

6 October 2008

**TO CREDITORS**

Dear Sir/Madam

**RE: OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED) (“THE COMPANY”)  
ACN 086 294 028**

**MELBOURNE**  
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ADELAIDE  
BRISBANE  
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SHANGHAI  
SINGAPORE  
TOKYO

I refer to the appointment of Peter Damien McCluskey, Adrian Lawrence Brown and me on 27 March 2008 as the Company’s Administrators.

Creditors confirmed the appointment at a first meeting of creditors held on 8 April 2008. At that meeting, creditors resolved to appoint a Committee of Creditors, consisting of:

Affiliated through  
Kroll Worldwide  
UNITED STATES  
UNITED KINGDOM

Committee member	Creditor
Ross Dobinson	Ross Dobinson
Vaz Hovanessian	Fairstar Resources Limited
Raymore Millard	Raymore Millard & Golden West Resources Ltd
Jeffrey Beamont	Freemont Pty Ltd
Raewyn Clarke	Mandolin Pty Ltd
David Andrews	Imobiliari Pty Ltd, Tulloch Management Pty Ltd, Templar Enterprises Pty Ltd, Mark David Powditch, Peter William & Belita McMahon and JH & SE Wolfraad

A second meeting of creditors, as required under section 439A of the Corporations Act 2001, is convened to consider and, if thought fit, resolve that the Company be placed into liquidation. I enclose the following regarding the second meeting of creditors.

1. Notice of Meeting. *Please note that the meeting commences at **11:00am**. You should arrive for registration at least **30 minutes** prior to the meeting.*
2. Informal Claim Form for Voting Purposes together with a Fact Sheet setting out how to complete the form.



Please note that informal claim forms submitted for the purposes of the first meeting of creditors are not valid for the second meeting of creditors. Accordingly, creditors attending the second meeting are required to submit a new Informal Claim form.

*A person is not entitled to vote at the meeting unless they provide particulars of the debt or claim to the Administrators before the meeting. **Please note this form is for voting purposes only.** All creditors must furnish full details of their claims, indicating whether they rank as secured, preferential or unsecured, and whether they claim title to any goods supplied to the Company or any lien/pledge over goods in their possession which are property of the Company.*

3. Appointment of Proxy form. The form enables you to appoint another person to act on your behalf at the meeting. Proxy forms submitted for the first meeting of creditors are not valid for this meeting.

**The Informal Claim Form for Voting Purposes and Proxy form should be lodged with this office before the meeting and, in any event, not later than 2.00pm on the day prior to the meeting.** Forms can be sent by facsimile on (03) 9642 5887 marked to the attention of Ms Megan Velo or scanned and emailed to opsl@fh.com.au. However, Corporations Regulation 5.6.36A requires lodgement of the original of the Proxy form with the Administrators' office within 72 hours of lodging the faxed/emailed copy.

- 4 Administrators' report to creditors pursuant to section 439A(4)(a) of the Corporations Act 2001 which includes an opinion on each of the following matters:
  - Whether it is in the creditors' interests for the Company to execute a Deed of Company Arrangement.
  - Whether it would be in the creditors' interests for the Company to be wound up.
  - Whether it would be in the creditors' interests for the administration to end.

### **The Administrators' Remuneration**

The Administrators' report includes a remuneration report explaining their remuneration claim setting out:

- (a) Details of time spent by category of staff at the rates applicable for such staff; and,
- (b) A summary of the work undertaken by the Administrators and their staff in the administration.

### **Prospective Remuneration of Liquidators**

If we are appointed liquidators, we recommend that a Committee of Inspection be appointed to consider liquidators' remuneration.

We intend that the liquidators' remuneration be fixed on the basis of time spent by our staff (of an appropriate level having regard to the nature and complexity of the work) and us and calculated by reference to the Ferrier Hodgson schedule of hourly rates.



For further information concerning the Voluntary Administration process and Ferrier Hodgson, you may wish to visit our website at [www.ferrierhodgson.com](http://www.ferrierhodgson.com).

Queries regarding the administration can be directed by email to [ops1@fh.com.au](mailto:ops1@fh.com.au). If you do not have access to email, you can telephone Ms Megan Velo of this office on (03) 9604 5161.

Yours faithfully

A handwritten signature in black ink, appearing to read 'John Lindholm', written over a light blue horizontal line.

JOHN LINDHOLM  
ADMINISTRATOR

Encls

**FORM 529  
CORPORATIONS ACT 2001**

Subregulation 5.6.12(2)

**OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED) ("THE COMPANY")  
ACN 086 294 028**

**NOTICE OF MEETING OF CREDITORS**

NOTICE is given that a meeting of the creditors of the Company will be held at the Melbourne Convention and Exhibition Centre, 2 Clarendon Street, Southbank, Victoria, on 15 October 2008 at 11:00am.

**AGENDA**

1. To consider a statement by the directors about the Company's business, property, affairs and financial circumstances.
2. To consider the circumstances leading up to the administration and the various options available to creditors.
3. To determine the remuneration of the Voluntary Administrators.
4. For creditors to resolve upon one of the following:
  - That the Company execute a Deed of Company Arrangement; or
  - That the administration should end; or
  - That the Company be wound up.
5. If the Company is wound up, to consider the appointment of a Committee of Inspection.
6. Any other business that may be lawfully brought forward.

