of Member States by 2005) and the Prospectus Rules.
- The FCA was aware that the Prospectus was inviting retail investors to exchange their existing instruments and required a high acceptance level to meet LBG's needs.
- Prospectus Rule PR 2.4.6 in force at the time states: *When incorporating information by reference, issuers, offerors or persons asking for admission to trading on a regulated market shall endeavour not to endanger investor protection in terms of comprehensibility and accessibility of the information.* Key information relevant to understanding the terms of the ECNs which, under the Prospectus Rules, should have been included in the body of the prospectus was only included in the information incorporated by reference. This information - the FSA's indication that it expected banks to maintain a CT1 capital ratio of at least 4% in the stress scenario - was key to understanding the CDE clause as LBG claim it was intended. This points to a serious mistake by the FCA.

I have looked at the EOM in the light of these points. The EOM was issued on 3 November 2009 with an expiry date of 20 November. The General Notice on page 4 makes it clear that "each prospective investor should consult their own legal, financial, accounting or tax adviser for advice." A summary of Key Features on page 9 includes a CDE as an event that would render the ECNs redeemable before the Maturity Date. A summary of the Risk Factors is set out on pages 11 and 12 and this is followed by Part II, which sets out the Risk Factors in detail (pages 13 to 25). Paragraph 5.10 (page 22) sets out the Redemption Risk, including the occurrence of a CDE as set out more fully in Part A of Appendix 6. This lists the Terms and Conditions of the ECNs: 8(e) deals with Early Redemption for Regulatory Purposes and the Definitions are listed in 19. The Terms and Conditions set out here are qualified by reference to Schedule 4 of the Trust Deed, which it is clearly stated will prevail in the event of any dispute. Part VII of the EOM gives an overview of the ECNs (pages 96 to 103) and pages 98 to 99 deal with Early Redemption for Regulatory Purposes. (For ease of reference, I have attached as Annex 1 to this decision some relevant extracts from the EOM.)

I appreciate that the meaning of these terms has been subject to scrutiny by the courts and that different interpretations have resulted, including Lord Neuberger's comments on whether there was in fact an error in the Trust Deed. I acknowledge Mr Taber's point, made in response to my preliminary decision, that LBG's written and oral submissions to the courts stated that there was a mistake in the drafting of the CDE clause of the ECN terms. However, I do not consider that these subsequent events mean that the FSA failed in its responsibilities in relation to the issuing of the prospectuses. Although you have said that when reading the EOM you focussed on the conversion trigger and did not consider that there was a real possibility of a CDE on the basis subsequently claimed by LBG, I am satisfied that early redemption for regulatory purposes based on a CDE is clearly highlighted as a risk factor even if that is something that you did not focus on at the time.

Overall, I am satisfied that the EOM adequately described the instruments being offered, set out the complexity and risks attached, and included warnings to obtain professional advice. Given this, I do not consider that there is any basis to say categorically that the FSA or the UKLA made a mistake or acted with lack of care when approving the EOM. I consider the FCA's complaints response to you on this element of your complaint to be reasonable and therefore I do not uphold this aspect of your complaint.

In relation to Element Two of your complaint the FCA Complaints Team said:

This element of the complaint arises from the Court of Appeal judgment where it refers to an 'obvious mistake' in the Trust Deed by which the ECNs were constituted in relation to the construction of the CDE clause. The error referred to is that the definition of a CDE fails to make adequate provision in the clause for future changes to the capital rules.

The role of the UKLA

The role of the UKLA in approving a Prospectus is to check that the documents comply with the Listing and Prospectus Rules and that the required disclosures have been made.

A mistake in the Trust Deed

The UKLA has reviewed this point internally and I have had access to its comments. The FCA's view is that the clause is referred to as a mistake in the context of an assessment of the Trust Deed from the perspective of contract law. On that point, I think it is also worth noting how the majority view of the Supreme Court was more open to interpretation on the question of a mistake in the drafting of the relevant CDE clause.

In the leading judgment, Lord Neuberger, when discussing whether the drafting does involve a departure from the literal meaning of the clause, he says at paragraph 38 of the Supreme Court Judgment that:

"It may involve a departure from the literal meaning, but, if it does, it is on the basis of a rather pedantic approach to interpretation."

This, in my view, does not mean the FSA made a material mistake in approving the Prospectus. The Prospectus was required to be reviewed in line with the Listing and Prospectus Rules and to check that the required disclosures had been made. From what I can see, the Prospectus accurately summarises what is in the Trust Deed and the mistake in the Trust Deed referred to by the Court of Appeal does not represent a breach of the Listing and Prospectus Rules in force at the time.

Also, in considering the role of the UKLA in approving a Prospectus and the differing viewpoints on the drafting mistake at both Court of Appeal and Supreme Court level, I do not think it is reasonable to have expected the UKLA, or the FSA to have picked up on it at the time.

