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M^CGRATHNICOL

CORPORATE RECOVERY

**Lift Capital Partners Pty Limited
ACN 111 015 500
Lift Capital Nominees No.1 Pty Limited
ACN 112 913 532
(Administrators Appointed)
("Lift" or "the Companies")**

Supplementary Report to Creditors

Pursuant to s.439A of the Corporations Act 2001

11 July 2008

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1 Introduction and overview

1.1 Background

This supplementary report to creditors pursuant to section 439A of the Corporations Act 2001 (“the Act”) should be read in conjunction with our previous report dated 4 July 2008 (“Previous Report”). Creditors should note that we have applied the same glossary terms in this report. We have posted a copy of this supplementary report to all known creditors and will post the report on the McGrathNicol and Lift websites.

The Previous Report was a comprehensive report on the business, property, affairs and financial circumstances leading to the appointment of the Administrators, a copy of which is available on both the McGrathNicol and Lift websites.

The purpose of this report is to inform creditors of a DOCA proposal for the Companies received from ML and the Directors, summarise its terms and provide a revised opinion on the options for the Companies that creditors will vote on at the meetings.

This additional report was contemplated in our Previous Report where we indicated that discussions were in place regarding a DOCA proposal.

Additionally, we include an estimate of the comparable returns to creditors under both liquidation and in the event creditors resolve that the Companies execute the proposed DOCA, together with our estimate of fees and expected tasks to be undertaken.

As detailed in our Previous Report, we are required to provide creditors with a statement of opinion about each of the courses of action in respect of which creditors of Lift are entitled to vote at the second creditors meetings on 16 July 2008.

1.2 Options available to creditors and recommendations

Following the new information available to creditors in this Report the matters requiring our opinion are:

- + whether it would be in the creditors’ best interests for the administrations to end;
- + whether it would be in the creditors’ interest for the Companies to execute a DOCA and a statement setting out the details of any proposed DOCA; and
- + whether it would be in the creditors’ interests for the Companies to be wound up.

We set out in section 2 an analysis of the DOCA proposal and the key issues for creditors to consider when deciding on whether to vote in favour of the DOCA.

In our opinion, it is in the interests of creditors to resolve that the Companies execute the DOCA in the terms set out below in section 2, as this DOCA is likely to produce a better outcome for creditors than would be achieved in liquidation. Creditors should take into account the implications of such a resolution, which we summarise in section 3 below.

2 Outline of the DOCA

2.1 Terms of the DOCA

We received a DOCA proposal in respect of the Companies from the Directors and ML, the key terms of which were finalised on 10 July 2008 and are set out below:

- + Directors to contribute cash of \$1.15m to a Deed Fund, as follows:
 - \$1m by 31 August 2008;
 - \$50k by 30 November 2008;
 - \$50k by 28 February 2009; and
 - \$50k by 31 May 2009.
- + Directors to not submit any claim in the Deed Administration and causing any relative not to submit a claim in the Deed Administration. Indicative claims received to date from the Directors and related entities amount to approximately \$1.29m;
- + ML to contribute cash of \$1.4m to a Deed Fund on 31 August 2008;
- + ML to cause Berndale to immediately return all securities held to Lift and ML to cause Berndale not to submit any claim against Lift in the Deed Administration;
- + ML to cause MLAN to return units in managed funds held to Lift or otherwise deal with those securities under Lift's direction;
- + should Lift so instruct, to return to Lift the MLIA/MLI Securities;
- + ML to limit its claim for brokerage and commission fees to approximately \$1m;
- + full releases are to be provided to and from the Directors, ML and Lift to each other in respect of all claims other than those noted in the following point;
- + the releases by ML and Lift do not extend to the following:
 - any claim in relation to the return of the MLIA/MLI Securities and securities held at either MLAN or Berndale.;
 - the court Application for Declarations in relation to the ownership of the MLIA/MLI Securities;
 - any dispute arising in relation to the any indemnity claimed by ML under the November 2007 IPBA;
 - any dispute in relation to brokerage fees ML proposes to charge pertaining to the sell down of shares post 10 April 2008;
 - any dispute as to the quantities of stocks transferred to ML/MLIA by Lift, when reconciled to the ML/MLIA records of securities received; and
 - ML's secured rights under its charge and any other contractual rights under its agreements with Lift, other than as released under the DOCA proposal.

The cash contribution from ML will only be made once the Directors contribution has been received. There are also a number of issues upon which execution of the DOCA will be conditional, primarily relating to the Administrators being satisfied with the manner in which the sell down process was conducted.