Proxies to be used at the meeting should be lodged at the office of the Administrators by 2.00pm on the day prior to the meeting. **A corporation may only be represented by proxy or by an attorney appointed pursuant to Corporations Regulations 5.6.28 and 5.6.31 respectively or, by a representative appointed under Section 250D of the Corporations Act 2001.**

In accordance with Regulation 5.6.23(1) of the Corporations Regulations, creditors will not be entitled to vote at the meeting unless they have previously lodged particulars of their claims against the company with the Administrators.

DATED this 6<sup>th</sup> day of October 2008.

  
**JOHN LINDHOLM**  
**ADMINISTRATOR**

**INFORMAL PROOF OF DEBT FORM**

Regulation 5.6.47

**OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED) (“THE COMPANY”)  
ACN 086 294 028**

Name of creditor:

Amount of debt claimed:

(see note)

Consideration for debt:

Whether debt secured or unsecured:

If secured, give details of security including dates, etc:

Balance, if any, after deducting value of security (see note):

.....  
Creditor (or person authorised by creditor)

---

**NOTE:**

Under the Corporations Regulation 5.6.23, a creditor is not entitled to vote at a meeting unless:

- a. his claim has been admitted, wholly or in part, by the Administrator; or
- b. he has lodged with the Administrator particulars of the debt or claim, or if required, a formal proof of debt.

For the purposes of Part 5.3A, a secured creditor may vote for the whole of his debt without regard to the estimated value of his security (Regulation 5.6.24):

Proxies must be made available to the Administrator.

**OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED)  
ACN 086 294 028**

**FACT SHEET – COMPLETING YOUR INFORMAL PROOF OF DEBT FOR VOTING PURPOSES ONLY**

Please note that this fact sheet relates solely to completing an Informal Proof of Debt for Voting Purposes at the second meeting of creditors.

*A person is not entitled to vote at the meeting unless they provide particulars of the debt or claim to the Administrators before the meeting. **Please note this form is for voting purposes only. It does NOT relate to proving for a dividend.***

*All creditors must furnish full details of their claims, indicating whether they rank as secured, preferential or unsecured, and whether they claim title to any goods supplied to the Company or any lien/pledge over goods in their possession which are property of the Company. Client creditors are considered to be unsecured creditors.*

**CLIENT CREDITORS**

“Client creditors” are those creditors who provided collateral (that is, stock and/or cash to the Company). The categories of client creditors are:

1. Clients who have served default notices
2. Clients who have not served a default notice
3. Clients who allege damages claims

Based on the Court’s directions, client creditors are entitled to claim the following for voting purposes

<b>CATEGORY</b>			
	<b>1</b>	<b>2</b>	<b>3</b>
<b>Voting</b>	Claim based on the value of stock at the close of business on the first business day after the default notice was served (if the notice was served during business hours), less cash loans	Claim based on value of stock on date selected by the Administrators (being, Thursday, 9 October 2008), less cash loans	Administrators will admit claims to vote for \$1

**Category 1**

If you fall into CATEGORY 1, complete the Informal Proof of Debt for the Purpose of Voting using the dollar amount calculated under column 1 above.

## Category 2

If you fall into CATEGORY 2, please follow the instructions set out below

Following the Court's directions, we have set Thursday, 9 October 2008 as the date at which client creditors' claims will be calculated for voting purposes only. This allows us sufficient time to prepare the necessary calculations, communicate those calculations to you and then deal with any queries prior to the second meeting of creditors.

Late Friday, 10 October 2008, we will send an email setting out the amount/s (by account number only) you can claim for voting purposes at the second meeting of creditors. This amount will be calculated as the difference between:

- The value of the stock/cash (that is, "collateral") you provided to the Company in return for loans. The stock will be valued at the "bid/offer prices" (where available) at close of trading on the ASX on Thursday, 9 October 2008; and,
- The value of your loan/s as set out in the Company's records at 27 March 2008 (that is, the date of our appointment) plus interest up to 9 October 2008.

Please note that the calculation will not include dividends declared since 27 March 2008.

If you dispute the calculation provided to you, please set out your dispute in an email to: [opsl@fh.com.au](mailto:opsl@fh.com.au) no later than 2.00pm on Tuesday, 14 October 2008.

If possible, we will also make the calculations available on our website on Monday, 13 October 2008 using the account numbers only to identify client creditors.

## Category 3

Following the Court's directions, we intend admitting category 3 creditors to vote for \$1.

### **OTHER CREDITORS**

Other creditors will likely include trade creditors and employees. You should complete the Informal Proof of Debt for the Purpose of Voting claiming the amount you say the Company owes you.

### **QUERIES**

If you have a query, we ask that you set your query out in an email directed to [opsl@fh.com.au](mailto:opsl@fh.com.au) and we will respond as soon as practicable by return email.

If you do not have access to email, please telephone Ms Megan Velo on (03) 9604 5161.



