

26 July 2013

TO INVESTORS OF LDC FINANCE LIMITED (IN RECEIVERSHIP AND LIQUIDATION)

CC to Thomas Dewar Sziranyi and Letts / Hugh Rennie QC / Kevin Sullivan

LDC FINANCE LIMITED (IN RECEIVERSHIP AND LIQUIDATION)

Introduction

We write to you as liquidators of LDC Finance Limited (in Receivership and Liquidation) (**LDC**). This letter has the support of the LDC Investor Recovery Group who we are working closely with.

There are a number of important developments regarding LDC and we set them out in this letter and the materials which accompany it. For ease of understanding this letter and the other documents in this pack, we refer to secured investors in LDC as Stockholders and to unsecured investors as Depositors. Where we refer to both secured and unsecured investors we use the word investors or Security holders.

Specifically this letter will provide a summary of these developments which include:

- The payment to Stockholders of their final distribution obtained in the receivership of LDC. This equates to 100 cents in the dollar invested as well as some interest as set out below.
- An update on the Court proceedings we have filed on behalf of LDC investors and the prospects of a further distribution being made if those proceedings are successful.
- The calling of a meeting of all LDC investors and the extraordinary resolutions to be voted on at the meeting. The notice calling the meeting in Nelson and the explanatory materials are enclosed with this letter.
- The funding options for the Court proceedings including a request that Stockholders in LDC contribute to the funding of the Court proceedings. (Stockholders are to be paid principal amounts now but are invited to allow the Liquidator to retain the interest component of the distribution in a fund to support the litigation. This is described in more detail below).

The F & I Claim and Settlement

Following a negotiated settlement of the long running litigation against the Finance & Investments Partnership (**F&I**), Stockholders are now receiving a final distribution being the balance of their capital invested and a significant portion of interest. Unfortunately the Depositors of LDC (being unsecured) will not receive any



distribution and have not done so at any stage during the receivership. The only chance of a payment to Depositors is if the Court proceedings we have filed are successful.

Description of the Court Proceedings

Following our appointment as Liquidators last year, and in conjunction with the Investor Recovery Group, we saw an immediate danger that potential claims arising out of the insolvency of LDC might be lost because too much time had gone by since LDC's collapse. As a general rule, Court cases must be commenced within six years of the events that gave rise to the "cause of action". LDC investors have lost money because LDC became insolvent. Potentially a key date in the history of the company was 21 September 2006 (the date of registration of Prospectus No.4) and so proceedings were commenced and issued under some urgency on 17 September 2012 to bring them within six years of that date.

There are five plaintiffs. The first is LDC but under our control as Liquidators; the second plaintiffs are Mrs Wilson and Mr Fawcett, who are representatives of Stockholders; the third plaintiffs are Mrs Whalan and Mrs Wilson, together with CW Fishing and Motorsport Consulting Limited as representatives of Depositors; the fourth plaintiffs are Fawdan Subdivisions Ltd and Mr and Mrs McNeill as representatives of investors who were also clients of Carran Miller Strawbridge ; and the fifth plaintiffs are us as Liquidators.

The reason for the appointment of "representatives" is that the investors have discrete rights and claims independent of the company or the Liquidator. To be able to act as "representatives" of others however needs Court permission, and an application to the Court has been made to allow the people named above to represent the different classes of investors. This application has not been determined but is now set down for hearing on 6-7 November 2013 in the Nelson High Court. It is opposed by some of the defendants. If the application fails the Court proceedings will continue by LDC and by us as liquidators. If the application succeeds it is likely that the Court will order that each investor will be sent a letter asking them to confirm if they wish to be represented in the Court proceedings. Such a letter will be approved by the Court and will provide you with an opportunity to get a full set of the Court documents filed and set out how it is intended that the representative plaintiffs represent the interests of investors. Representation will not require investors to pay any costs of the Court proceedings. The funding of the Court proceedings is explained further below.

The collapse of LDC, and the events that caused it, are generally well known. There was substantial lending to entities that the accountancy practice of Carran Miller Strawbridge had very close associations with, notably, Heli-Logging Holdings Limited and Halifax Finance Limited. It is believed that at the date of the initial prospectus (2004) those entities were foreseeably insolvent and were most unlikely to have repaid the funds borrowed from LDC. In 2006 LDC entered into the arrangements

with F & I which were designed to improve LDC's balance sheet, but which was ultimately undone through the Courts once both F&I and LDC were placed into receivership.

Against the first defendants, the directors of LDC, it is contended in the Court proceedings that they breached duties that they owed as directors by trading LDC with inadequate accounts and accounts that overstated its assets, that they failed to report impaired loans and traded the company while it was insolvent creating substantial risk of serious loss to the investors.