2.2 Issues for creditors to consider

We set out below the key issues, in our view, for creditors to consider when contemplating whether or not to vote in favour of the DOCA:

- + an additional cash consideration of \$2.55m will be available for the Deed Administrators to distribute to creditors;

- + the value of the foregone claims of the Directors and related parties, assuming both that they are valid and that a distribution of 60 cents in the dollar would apply, are valued at approximately \$775k;
- + the value of the foregone claims by Berndale, again assuming both that they are valid and that a distribution of 60 cents in the dollar would apply, are valued at approximately \$660k;
- + it should be noted that neither the Directors or Berndale unsecured claims have been adjudicated upon at this stage;
- + immediate return of the securities held by Berndale and MLAN, which will facilitate the repayment of client loans to Lift thereby reducing the timing of distributions to creditors;
- + a substantial reduction in the level of professional costs likely to be incurred as the investigation provisions under the Act that are available only to a liquidator will be unavailable to a Deed Administrator;
- + a further reduction in likely professional costs to be incurred as less statutory reporting obligation are required under a DOCA;
- + a reduction in operating costs likely to be incurred as the DOCA process should be more timely than a liquidation;
- + the releases provided by Lift to the Directors and to ML will preclude Lift from pursuing certain classes of claims against these parties, further details of which are set out in section 3 below; and
- + any claims by creditors, clients or regulators against the Directors, ML, Berndale or any other person will not be released under the DOCA proposal.

3 Effects of the DOCA on Lift's potential claims

3.1 Potential claims by Lift against ML

3.1.1 *Sell-down of securities by ML*

Following our appointment on 10 April 2008, ML declared that an Event of Default had occurred under the IPBA with Lift. ML sent a notice of termination of the IPBA and other agreements to Lift and, acting under its enforcement powers under the IPBA, during the second half of April 2008 and early May 2008, proceeded to sell securities in its possession and applied the proceeds of sale against the debt claimed from Lift of approximately \$699m.

The question arises as to whether Lift has any claim (as distinct from any claims that individual Lift clients may consider they have) against ML by reason of ML selling the securities that it sold and retaining the proceeds of sale.

It appears from the Lift records reviewed and inquiries made, that the securities sold were voluntarily transferred by Lift to ML from early 2005 up to 10 April 2008, pursuant to the terms of its agreements with ML.

Whether Lift was entitled to transfer these securities to ML under its agreements with its clients and whether ML had an entitlement to sell these securities, despite any proprietary claims that Lift's clients asserted over those securities, are matters which we understand that individual Lift clients and their lawyers are currently investigating.

In relation to any claim by Lift against ML, there are provisions in the IPBA which we expect would be relied on by ML to support an assertion that it was entitled, as against any claim by Lift, to sell the securities and retain the proceeds of sale to such extent necessary to repay the funding provided to Lift.

Section 440B of the Act provides that a secured creditor cannot enforce a charge on property of a company in administration without the administrators' written consent or leave of the court. A question arises as to whether the securities that had been voluntarily transferred by Lift to ML and which ML sold were "property" of Lift and whether ML was enforcing a charge when it sold those securities. ML's position is that it was not enforcing a charge and was rather exercising a security interest in the form of contractual rights when it sold the securities.

A question also arises as to whether, if the securities were sold prematurely before the Court's consent had been obtained, this caused any loss to Lift, noting that if ML's power of sale is valid, the securities would have been sold at a later date if the Court's consent was obtained or during a liquidation. Given recent market conditions, it may be difficult to establish that Lift incurred a loss in any event.

Any claims by Lift in this regard, would be released by Lift, if the DOCA proposal is approved by creditors and a DOCA is executed. No releases of claims by Lift's clients would be provided under the DOCA proposal. Claims by Lift's clients would also remain available to ASIC under section 50 of the ASIC Act.

3.1.2 *ML funding to Lift*

In the period from about January 2008 to March 2008, it appears that units in various managed funds, then of approximately \$41m in value, were progressively transferred from Lift to MLAN. It appears that the transfer of these units did not occur pursuant to any of the then existing written agreements between Lift and ML (eg the IPBAs or the GMSLAs), but rather occurred following discussions that took place between ML and Lift in January 2008.

There were discussions in January 2008, regarding whether ML would provide additional funding to Lift which was expected to be in the amount of about \$25m to \$35m, to be secured on these units in managed funds, which would be required to be transferred to MLAN by way of security.

Over a period of several weeks Lift undertook the work of transferring units in managed funds to MLAN. However, no additional funding secured by units in managed funds was provided and the administrators were appointed on 10 April 2008.