**JOHN LINDHOLM**  
**ADMINISTRATOR**

**FORM 532  
CORPORATIONS ACT 2001**

Regulation 5.6.29

**OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED) ("THE COMPANY")  
ACN 086 294 028**

**APPOINTMENT OF PROXY CREDITORS MEETING**

\*I/\*We<sup>1</sup> .....  
of .....  
a creditor of Opes Prime Stockbroking Ltd (Administrators Appointed) (Receivers and Managers Appointed), appoint<sup>2</sup> .....  
or in his absence.....  
as\*my/our \*(i) general OR \*(ii) special proxy<sup>3</sup> to vote at the meeting of creditors to be held on 15 October 2008, or at any adjournment of that meeting, to vote  
(i) on all matters arising at the meeting; OR  
(ii) on each of the following kinds of resolution in the manner specified:

	<b>For</b>	<b>Against</b>	<b>Abstain</b>
(a) A resolution that the company be wound up:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) A resolution that the Administration end:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) A resolution that the Company execute a Deed of Company Arrangement:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) A resolution that the Administrators' remuneration as set out in the Administrators' remuneration report dated 6 October 2008 for the period from the appointment date to 30 September 2008, be fixed and paid in the sum of \$1,577,014 plus any applicable GST and, for the period from 1 October 2008 to the end of the Administration period, be fixed and paid to a maximum sum of \$125,000 plus any applicable GST.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) A resolution that a Committee of Inspection be appointed:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

I am an unsecured creditor and the total amount owed to me is \$

**OR**

I am a secured creditor and the total amount owed to me is \$

\* Strike out if inapplicable

<sup>1</sup> If a firm, strike out "I" and set out the full name of the firm.

<sup>2</sup> Insert the name, address and description of the person appointed.

<sup>3</sup> If a special proxy add the words "to vote for" or the words "to vote against" and specify the particular resolution.



DATED this            day of October 2008

.....  
Signature<sup>5</sup> of individual or person<sup>6</sup>  
authorised by corporate resolution to  
represent the corporation

OR        The Common Seal of<sup>4</sup>  
  
was hereunto affixed in the  
presence of

.....  
Director

.....  
Secretary

CERTIFICATE OF WITNESS<sup>7</sup>

I, ..... of .....  
certify that the above instrument appointing a proxy was completed by me in the presence of and at the request of the  
person appointing the proxy and read to him before he attached his signature or mark to the instrument.

DATED this            day of October 2008

.....  
Signature of Witness

.....  
Description

.....  
Place of Residence

<sup>4</sup> The method of affixing the Common Seal is prescribed in Section 127(2) of the Corporations Act 2001 and, usually, the creditor corporation's constitution.

<sup>5</sup> The signature of the creditor is not to be attested by the person nominated as proxy.

<sup>6</sup> A corporation may only be represented by proxy or by an attorney appointed pursuant to Corporations Regulations 5.6.28 and 5.6.31A respectively or, by a representative appointed under Section 250D of the Corporations Act 2001. Copy of authority/power of attorney to be annexed.

<sup>7</sup> This certificate is to be completed only where the person giving it is blind.

**OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED)  
ACN 086 294 028**

**Report to Creditors by the Administrators  
Pursuant to Section 439A Corporations Act 2001**

**John Ross Lindholm**

**Adrian Lawrence Brown**

**Peter Damien McCluskey**

6 October 2008



**FERRIER HODGSON**

LEVEL 29, 600 BOURKE STREET, MELBOURNE VIC 3000  
PO BOX 290, COLLINS STREET WEST, MELBOURNE VIC 8007  
TELEPHONE 03 9600 4922 FACSIMILE 03 9642 5887



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## Glossary of Terms

Abbreviation	Description
ABN	Australian Business Number
ACN	Australian Company Number
AMSLA	Australian Master Securities Lending Agreement
ANZ	ANZ Banking Group Limited
ANZ Transaction	Transaction entered into by ANZ and the Company, OPGL and Leveraged Capital on 20 March 2008 and constituted by the co-operation deed and various ancillary documents
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
ASX	Australian Stock Exchange Limited
Company	Opes Prime Stockbroking Ltd (Administrators Appointed) (Receivers and Managers Appointed)
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
Corporations Regulations	<i>Corporations Regulations 2001 (Cth)</i>
DOCA	Deed of Company Arrangement
ERV	Estimated Realisable Value
Financiers	ANZ, Merrill Lynch, Dresdner Kleinwort and BNP
Green Frog	Green Frog Nominees Pty Ltd (In Liquidation)
Hawkswood	Hawkswood Investments Pty Ltd (Administration Appointed) (Receivers and Managers Appointed)
IPBA	International Prime Brokerage Agreement including Australian addendum
Merrill Lynch	Merrill Lynch International and Merrill Lynch (Australia) Limited
Leveraged Capital	Leveraged Capital Pty Ltd (Administrators Appointed) (Receivers and Managers Appointed)
LVR	Loan to value ratio. An LVR is expressed as a percentage and calculated by taking the amount of the loan, dividing it by the value of the collateral provided for the loan and then multiplying it by 100
Merrill Lynch Transaction	Transaction under which the Company granted Merrill Lynch a charge over certain of its assets on 18 March 2008
NGF	National Guarantee Fund
Opes Prime Group	The Company and related entities
OPGL	Opes Prime Group Limited (In Liquidation) (Receivers and Managers Appointed)
OPGS	Opes Prime Group Securities Pty Ltd (In Liquidation)
Riqueza	Riqueza Holdings Ltd, a corporate entity registered in the British Virgin Islands with a registered office in Singapore
SEGC	Security Exchange Guarantee Corporation

## Listing of Annexures

<b>Annexure A</b>	Summary of claims issued against the Company and Leveraged Capital
<b>Annexure B</b>	Administrators' Remuneration Report