Against the second defendant, Carran Miller Strawbridge, it is said they were accountants of LDC but were also accountants to Halifax, Heli-Logging and other entities. As such they knew that these other entities which borrowed monies from LDC were financially precarious and at material times insolvent and unable to repay LDC. Their duty of care to LDC appears to have been compromised by their relationships with LDC's doubtful borrowers. As LDC's accountants and given the close relationship with LDC directors, we say that they must have known that LDC's balance sheet did not reflect a true position and they did not perform their duties as LDC's accountants and advisers. This allowed LDC to continue to trade and to keep soliciting and receiving deposits.

The third defendant is Perpetual Trust, who acted as the corporate trustee, whose role is to protect the interests of investors by overseeing the finances of the business. It is said in the claim that Perpetual had enough information to know that it was likely that LDC was overstating its assets and was not dealing properly with seriously impaired loans. The agreements relating to F & I were also known to the trustee and ought not to have been condoned. If Perpetual had not approved the F&I transactions it is contended in the proceedings that LDC would have ceased to trade in 2006. (We add here that Perpetual's current managers have met with the Liquidators and have offered to allow a full and transparent inspection of their records, contending that they did make proper decisions in respect of the information they did have. This will be appropriately considered and addressed as the proceedings progress.)

The fourth defendant is the auditing firm. As the auditors of the company which had published a prospectus to enable (and legalise) receipt of deposits, it is said that Sherwin Chan and Walshe failed to correctly identify substantial deficiencies within LDC that should have been obvious to a reasonable and prudent auditor, that there was enough information to make it clear that loans to entities like Heli Logging and Halifax were unlikely to be recovered and that the accounts of LDC did not reflect the true or realistic position.

Is the Litigation worth it?

It must always be accepted that any investment carries some level of risk, and that the public consciousness of that risk is far higher in 2013 than it was in 2006. The

standard of care and duties imposed on finance companies, however, were well known to those responsible for running, overseeing and auditing such entities in 2006.

LDC was a small finance company, operating within the Nelson region. It was a closely held company with the benefit of a high level of trust from its investors in the directors and accountancy practice that ran it. Those directors and the accountants were relied on by investors to run the company prudently. Its auditors and trustee were entities operating nationally, and who were required to ensure that objective standards of prudence were met.

The Court proceedings represent the last hope of any recovery for Depositors. It is likely that the defendants, or at least some of them, will be able to meet claims against them in full. We can give no certainty to you; only an assurance that we have taken legal advice from senior lawyers who specialise in this area and we believe the claims to be meritorious, that we will attempt to diligently manage and oversee them and will continue to advise and report to you on changes and developments as the proceedings progress.

Funding of the Court Proceedings

We have managed to enter into a conditional funding arrangement with a third party funding company based in New Zealand. There are some important conditions to the funding arrangement which require the support of LDC investors. Specifically we need to ensure that any proceeds of the Court proceedings are available to us to repay the funding costs to the third party funder and to the Stockholders who agree to provide funding. This requires a change to the status of the security arrangements which are in place and held on your behalf by Perpetual Trust. We also propose to alter the priority of Stockholders over Depositors so that the claim of each investor is treated equally. This would not apply to the current distribution being made by Perpetual to the Stockholders, but only in relation to distributions from the court proceedings being undertaken by the Liquidators and named investors. To us, this seems only fair given the fact the Depositors in LDC have so far received no return and the Stockholders are receiving all their principal and some interest. We explain this in more detail in the Explanatory Materials for the meeting.

Whilst we remain hopeful that we will be able to meet the conditions of the proposed funding arrangements with the third party funder the funding may not cover all of the costs of the Court proceedings. We therefore set out below the proposal to Stockholders to contribute some or all of the interest component of the dividend being paid to you as funding for the Court proceedings. (If any Depositors want to make a funding contribution from your own funds on the same terms as offered to the Stockholders you will need to get in touch with us).

Summary of Proposal

The proposal in simple terms is that we are asking Stockholders in LDC if they will agree to pay some or all of the interest component they are about to receive to us as Liquidators which we will use to fund the Court proceedings. If the Court proceedings are not successful (or the return is not substantial) you need to know that you may lose some or all of the money you pay to us. However if the proceedings are successful and generate sufficient funds we will not only repay the money you invest as a priority return but we will also pay interest at a rate to reflect the risk (15 percent per annum is proposed).

Description of the Funding Proposal

As a Stockholder you are now being paid the full balance of the principal sum invested by you in LDC, and a fixed portion of your interest (approximately 40 percent). Once that payment is made to Stockholders the assets of LDC will be exhausted and there are no further assets to be collected in the receivership. The only other payment that investors may get will come from the Court proceedings if they are successful.