In response to this element of your complaint, Mr Taber has made the following points:

- The reference to the Trust Deed is irrelevant because the Prospectus Directive requires the prospectus to contain all necessary information in an easily analysable and comprehensible form
- The FCA's arguments that the UKLA does not sign off or verify accuracy does not stand up to scrutiny because the FSA was heavily involved in the design and structure of the instruments and exchange offer

- If the Supreme Court could not agree on the interpretation of the documentation, how could it have been 'easily analysable and comprehensible' to 123,000 retail investors?

This aspect of your complaint was made in February 2016 and referred to the decision of the Court of Appeal. As noted above, when the matter went to the Supreme Court in June 2016, Lord Neuberger questioned whether there was indeed a drafting 'mistake'. Even if there was, the Court concluded that it was what LBG had intended. There was of course a dissenting judgment on this issue. However, I think the main point to emphasise here is that the Supreme Court decision upheld LBG's interpretation of the circumstances under which a CDE could occur and said that it would be too pedantic to interpret this narrowly. Although this is undoubtedly hugely disappointing to investors, in my view it is not ultimately either a 'prospectus' issue or an issue for the FCA. A problem with later interpretation of the contractual terms in the Trust Deed does not mean that the FSA did anything wrong or that the prospectuses failed the tests under the Prospective Directive. As noted above, that the Trust Deed would prevail in the event of any dispute was made clear in the EOM.

In response to my preliminary decision you have made a number of further points about this aspect of your complaint, which in summary are that:

- These were lengthy documents with a very short timescale allowed for consumers to take up a complex offer
- It was incumbent on the FSA to ensure that an unambiguous summary of risks and benefits was prepared.
- The explanation of the early redemption risk was far from clear
- This was compounded by LBG's later court admission to a drafting mistake in the definition of early redemption risk
- The FSA was therefore at fault in (1) allowing the EOM to be issued to a huge number of consumers without the above clear explanations of the early redemption risks, and (2) when LBG issued its early redemption notices, the FCA should have taken action against the EOM issuer for a misleading prospectus.

I have considered all of these points in detail but they do not change my conclusions. I acknowledge that the EOM gave a tight timescale, especially given the complex nature of the offer, but I cannot determine that it was unreasonable in all the circumstances. I have not seen any evidence to support the contention that the UKLA or FSA approved a prospectus that contained a material mistake. Furthermore, the principal responsibility for the documents lay with the issuers: it is not the FCA's role to 'copper bottom' every document produced. These were inherently complicated products with clear warnings as to the risks. The need to obtain professional advice was clearly indicated on all the relevant investor documents. I deal with the question of the FSA's responsibility to retail investors below. I consider the FCA's complaint response to you on this element of your complaint to be reasonable and therefore I do not uphold this aspect of your complaint.

In relation to Element Three of your complaint the FCA Complaints Team said:

> *You allege the FSA would have been aware that the intention of the CDE clause was for a CDE giving rise to a right to redeem if the 'stress test' threshold was raised above the 5% Core Tier 1 equity conversion trigger. You have said the FSA should have ensured this information was included in the EOM.*

LBG said in the Prospectus that the CDE provision could be triggered 'as a result of any changes to the Regulatory Capital Requirements or any change in the interpretation or application thereof by the FSA'. This seems to indicate that LBG knew some sort of change was possible. It also doesn't seem unreasonable for the clause to be drafted with the future in mind – especially as ECNs were designed in part to assist LBG in passing the stress tests that banks were subjected to by the relevant regulators. It follows that if the regime changed then a situation may arise where ECNs were no longer serving the purpose of assisting LBG in passing a stress test.

I note the FSA published Consultation Paper 09/29 – "Strengthening Capital Standards" on 3 December 2009 and the Basel Committee for Banking Standards issued a Consultation document on 17 December 2009 titled "Strengthening the Resilience of the Banking Sector" – which are both around the time the ECN prospectuses were issued.

It is clear from this that changes were in the air but having reviewed internal documents analysing this point, the documents referenced above did not seem to contain the level of detail that would have made the trigger of a CDE in the medium term immediately obvious.

You say that the FSA could have ensured that a supplementary prospectus was issued immediately after the Basel Committee met on 8 and 9 December 2009. The obligation on an issuer to file a supplementary prospectus occurs when a 'material mistake' is discovered [or a 'significant new factor' arises]. This would be after the publication of a prospectus but before the closure of any public offer or admissions to trading made pursuant to a prospectus.

The supplementary prospectus would correct the material mistake. In the case of the LBG EOM of 3 Nov 2009, the period during which the prospectus would need to be updated by a supplementary prospectus ran from 3 Nov 2009 to 1 Dec 2009. In this case, the changes to the rules that rendered the CDE clause unclear occurred years later.