## 1 Executive Summary

- We believe that the Company was insolvent at the date of the ANZ Transaction and the Merrill Lynch Transaction.
- Investigations show there are substantial claims available to a liquidator which represent the main potential avenues of recovery for the benefit of creditors.
- The main recovery actions available to a liquidator are subject to a formal confidential mediation which is currently scheduled for completion by 20 October 2008.
- We remain of the view that it is in the creditors' interests for us to explore the possibility of a mediated settlement of those claims.
- For the reasons set out in our report, our opinion and recommendation is that the Company be placed into liquidation at the second meeting of creditors convened for Wednesday, 15 October 2008 to be held at the Melbourne Convention and Exhibition Centre at 11.00am.
- It is not possible to provide a meaningful dividend estimate or an accurate estimate of liquidation costs at this stage. Following completion of the mediation, we will provide creditors with a detailed report outlining our further recommendations.

## 2 Summary of main events and strategy

The following summary of main events to date provides context in which to consider matters raised in our report.

Date (2008)	Event
27 March	Appointment of administrators and receivers & managers. The receivers and managers control the Company's assets and those of OPGL, Hawkswood and Leveraged Capital under charges held by ANZ
Early April	A number of Court proceedings are commenced by clients of the Company against the Company and / or ANZ and / or Merrill Lynch seeking injunctions to prevent the sale of shares and other remedies (includes separate proceedings commenced by CMG Equity Investments Pty Ltd, Beconwood Securities Pty Ltd, Melewar Steel Ventures Ltd and John Terpu)
8 April	First meeting of creditors. A Committee of Creditors is formed
21 April	Administrators apply to the Court for an extension of the convening period for the second meeting of creditors to preserve any rights which clients may have had under the securities lending agreements while those rights were being considered by the Courts
22 April	Court approves an extension of convening period for the second meeting of creditors to 23 June 2008
24 April	Administrators' interim report to creditors
2 May	OPGL, OPHS, OPGS, Trader Dealer and Hawkswood placed into liquidation



Date (2008)	Event
2 May	Justice Finkelstein delivers judgment in relation to a preliminary question in the Beconwood proceeding and comments that the appointment of the Administrators and the receivers and managers to the Company did not effect an automatic close-out of the securities lending agreements between the Company and its clients
30 May	Circular to creditors seeking creditor support for the Administrators' strategy of pursuing a mediation with the object of formulating a global, commercial solution to the multitude of claims which have arisen as a result of the collapse of the Company
18 June	Administrators apply to the Court for a further extension of the convening period for the second meeting of creditors to permit the Administrators to make an application for directions pursuant to section 447D of the Corporations Act regarding the impact of a liquidation or a DOCA on creditor claims and the calculation of those claims for voting and dividend purposes
18 June	Court approves a further extension of convening period to 31 July 2008
30 June	Circular to creditors advising of extension of convening period and the Administrators' proposed application to the Court seeking directions in relation to the date for the close-out of clients' securities lending agreements
10 July	Administrators apply to the Court seeking directions pursuant to section 447D of the Corporations Act in relation to the valuation of client claims under the securities lending agreements in light of Justice Finkelstein's decision in Beconwood
11 July	Circular to creditors providing an update regarding the Administrators' application to the Court for directions and the anticipated hearing date
1 August	Circular to creditors advising of the execution of a mediation agreement between the Administrators, ASIC, ANZ and Merrill Lynch with mediation to occur over the next two months
18 August	Court hearing in relation to the Administrators' application for directions
16 September	Court further extends the convening period of the second meeting of creditors to 8 October 2008 so that judgment will be available in relation to the Administrators' application for directions prior to the meeting being convened
17 September	Justice Finkelstein delivers his judgment in relation to the Administrators' application for directions and confirms that the appointment of the Administrators and the receivers and managers did not trigger an automatic close-out of clients' securities lending agreements
18 September	Circular to creditors advising that the Court further extended the convening period to 8 October 2008 with the second meeting of creditors scheduled to occur on 15 October 2008. The circular also advised creditors of the Court's decision regarding the Administrators' application for directions
September and on-going	Substantive meetings take place in the mediation

Copies of the interim report to creditors and the creditor circulars referred to above can be accessed at [www.ferrierhodgson.com.au](http://www.ferrierhodgson.com.au). Our interim report to creditors is adopted for the purposes of this report and forms part of this report.



We determined, and advised creditors, that it was in the creditors' best interests for the Administrators to explore the possibility of a mediated settlement of claims against the two main Financiers, ANZ and Merrill Lynch.

We sought agreement from ANZ, Merrill Lynch and ASIC to mediate claims that a liquidator of the Company might bring. Significant progress has been made in the mediation. Section 5 of our report provides an update on the mediation.

Following our appointment, certain client creditors initiated their own litigation against the Company, ANZ, Merrill Lynch and others either individually or as part of "investor groups". The status of that litigation is summarised in section 3 of our report.

The issues which have arisen in the client litigation, particularly as a result of Justice Finkelstein's judgment in Beconwood, have required the convening period for the second meeting of creditors of the Company to be extended. This matter was initially canvassed in our interim report.

### 3 Status of litigation related to Opes Prime Group

Set out below is a summary of litigation initiated by the receivers and managers regarding the Company.

Defendant	Court Proceeding	Description of relief sought	Status of matter
Berndale Securities Limited	Supreme Court of Victoria, No 6651 of 2008	Damages and an order that Berndale Securities Ltd transfer 800,000 shares in Challenger Financial Services Group Limited.	Settled

Set out below is a summary of litigation initiated by the receivers and managers regarding Leveraged Capital.