The Liquidators and plaintiffs propose that you authorise payment of the interest you are soon to receive from the trustee into an account to form part of a litigation fund for the proceedings (**funding contribution**). If the Court proceedings are successful and there are monies to distribute to investors, the investors who make a funding contribution will be entitled to a priority payment before other investors for the amount of their funding contribution. The priority will also include interest of 15 percent per annum on your funding contribution. If there are insufficient funds available to repay all of the funding contribution the amounts will be pro-rated in proportion to the funding contributions made. A formal funding agreement will be drawn up and sent to the Stockholders who indicate they wish to make a funding contribution.

We are not asking you to pay money now. We are only asking that you agree that Perpetual can withhold some or all of your interest payment until a formal funding proposal is agreed by you. If you do not agree to the formal funding proposal, or change your mind prior to entering it, the full amount of the interest component held to your account will be paid to you.

You are therefore not bound to commit to the funding proposal until the formal funding proposal is put to you. If you do sign up to become a funding investor your funding contribution will be paid into our liquidation account and used for the purposes of funding the Court proceedings. Funding investors will be entitled to regular reports on the Court proceedings but will not be entitled to direct how the Court proceedings are conducted. Those decisions will remain with us as liquidators and the other named plaintiffs in the proceedings. However we will be liaising

closely with the Investor Recovery Group on any major steps taken in the Court proceedings.

Attached to this letter are the forms containing an instruction for you to complete and return. If you can tick which box applies to you and send this back as soon as possible that would be appreciated. Naturally, we are happy to answer any queries as are the members of the Investor Recovery Group. If you do agree to the possibility of making a funding contribution we will write to you with the proposed funding terms. You are entitled to discuss this matter with your lawyer and if you prefer we will make available an independent lawyer who you can consult.

Timeframe and Conduct of the Court proceedings

We realise this letter is long and apologise for that. But these issues are important and we have been asked by Perpetual to ensure that we set out fully and fairly the way that the Court proceedings are going to be conducted. Once the interim issues of approving funding and the appointment of representative plaintiffs are resolved the main case will proceed with lawyers appointed in Wellington acting on behalf of all plaintiffs. We have engaged the law firm Thomas Dewar Sziranyi and Letts in Wellington as well as two barristers acting for us on the case. They are copied this letter. We are conscious that the costs of these Court proceedings need to be kept in check and have been working with the lawyers and third party funder to get an agreed budget.

The aim of the Court proceedings is to maximise the recovery for all investors, and to get a return for Depositors who have received nothing. It would be wrong to indicate that we are confident Depositors and Stockholders will be repaid all of their investment owing to them. On our legal advice we believe that we have good prospects of getting a recovery in the proceedings which will enable us to pay the funding investors in full along with interest, and pay both the Depositors and Stockholders a significant proportion of their investment. In the context of this letter sent out to so many persons we cannot disclose too many details about how we will conduct the case as this information could be used by the defendants to seek to gain an advantage.

It is true that the terms of funding by a third party funder will likely result in a significant return to that funder. However, we do not have any ability to take these proceedings without a third party funder and the support of funding investors. The proceedings must at all times be viable and have the chance of resulting in a significant return to investors. We strongly believe that this case should be taken and that the chance of the return to LDC investors makes this proceeding viable.

The likely timeframe to get a resolution will depend on whether a settlement is able to be reached with the defendants or whether the proceedings have to go to a full defended hearing and any appeals. We are committed to progressing the

proceedings to a conclusion and our legal team will seek to move the proceedings through Court efficiently.

We thank you for taking the time to read through this letter and ask you to read carefully the notice of meeting of investors and the explanatory materials. We hope to meet many of you at the meeting.

Yours faithfully,

LDC FINANCE LIMITED (IN RECEIVERSHIP AND LIQUIDATION)

A handwritten signature in black ink, appearing to read 'Iain Shephard' followed by a stylized flourish.

**Iain Shephard/Heath Gair
Liquidators**

Election on becoming a funding creditor

This form needs to be returned to the Liquidators at the address marked below within 30 days of the date of this letter. If no election is made your partial interest payment will be sent to you.

I, (Name)_____

(Address)_____

(Telephone)_____ (Email)_____

(contact details are required to be able to contact you if there is an issue with your form)

as a secured creditor of LDC Finance Limited (in Receivership) (in Liquidation) confirm (tick one box only):

- I consent to and request that the interest component of the distribution Perpetual, as trustee, is paying to me / us be set aside until I receive and consider a creditor funding arrangement from the Liquidators.
- I consent to and request that 50% of the interest component of the distribution Perpetual, as trustee, is paying to me / us be set aside until I receive and consider a creditor funding arrangement from the Liquidators.
- I confirm I require the trustee to pay to me the full amount of my distribution, including the full interest component.

Return to:

*The Trustee of LDC Finance Ltd (in Receivership and Liquidation)
Perpetual Trust Limited
C/- Shephard Dunphy
PO Box 11793
Wellington 6011*

*Fax 04 473 6748; or
Email to elliott@sd.co.nz*