There has been significant work involving the Supervision, Markets and UKLA departments at the FCA to establish if there is evidence of whether LBG or the FSA knew of the effect of the Basel Committee's proposed changes to the bank's capital regime ahead of their publication.

I appreciate the point that there were members of FSA staff on the Basel Committee at the time and clearly, this suggests that there were individuals within the FSA who were aware of the direction of the Basle Committee's policy on regulatory capital. However, I do not think it necessarily follows the FSA knew of the effect of the changes to the extent that it should have required LBG to make an amendment to the Prospectus.

This is because, from the analysis contained in the internal documents I have seen, none of the published material from Basel in 2009 and 2010 has enough detail to suggest that the effect of the changes could have been predicted. Also, I am satisfied the FSA was unaware – as it was not agreed until 2013 – that the PRA would pursue an early adoption of the Basel Standards, which subsequently triggered the CDE.

In response to this element of your complaint, Mr Taber has made the following points:

- The FCA's complaint response ignores the Supplementary Prospectus dated March 2010.
- The Basel Standards published on 8 December 2009 had clear detail of the precise changes which could lead to a CDE being triggered but this information was omitted from the prospectus. The changed calculation of core capital came from these standards and at the time the ECNs were offered, the FSA was aware that those standards would be implemented by the end of 2012.

The risk of early redemption for regulatory purposes, including following a CDE "*occurring as a result of **any*** [my emphasis] *changes to the Regulatory Capital Requirements or any change in the interpretation or application thereof by the FSA*", was one of the risk factors identified in the EOM. What Mr Taber appears to be saying is that if there was knowledge within the FSA about the impact of changes arising from the Basel standards while the prospectus was live, this significantly increased the risk and should have been drawn to the attention of prospective investors. The Basel Committee on Banking Supervision's Consultative Document *Strengthening the resilience of the banking sector* was dated December 2009 and issued for comment by 16 April 2010, shortly after the prospectus was released. It was a consultation document and I accept the FCA's complaint response that the effect of the changes could not have been predicted in 2009/10, particularly as it was not decided until 2013 that the PRA would pursue an early adoption of the Basel Standards. Although it might have been helpful for the FSA to have referred to the existence of emerging new standards, I am not persuaded that the fact that it did not do so represents a significant regulatory failing. Overall, although I agree with Mr Taber that the FCA's complaint response did not specifically refer to the Supplementary Prospectus of March 2010, I am satisfied that it was reasonable for the FCA complaint response to say that none of the actual changes to the regulatory regime made from 2013 onwards were clear and crystallised when this or the EOM was issued. For these reasons, I consider the FCA's complaint response to be reasonable and I do not uphold this aspect of your complaint.

I have two final points to make about the FCA's complaints response to you. As you point out, the FSA did not have in 2009 the specific consumer protection remit now held by the FCA. The FCA's statutory duty for consumer protection therefore cannot be applied retrospectively to the approval of the EOM. In response to my preliminary decision you have said that "*in relation to consumer protection the FSMA 2000 has not, as I understand it, changed materially since it was enacted. The requirement to have regard for the interests of consumers was just the same as it is now…*" However, I am satisfied that the FSA had few formal powers to protect direct retail investors in 2009 and that the new FCA was given an extended consumer protection remit, for example to include investors in primary debt and equity products. From the records I have seen, I am satisfied that the FCA took into account the impact on consumers of the decisions that it made.

It is also correct that since April 2013 the UKLA sits within the FCA. Although I understand that you would like to be reassured that protocols and procedures have been updated, I am satisfied that it was reasonable for the FCA's complaint response to focus on the requirements for approval of prospectuses in 2009.

Delay

As noted above, you first complained to the FCA in February 2016. You contacted my office in December 2016 to request my intervention because of the FCA's lack of substantive progress in responding to your concerns. We intervened to monitor the situation and, based on the FCA's assurance that it would complete its review by the end of January, we advised you to wait for the outcome of that investigation. The FCA complaint response was sent to you on 31 January 2017.

I note that the FCA's complaint response to you apologises for the length of time taken to complete its investigation into your complaint. I have considered whether that is an acceptable response to its delays or whether it would be appropriate for me to recommend that a small payment is made to you. I am aware that this was a complex matter requiring detailed review and liaison with staff across the FCA at senior level. During the period of the FCA's complaints investigation the substantive issues were also being considered by the Supreme Court, which issued its judgment on 16 June 2016. I also note that the FCA sent you regular updates and generally kept you informed about progress.

Nevertheless, I have concluded that overall there were unacceptable and avoidable delays by the FCA in dealing with your complaint from July 2016 when you were advised that the FCA expected to issue its response by the end of August, if not before. You then received an update to say that the case officer was aiming for 19 September. On 31 October, you were told that he was "on course to send my findings during December at the latest". When this did not happen you quite reasonably contacted my office for assistance. In view of this, I **recommend** that the FCA offers to pay you the sum of £100 in recognition of the distress and inconvenience that has been caused to you by its repeated failure to meet its own deadlines in handling your complaint.