Defendant/s	Court Proceeding	Description of relief sought	Status of matter
Paul Belousoff, Judson Belousoff, Joash Belousoff and Christyaan Belousoff	Supreme Court of Victoria, No 7954 of 2008	Payment by Paul Belousoff in the amount of \$1,198,278.35. Alternatively, payment by: <ul style="list-style-type: none"><li>Judson Belousoff in the amount of \$396,088.48</li><li>Joash Belousoff in the amount of \$403,433.98; and</li><li>Christyaan Belousoff in the amount of \$398,755.89.</li></ul> Interest and costs. A declaration that Paul Belousoff holds the monies on trust for Leveraged Capital.	Defences of the first, second and fourth defendants are due to be filed and served by 16 October 2008. The third defendant's defence is due to be filed and served on 29 October 2008.



Defendant/s	Court Proceeding	Description of relief sought	Status of matter
Jessica Tjong and David Hunter	Supreme Court of Victoria, No 6667 of 2008	Payment in the amount of \$445,822.25. Alternatively payment in the amount of \$383,000. Alternatively a declaration that the relevant property is held on constructive trust, or alternatively resulting trust, for Leveraged Capital. Further equitable damages, interest and costs.	Defences have been filed and served. The plaintiff will soon file an amended statement of claim claiming an additional \$42,000.
Anthony Charles Blumberg	Supreme Court of Victoria, No 6615 of 2008	Payment of the amount of \$14,231,127.51. Alternatively, a declaration that the proceeds of payments allegedly made to Mr Blumberg were held on constructive or resulting trust by Mr Blumberg for Leveraged Capital. Further or alternatively, equitable damages. Costs and interest.	Defendant has until 3 November 2008 to file defence.

**Annexure A** contains a summary of claims issued against the Company and Leveraged Capital.

## 4 Investigations

### 4.1 Our further investigations

In our interim report, we set out the results of our preliminary investigations regarding:

- Potential voidable transactions; namely, the ANZ Transaction and the Merrill Lynch Transaction
- Riqueza
- Potential recovery actions against the Company's directors
- Insolvent trading

#### 4.1.1 Potential liquidator claims

##### Claims against ANZ

Our investigations since our interim report have focussed on the ANZ Transaction and the Merrill Lynch Transaction. In our interim report to creditors, we explained the ANZ Transaction of 20 March 2008 under which:

- A Co-Operation Deed was entered into by ANZ, the Company, OPGL and Leveraged Capital;
- ANZ loaned \$95 million to the Company and OPGL pursuant to a term loan;
- ANZ released certain securities to OPSL in order for those securities to be redelivered to a client of Leveraged Capital;





- The term loan proceeds of \$95 million were retained by ANZ to, in effect, meet a margin call on OPFL;
- ANZ obtained fixed and floating charges over all of the assets and undertakings of the Company, OPFL, Leveraged Capital and Hawkswood (these charges were subsequently registered with ASIC);
- Various amendments were made to the terms of the AMSLA in place between ANZ and the Company and the AMSLA between ANZ and Leveraged Capital;
- ANZ obtained a cross-guarantee and indemnity from the Company, OPFL and Leveraged Capital;
- ANZ obtained a guarantee and indemnity from Hawkswood and from the directors of the Company in respect of the \$95 million term loan; and
- ANZ obtained a share mortgage from the directors of the Company.

We have determined that a liquidator would challenge the ANZ Transaction on the following key grounds:

- (a) The term loan which formed part of the ANZ Transaction constitutes an unfair loan under section 588FD(1) of the Corporations Act.
- (b) The ANZ Transaction is an uncommercial transaction for the purposes of section 588FB of the Corporations Act.
- (c) The floating charge granted by the Company is void as against a liquidator under section 588FJ(2) of the Corporations Act except to the extent of any fresh advances.

If legal proceedings were fully successful, the effect of these claims is that the Court would seek to place the parties as close as possible back into the position they were in prior to the transaction. This is a complex exercise. However, based on the current information available, we believe the overall effect may be:

- (i) ANZ would be required to make a payment to the liquidators of between \$135 million and \$200 million;
- (ii) ANZ would be required to release all of its registered charges;
- (iii) The receivers and managers appointed by ANZ would be required to retire, and to account to the liquidators for all the assets of the companies (presently estimated at around \$70 million, including surplus securities and cash redelivered, or to be redelivered, by Merrill Lynch).

Therefore, the gross “value” of the claim is in the region of \$205 million to \$270 million.

As with all legal proceedings there are risks and mitigating factors associated with proceeding to Court on the basis that:

- These claims are legally and factually complicated and ANZ denies any liability;
- Significant legal costs will be incurred by the liquidators in pursuing these claims against ANZ should it be necessary for the liquidators to commence a Court proceeding;



- There is ultimately a risk that the liquidators will not be successful in a Court proceeding in respect of these claims against ANZ.

### **Claims against Merrill Lynch**

In our interim report to creditors, we explained that the Company and Merrill Lynch executed an IPBA on 26 September 2006 which included a charge over certain of the Company's assets. The charge was created on 30 October 2006 but not registered with ASIC until 5 October 2007. The Company and Merrill Lynch "re-papered" the IPBA by executing a second IPBA on 18 March 2008 which included a second charge over relevant Company assets and was in identical terms to the original IPBA. Merrill Lynch registered the second charge with ASIC on the day following our appointment as administrators. The original IPBA was terminated on 20 March 2008.