An issue which arises for consideration is whether there was a binding agreement or promise for the provision of funding which gives rise to a compensable claim, and if so, the potential measure of such compensation, including for loss of opportunity in the form of future profits. To date the Administrators have not sighted any binding written agreements for the provision of such funding and it would be necessary to seek to prove such an agreement existed based on oral discussions and conduct.

Any claim that Lift might have in relation to any breach of an agreement by ML to provide funding would be released and would no longer be available to Lift, if the DOCA proposal is approved by creditors and a DOCA is executed.

3.1.3 Shadow Director issues

During March and April 2008, discussions were held between ML and Lift regarding 'managing down' (ie reducing) various loans from Lift to its clients. Details of loan arrangements between Lift and various of its clients were provided to ML.

An issue may arise to whether it could be established that ML took an active part in the affairs of Lift such as to give rise to any 'shadow director' claims - ie that ML was deemed to be a director under the Corporations Act and could be held liable for any breaches of duty it engaged in the capacity of a director. Such duties would include not causing Lift to engage in insolvent trading (s588G) and not acting contrary to the best interests of Lift or for other than a proper purpose (s181).

Establishing that a financier has acted as a shadow director is generally viewed as being a difficult task.

Any claim that Lift might have in relation to any 'shadow director' conduct by ML would be released and would no longer be available to Lift, if the DOCA proposal is approved by creditors and a DOCA is executed.

3.1.4 Other claims

Any other claims against ML by Lift that might be identified by the Administrators in the course of a liquidation, other than the claims that are "carved-out" from the proposed release to ML as described in section 2.1 above, would also be released and would no longer be available to Lift, if the DOCA proposal is approved by creditors and a DOCA is executed. As mentioned above, no releases of claims by Lift's clients would be provided under the DOCA proposal and any such claims of Lift clients would remain available to Lift's clients. Claims by Lift's clients would also remain available to ASIC if it chose to bring claims on behalf of Lift's clients under section 50 of the ASIC Act.

3.2 Potential Claims by Lift against the Directors

Under the DOCA Proposal, it is proposed that all claims by Lift against the Directors would be released and would no longer be available to Lift. We have summarised below any potential claims by Lift against the Directors that we have considered to date which would be among the potential claims against the Directors which Lift would be releasing and which would no longer be available to Lift, if the DOCA proposal is approved by creditors and a DOCA is executed.

3.2.1 Directors' duty to prevent Insolvent Trading (s588G of the Act)

As described in section 10.3 of our s439A report to creditors, based on Lift's books and records and discussions with the Directors, we have not found any indication to date that Lift was trading while insolvent up to the date of our appointment on 10 April 2008.

3.2.2 *Unreasonable director-related transactions (s588FDA of the Act)*

As referred to in section 10.4.4 of our s439A report to creditors, we reviewed a number of client accounts held by entities or persons related to Directors. In the case of the spouse of one Director, it appears to the Administrators that under Lift's criteria for making margin calls on client accounts, between January 2008 and 10 April 2008 the Director's spouse ought to have received (but did not receive) a margin call in an amount which was as high as \$607,500 on 18 January 2008, but which had reduced to an amount of \$59,000 by the time of our appointment on 10 April 2008.

The effect of the margin call not being made would appear to be that Lift did not have the benefit of the amounts owing by the Directors' spouse, which could have been used to reduce the amount of funding Lift had obtained from ML and accordingly the amount of interest that Lift was paying to ML. The Administrators consider that the amount remaining owing by the Director's spouse on her account will be recoverable in full. Accordingly it is not apparent to us to date that this issue gives rise to any significant compensable claim by Lift against the relevant Director.

We have also reviewed a number of payments made to the Directors and their related entities of approximately \$660,000 during September 2008. These payments related to bonuses for the year ended 30 June 2007 along with payments to Globex Finance Pty Limited, an entity related to two of the Directors, with respect to past services provided to Lift for product development work related to the development of the SuperLIFT product. We have reviewed the circumstances of these payments and our preliminary view, based on information reviewed to date is that whilst the payments are substantial, they were commercially justifiable at the time, and reflect the value of services provided to Lift. We have asked for further submissions from the Directors in respect of these issues. Should those submissions impact our recommendation we will report accordingly.

3.2.3 *Other claims*

As referred to in section 10.5 of our s439A report to creditors, issues concerning the Directors' statutory and fiduciary duties to act in the best interests of Lift remain under review. To date, there are no other significant issues concerning the Directors' conduct that we have identified to date other than the issues referred to above and in section 10 of our s439A report to creditors.

3.2.4 *Summary*

Further investigations of the above matters could be conducted in a liquidation. Under the DOCA Proposal, it is proposed that all claims by Lift against the Directors would be released and would no longer be available to Lift.