Conclusion

In conclusion, for the reasons set out above, I have not upheld your substantive complaint. I have however concluded that there was avoidable delay in responding to you. I recommend that:

- The FCA offers to pay you the sum of £100 for distress and inconvenience caused to you by its complaints handling delays.

Yours sincerely

Antony Townsend
Complaints Commissioner

ANNEX 1 – RELEVANT EXTRACTS FROM LBG Exchange Offer Memorandum (EOM), dated 3 November 2009

Early Redemption for Regulatory Purposes If, immediately prior to the giving of the notice referred to below, a Capital Disqualification Event has occurred and is continuing, then the relevant Issuer may, subject to Condition 8(b) and having given not less than 10 nor more than 21 days' notice to the 98 Trustee, the Principal Paying and Conversion Agent, and the ECN Securityholders (which notice shall, subject as provided in Condition 8(f), be irrevocable), redeem in accordance with the relevant Conditions at any time (in the case of a Fixed Rate ECN) or on any Interest Payment Date (in the case of a Floating Rate ECN) all, but not some only, of the relevant series of ECNs at their principal amount (or at such other amount as may be specified in the relevant Pricing Schedule), together with any accrued but unpaid interest to (but excluding) the relevant redemption date. See Part A of Appendix 6 (''Terms and Conditions of the ECNs – Redemption and Purchase – Redemption for Regulatory Purposes''). A ''Capital Disqualification Event'' is deemed to have occurred (1) if, at any time LBG or, where LTSB is a or the Guarantor, LTSB is required under Regulatory Capital Requirements to have regulatory capital, the ECNs would no longer be eligible to qualify in whole or in part (save where such non-qualification is only as a result of any applicable limitation on the amount of such capital) for inclusion in the Lower Tier 2 Capital of LBG or, as the case may be, LTSB on a consolidated basis; or (2) if as a result of any changes to the Regulatory Capital Requirements or any change in the interpretation or application thereof by the FSA, the ECNs shall cease to be taken into account in whole or in part (save where this is only as a result of any applicable limitation on the amount that may be so taken into account) for the purposes of any ''stress test'' applied by the FSA in respect of the Consolidated Core Tier 1 Ratio.

8(e) Redemption for Regulatory Purposes If, immediately prior to the giving of the notice referred to below, a Capital Disqualification Event has occurred and is continuing, then the Issuer may, subject to Condition 8(b) and having given not less than 10 nor more than 21 days' notice to the ECN Securityholders in accordance with Condition 17, the Trustee, the Principal Paying and Conversion Agent and the Registrar (which notice shall, subject as provided in Condition 8(f), be irrevocable), redeem in accordance with these Conditions at any time (in the case of a Fixed Rate ECN or in the Fixed Interest Rate Period in the case of a Fixed/Floating Rate ECN) or on any Interest Payment Date (in the case of a Floating Rate ECN or in the Floating Interest Rate Period in the case of a Fixed/Floating Rate ECN) all, but not some only, of the ECNs at their principal amount (or at such other amount as may be specified in the relevant Pricing Schedule), together with any accrued but unpaid interest to but excluding the relevant redemption date. Upon the expiry of such notice, the Issuer shall redeem the ECNs as aforesaid.

19 a ''Capital Disqualification Event'' is deemed to have occurred (1) if, at any time LBG or, where LTSB is a or the Guarantor, LTSB is required under Regulatory Capital Requirements to have regulatory capital, the ECNs would no longer be eligible to qualify in whole or in part (save where such non-qualification is only as a result of any applicable limitation on the amount of such capital) for inclusion in the Lower Tier 2 Capital of LBG or, as the case may be, LTSB on a consolidated basis; or (2) if as a result of any changes to the Regulatory Capital Requirements or any change in the interpretation or application thereof by the FSA, the ECNs shall cease to be taken into account in whole or in part (save where this is only as a result of any applicable limitation on the amount that may be so taken into account) for the purposes of any ''stress test'' applied by the FSA in respect of the Consolidated Core Tier 1 Ratio;

''Core Tier 1 Capital'' means core tier one capital as defined by the FSA as in effect and applied (as supplemented by any published statement or guidance given by the FSA) as at 1 May 2009; ''Lower Tier 2 Capital'' has the meaning given to it by the FSA from time to time; ''Regulatory Capital Requirements'' means any applicable requirement specified by the FSA in relation to minimum margin of solvency or minimum capital resources or capital;
''Tier 1 Capital'' has the meaning given to it by the FSA from time to time; and ''Upper Tier 2 Capital'' has the meaning given to it by the FSA from time to time.