We have determined that a liquidator would challenge the second charge on the following grounds:

- The second charge is a floating charge created during the six months prior to our appointment and is void as against a liquidator of the Company under section 588FJ of the Corporations Act;
- The creation of the second charge was an unfair preference under section 588FA of the Corporations Act because the second charge would result in Merrill Lynch receiving more than it would receive in respect of the debt due from the Company to Merrill Lynch under the IPBA if the Merrill Lynch Transaction was set aside and Merrill Lynch were to prove in the winding up (as the first charge would have been void as against the liquidators of the Company under section 266(1) of the Corporations Act for failure to register the charge within 45 days of its creation or prior to 6 months before the commencement of the administration);
- The creation of the second charge was an uncommercial transaction under section 588FB of the Corporations Act and is therefore void as against the liquidator.

If the second charge is a floating charge or if the entry into it constituted an uncommercial transaction or conferred an unfair preference on Merrill Lynch, the liquidators may be entitled to avoid the charge. This would entitle the liquidators to recover from Merrill Lynch the sum obtained by Merrill Lynch by way of realisation of the relevant securities; we believe this to be an amount of approximately \$500 million (on the basis that all surplus securities held by Merrill Lynch have been, or will be, returned to the Company).

As is the case in relation to the ANZ Transaction, there are risks, and mitigating factors, associated with the liquidators' claims against Merrill Lynch in respect of the Merrill Lynch Transaction, including:

- Uncertainty in relation to the law in Australia in relation to fixed and floating charges;
- Significant legal costs will be incurred by the liquidators in pursuing these claims against Merrill Lynch should it be necessary for the liquidators to commence a Court proceeding;
- There is ultimately a risk that the liquidators will not be successful in a Court proceeding in respect of these claims against Merrill Lynch; and,
- If an order is made by the Court against Merrill Lynch and Merrill Lynch makes a payment to the Company, then Merrill Lynch will be a creditor of the Company for the amount of that payment. This could mean that Merrill Lynch would receive back a significant part of the amount it paid, by way of dividend distribution out of the liquidation.



## **Other potential liquidator claims**

We are currently investigating other claims which may be brought by a liquidator of the Company for the benefit of unsecured creditors. Such claims include potential unfair preference claims against any clients who obtained redelivery of stock or cash from the Company in the six months prior to our appointment.

### **4.1.2 The Company's solvency**

Certain of the claims relating to the ANZ Transaction and the Merrill Lynch Transaction require a finding that the Company was insolvent as at the date of those transactions. Our strategy of pursuing a mediated settlement of claims against ANZ and Merrill Lynch meant that it was necessary to conduct a full analysis of the Company's solvency.

Accordingly, significant time and resources have been dedicated to determining if the Company was insolvent at the date of the ANZ Transaction and the Merrill Lynch Transaction. This involved complex investigation and enquiry.

In summary, it is our view that the Company was insolvent at the date of the ANZ Transaction and the Merrill Lynch Transaction given:

- The Company was not meeting margin calls under its facilities with ANZ
- The Company could not meet its obligation to redeliver stock to Altinova Nominees Pty Ltd. That obligation fell due on 13 March 2008
- The disclosure by Emini to Blumberg and Smith on or about 9 March 2008 of manipulations to certain client accounts to avoid margin calls would likely have led to a suspension or termination of the Company's admission as an ASX participant. Under these circumstances, the Company would have been unable to trade which would have triggered a call from clients for the redelivery of their stock
- There was no real prospect of the planned "backdoor" ASX listing of OPGL occurring in light of the disclosures by Emini of the account manipulations
- The Company's balance sheet, adjusted for estimated true and fair values, shows a deficiency of between approximately \$229 million and \$254 million at 20 March 2008. The adjusted balance sheets as at 20 March 2008 compared to the Company's balance sheet according to its books and records are set out below:



	20 March 2008 \$'000	A \$'000	B \$'000
<b>Current Assets</b>			
Cash and cash equivalents	(14,000)	(14,000)	(14,000)
Trade and other receivables	809,308	587,033	587,033
Other Current Assets	6,908	6,908	6,908
<b>Total Current Assets</b>	<b>802,216</b>	<b>579,941</b>	<b>579,941</b>
<b>Total Non-Current Assets</b>	<b>3,677</b>	<b>2,974</b>	<b>2,974</b>
<b>Total Assets</b>	<b>805,893</b>	<b>582,915</b>	<b>582,915</b>
<b>Current Liabilities</b>			
Trade and other payables	(795,260)	(829,376)	(829,376)
Other Current Liabilities	(1,240)	(1,240)	(1,240)
<b>Total Current Liabilities</b>	<b>(796,500)</b>	<b>(830,616)</b>	<b>(830,616)</b>
<b>Total Non Current Liabilities</b>	<b>(6,791)</b>	<b>(6,790)</b>	<b>(6,790)</b>
<b>Total Liabilities</b>	<b>(803,291)</b>	<b>(837,406)</b>	<b>(837,406)</b>
<b>Net Assets/(Liabilities)</b>	<b>2,602</b>	<b>(254,491)</b>	<b>(254,191)</b>
<b>Contingent Assets</b>			<b>1,513,727</b>
<b>Contingent Liabilities</b>			<b>(1,488,584)</b>
<b>Adjusted Net Assets/(Liabilities)</b>	<b>2,602</b>	<b>(254,491)</b>	<b>(229,348)</b>

Column "A" shows the balance sheet as at 20 March 2008 adjusted to account for provisions and/or other adjustments necessary to reflect true and fair values as at 20 March 2008.