4 Estimated return to unsecured creditors

We included our estimated return to creditors under liquidation in the Previous Report. Set out in the table below is a comparison between the low case estimate in liquidation and the low case estimate should creditors resolve to approve the DOCA.

| Estimated Return to Creditors – liquidation v DOCA scenario | | |
|--|-----------------------------|----------------------|
| | Liquidation Scenario | DOCA Scenario |
| | \$M | \$M |
| Assets | | |
| Cash contribution (from Directors) | - | 1.2 |
| Cash contribution (from ML) | - | 1.4 |
| BVA shares | 45.0 | 45.0 |
| ML securities | 28.0 | 28.0 |
| Cash loan repayments | 68.0 | 68.0 |
| Cash/option proceeds | 6.0 | 6.0 |
| | <u>147.0</u> | <u>149.6</u> |
| Less: costs of administration/operational costs | (9.5) | (7.5) |
| | <u>137.5</u> | <u>142.1</u> |
| Liabilities | | |
| Unsecured creditors | | |
| Client equity (claims) | 217.0 | 216.7 |
| Less: claims foregone by Directors | - | (1.3) |
| Trade creditors | 3.0 | 2.0 |
| Less: claims foregone by ML | - | (1.1) |
| Provision for unknown claims | 10.0 | 10.0 |
| | <u>230.0</u> | <u>226.3</u> |
| Return to creditors (¢ in the \$) | 59.7¢ | 62.8¢ |

Source: Administrators' estimates

The key points are:

- + we have assumed the liquidation and DOCA scenarios on the low case basis as set out in the Previous Report;
- + the variances between the estimated returns under the two scenarios are as follows:
 - additional funds available of \$2.5m;
 - reduced professional costs of an estimated \$2m; and
 - a reduction in unsecured creditor claims of \$2m.
- + for the purposes of this analysis, all other assumptions as set out in the Previous Report remain unchanged; and
- + the impact of the DOCA is an estimated additional 3 cents in the dollar to unsecured creditors.

5 Administrators' recommendation

In our Previous Report, in the absence of a DOCA proposal, our recommendation was that it was in the best interests of the Companies' creditors for those Companies to be wound up.

On 10 July 2008, we received the DOCA proposal as outlined above. On review of the DOCA proposal we have revised our recommendation to creditors that they resolve that the Companies execute the DOCA on the terms outlined above, as on balance the value of any claims that may be available to Lift in a liquidation and that are proposed to be released are highly uncertain, additional professional fees would be incurred and accordingly, based on the

information currently available, it appears that the DOCA is likely to produce a better outcome for creditors than would be achieved in liquidation.

6 Committee of creditors

At the creditors meetings, the current Committee automatically dissolves pursuant to the Act and a new committee of creditors may be formed, if creditors so chose. We will advise creditors of a committee's role and functions at the meetings, following which we will call for nominations for creditors who wish to be members of the committee.

7 Administrators' remuneration

An administrator's remuneration can only be fixed by resolution of a committee of creditors, the company's creditors or by application to the Court.

In accordance with section 449E of the Act and the IPA COPP, a Schedule of Remuneration Methods and Hourly Rates was provided to you with our initial communication and tabled at the first creditors meetings. A schedule setting out the hourly rates we propose to charge from 30 June 2008 was provided in our Previous Report.

7.1 Future Fees – Administrators' Remuneration

Should creditors resolve that the Companies execute the DOCA, Lift, the Directors and ML must execute the DOCA within 21 days from the date of the meetings otherwise the Companies are automatically wound up. Accordingly, we have outlined the estimated Administrators' remuneration for the period 16 July 2008 to the execution of the DOCA, assumed to be on 6 August 2008.

7.1.1 LCP

A summary of the tasks to be undertaken from 16 July to 6 August 2008 is detailed below and in **Annexures A and B**.

| Remuneration estimates for the Administration of LCP (16 July to execution of DOCA) | |
|--|---|
| Task categories | Administrators' Estimate (GST exclusive) \$ |
| Assets | 125,000 |
| Creditors | 155,000 |
| Employees | 12,500 |
| Trade-on | 12,500 |
| Investigations | - |
| Statutory and reporting | 25,000 |
| Administration | 20,000 |
| Total | 350,000 |

Source: Administrators' estimates

Approval is being sought for future remuneration fixed at \$350,000 (excluding GST), with the following resolution to be proposed at the forthcoming meeting:

"That the remuneration of the Administrators of Lift Capital Partners Pty Ltd for the period 16 July 2008 to the execution of the DOCA shall be equal to the cost of time

spent by the Administrators, their partners and staff, calculated at the rates detailed in the Schedule of Hourly Rates provided to creditors in the Previous Report, to a fixed amount of up to \$350,000, exclusive of GST.”