Column B shows adjustments made as per "A" but also incorporates off-balance sheet items; namely,

- i. a contingent liability represented by the value of stock lodged with the Company by its clients and which, under the terms of the client securities lending agreement, the Company had an obligation to return to clients, at call, upon the clients repaying loan amounts (if the account's position so required);
  - ii. the Company's liability to the Financiers for non-cash loans against the portfolio of stock lodged by the Company; and
  - iii. a contingent asset represented by the value of stock lodged by the Company with the Financiers upon the Company repaying loan amounts due to the Financiers.
- The Company had no realistic prospect of obtaining further funds from other sources.
  - There was no realistic prospect of the Company returning to solvency after 20 March 2008.

Other entities in the Opes Prime Group (namely, Hawkswood, Leveraged Capital and OPGL), were financially dependent on the Company. It is our view that these entities were also insolvent from at least as early as the date of the ANZ Transaction and the Merrill Lynch Transaction.



#### **4.1.3 Asset recoveries by the receivers and managers**

We understand that the receivers and managers presently estimate gross asset recoveries of approximately \$70 million. This includes approximately \$54 million received from Merrill Lynch under the close out of the IPBA and an expected \$12 million from Green Frog.

#### **4.1.4 Claims against the Company's directors**

As set out earlier in our report, the receivers and managers have instigated legal action against the Company's directors seeking recovery of various amounts. Also, ASIC is investigating the conduct of the Company's directors.

At this stage, it is unclear whether, if the Company's directors pay amounts claimed as due to the Company and/or other Opes Prime Group entities upon demands made by the receivers and managers, they would have the capacity to meet any further claims brought by the liquidators. However, this is a matter which would be fully determined if and when the Company is wound up. As stated in our interim report, claims would likely include a claim for compensation for breaches of director duties.

#### **4.1.5 Riqueza**

We refer creditors to our commentary on Riqueza in our interim report and confirm that we now control Riqueza. Our further review of Riqueza's operations does not disclose that Riqueza holds any material assets other than substantial loan accounts within the Opes Prime Group.

#### **4.1.6 Statement by directors**

In our interim report, we advised that the directors were preparing a statement about the Company's business, property, affairs and financial circumstances pursuant to section 438B of the Corporations Act. The statement essentially sets out a company's assets and liabilities at a particular date and is designed to assist Administrators understand a company's affairs at the date of their appointment.

The directors provided the statement. The statement did not inform us of any financial information to which we were not privy. We have summarised for creditors within our interim report and this report the Company's financial position based on the Company's books and records and our enquiries.

#### **4.1.7 Green Frog**

Green Frog is wholly owned by the Company. Messrs C Nicol and P Anderson of McGrath Nicol were appointed liquidators of Green Frog on 21 May 2008 by resolution of the Company.

Green Frog's sole purpose was to hold securities as nominee for third parties. Green Frog owns no assets other than the securities registered in its name but held on behalf of third parties.

Where there has been agreement obtained from the Company and its receivers and managers, Green Frog's liquidators have released securities to the beneficial owner. The beneficial ownership of a number of securities is currently the subject of litigation and further enquiry by Green Frog's liquidators.



## 4.2 ASIC investigations

Based on information received from ASIC, we provide the following summary of their investigations to date.

- ASIC commenced investigations into suspected contraventions of the Corporations Act on 28 March 2008. Those investigations concern the conduct of the directors and officers of the Company and certain other entities in the Opes Prime Group.
- ASIC's investigations include a consideration of whether the Company's directors or any other person has breached the Corporations Act. The investigation is considering the circumstances and terms of the ANZ Transaction. ASIC is concerned that in entering into the ANZ Transaction, the Corporations Act may have been contravened. Section 588G of the Corporations Act prohibits company directors from incurring a debt if they have a reasonable suspicion that the company is insolvent. The agreement was signed by three of the Company's directors; Messrs Emini, Smith and Blumberg.
- ASIC has taken action to prevent Messrs Emini, Smith and Blumberg from leaving Australia. ASIC obtained orders in the Federal Court, by consent, from Mr Emini that he must give ASIC 48 hours notice of his intention to request the return of his passport, which he had given to ASIC voluntarily. This order remains in place until 3 March 2009.
- ASIC obtained orders from the Court, also by consent, in relation to Mr Smith that require his passport to be held by the Sydney registry of the Federal Court. ASIC also successfully opposed an application made by Mr Smith to travel overseas for a holiday. These orders remain in place until 4 December 2008.
- Mr Blumberg has provided a voluntary undertaking, effective until 2 February 2009, to give at least seven days notice to ASIC of intention to travel overseas. Mr Blumberg's passport is held by his solicitor who has also given ASIC an undertaking not to release it without giving seven days notice.
- ASIC's investigations arising from the collapse of Opes Prime are continuing.

Shortly, we expect to lodge a report with ASIC pursuant to section 438D of the Corporations Act.