7.1.2 LCN

A summary of the tasks to be undertaken from 16 July to 6 August 2008 is detailed below and in **Annexures C and D**.

Time estimates for the Administration of LCN (16 July to execution of DOCA)

| Task categories | Administrators' Estimate (GST exclusive) \$ |
|-------------------------|--|
| Assets | - |
| Creditors | 400 |
| Employees | - |
| Trade-on | 1,200 |
| Investigations | - |
| Statutory and reporting | 3,200 |
| Administration | 200 |
| Total | 5,000 |

Source: Administrators' estimates

Approval is being sought for future remuneration fixed at \$5,000 (excluding GST), with the following resolution to be proposed at the forthcoming meeting:

“That the remuneration of the Administrators of Lift Capital Nominees No.1 Pty Ltd for the period 16 July 2008 to the execution of the DOCA shall be equal to the cost of time spent by the Administrators, their partners and staff, calculated at the rates detailed in the Schedule of Hourly Rates provided to creditors in the Previous Report, to a fixed amount of up to \$5,000, exclusive of GST.”

7.2 Future Fees – Deed Administrators' Remuneration

7.2.1 LCP

Should creditors resolve that the Companies execute the DOCA, the basis on which remuneration would be sought would be remuneration based on time incurred calculated in accordance with rates set by McGrathNicol in accordance with the IPA's COPP.

We estimate that the remuneration of the deed administrators from the date of execution of the DOCA (on or before 6 August 2008) and its effectuation to be \$2,000,000. This estimate is based on our view of required tasks and cost estimates set out in the table below. We have included the comparable estimates under liquidation as set out in our Previous Report for information.

A summary of the tasks to be undertaken from execution to completion of the DOCA is detailed below and in **Annexures E and F**.

| Remuneration estimates for the proposed DOCA / Liquidation of Lift Capital Partners Pty Limited | | |
|--|-----------------------------|------------------------------|
| Task categories | DOCA Estimate \$ | Liq'n Estimate \$ |
| Assets | 1,000,000 | 1,075,000 |
| Creditors | 800,000 | 800,000 |
| Employees | 50,000 | 62,500 |
| Trade-on | 75,000 | 125,000 |
| Investigations | - | 250,000 |
| Statutory and reporting | 25,000 | 62,500 |
| Administration | 50,000 | 125,000 |
| Total | 2,000,000 | 2,500,000 |

Source: Administrators' estimates

Approval of deed administrators' remuneration would be sought via creditor approval at the appropriate time.

7.2.2 LCN

We estimate that the remuneration of the deed administrators from the date of execution of the DOCA (on or before 6 August 2008) and its effectuation to be \$30,000. This estimate is based on our view of required tasks and cost estimates set out in the table below. We have included the comparable estimates under liquidation as set out in our Previous Report for information.

A summary of the tasks to be undertaken from execution to completion of the DOCA is detailed below and in **Annexures G and H**.

| Time estimates for proposed DOCA / Liquidation of LCN | | |
|--|-----------------------------|------------------------------|
| Task categories | DOCA Estimate \$ | Liq'n Estimate \$ |
| Assets | - | - |
| Creditors | 13,000 | 15,200 |
| Employees | - | - |
| Trade-on | 1,500 | 2,000 |
| Investigations | - | - |
| Statutory and reporting | 11,500 | 18,000 |
| Administration | 4,000 | 4,800 |
| Total | 30,000 | 40,000 |

Source: Administrators' estimates

Remuneration estimates in our Previous Report in the event that creditors do not resolve that the Companies execute the DOCA, remain unchanged.

8 Other matters

The Previous Report outlined three broad categories of clients in the administration (Category 1, 2 and 3). For creditors information we have recently updated the websites www.liftcapital.com.au and www.mcgrathnicol.com.au to include client account numbers and the corresponding client categories. Clients should note that this information has been provided from Liff's records and may be subject to amendment, as some discrepancies have been identified between Liff and third party records.

9 Creditor meeting details

The second statutory meetings of the Companies' creditors have been convened to be held at Wesley Centre, 220 Pitt Street, Sydney NSW 2000, on 16 July 2008, commencing at 11:00 AM, at which we will present the material in the Previous Report and the Supplementary Report.

For creditors who are interstate and unable to attend the meeting, a copy of the minutes of the meetings will be made available on the website shortly after the meetings.

Creditors who require further details in relation to the meetings should contact Vanessa Chase of this office on (02) 9338 2629.



A G McGrath
Joint Administrator



J D Hayes
Joint Administrator