## 5 Progress of mediation

As we have previously reported in our circular to creditors dated 1 August 2008, a mediation commenced in early August 2008 between the Administrators, ANZ, Merrill Lynch and ASIC. The mediator is The Honourable Alex Chernov AO QC.

The liquidator claims against ANZ in respect of the ANZ Transaction and Merrill Lynch in respect of the Merrill Lynch Transaction are the subject of the mediation. No settlement has yet been reached in the mediation and the mediation is continuing.

On that basis, the mediation negotiations remain strictly confidential and we cannot make any further comment at this stage about the progress of the mediation. We will notify creditors as soon as there is an update in relation to the mediation. We believe that the participants in the mediation are continuing to participate in good faith and with genuine desire to work towards a solution.



Initially, an ambitious completion date of 29 September 2008 was agreed for the mediation. The participants have now agreed to extend the completion date to 20 October 2008 on the basis that significant progress has been made so far.

We remain of the view that a reasonable mediated settlement of the liquidator claims against ANZ and/or Merrill Lynch would be in the best interests of creditors owing to the complexity of the legal issues and the risks inherent in litigation.

## **6 Determination of creditor claims for voting purposes and dividend purposes**

On 2 May 2008, Justice Finkelstein delivered his judgment in relation to a preliminary question which arose in the proceeding commenced by Beconwood Securities Pty Ltd and Beconwood Ltd against ANZ, ANZ Nominees Limited and the Company (See *Beconwood Securities Pty Ltd v Australia and New Zealand Banking Group Limited* [2008] FCA 594). In doing so, His Honour commented that our appointment and the appointment of the receivers and managers to the Company on 27 March 2008 did not have the effect of automatically closing out obligations under the securities lending agreements.

Owing to the uncertainty created by Justice Finkelstein's judgment in the Beconwood proceeding, on 10 July 2008, we made an application to the Federal Court of Australia for directions pursuant to section 447D of the Corporations Act as to the appropriate date on which client positions under the securities lending agreements with the Company and Leveraged Capital should be valued for the purposes of voting at the second meeting of creditors and in any subsequent winding up of the companies or deed of company arrangement. A number of client creditors participated in this application and made submissions to the Court. ANZ and the receivers and managers of the Company also participated in the application.

On 17 September 2008, Justice Finkelstein delivered his judgment in relation to that application (see *Lindholm, in the matter of Opes Prime Stockbroking Limited (Administrators appointed)(Receivers and Managers appointed)* [2008] FCA 1425). His Honour confirmed that our appointment on 27 March 2008 and the appointment of the receivers and managers to the Company did not have the effect of automatically closing out obligations under the securities lending agreements. His Honour also confirmed that a liquidation of the Company will trigger an automatic close-out of the position of those clients whose positions under their securities lending agreements have not already closed out.

We accept Justice Finkelstein's ruling and will conduct the administration, and any subsequent liquidation, in accordance with the directions given by His Honour. No person has given notice of intention to appeal the decision.

In accordance with the directions given by Justice Finkelstein, we propose to assess or estimate clients' claims under their securities lending agreements for voting purposes and for the purposes of proofs of debt in a winding up of the Company on the basis set out below.

The categories of clients are:

1. Clients who have served default notices
2. Clients who have not served a default notice
3. Clients who allege damages claims



	CATEGORY		
	1	2	3
<b>Voting</b>	Claim based on the value of stock at the close of business on the first business day after the default notice was served (if the notice was served during business hours), less cash loans	Claim based on value of stock on date selected by the Administrators (being, 9 October 2008), less cash loans	Administrators will admit claims to vote for \$1
<b>Proof of debt</b>	As above	Claim based on the value of stock at the close of business on the business day after the liquidation, less cash loans	No guidelines have been provided by the Court. Claims will need to be adjudicated by the liquidators on a case by case basis.

If category 1 or 2 clients have become debtors of the Company as at close of business on 9 October 2008 due to movements in share values, they will be admitted to vote at the meeting for \$1.00 on the basis that they may fall within category 3.

## 7 Consequence of Liquidation

### 7.1 Impact on client securities lending agreements

As discussed above, Justice Finkelstein has confirmed that the appointment of a liquidator to the Company will trigger an automatic close-out of the securities lending agreements entered into by clients of the Company if those clients have not already closed out their securities lending agreements. In these circumstances, the value of shares and cash collateral transferred by clients to the Company will be calculated as at the close of business on the business day after the second meeting of creditors. Therefore, in respect of clients who have not already closed out their securities lending agreements, the liquidation of the Company will have the effect of replacing the respective obligations of the parties to redeliver shares and repay cash collateral with an obligation to pay the net close-out amount.

### 7.2 Impact of recent fall in the share market

#### 7.2.1 Impact on assets available for distribution

As clients of the Company will be aware, the All Ordinaries index of the ASX has fallen since our appointment on 27 March 2008. We do not believe that the fall in the share market since our appointment on 27 March 2008 will significantly reduce the value of the assets which may be available for distribution to creditors of the Company. As discussed above, the most substantial assets of the Company are the liquidator claims against ANZ and Merrill Lynch. The quantum of these claims is not calculated by reference to the share market. There are, however, two important qualifications to that conclusion:

- Some of the assets of the Company, which might become available to the liquidators if the claim against ANZ is successful, are listed securities. Those assets are, naturally, affected by the current share market volatility.
- If the claim against Merrill Lynch is successful, then Merrill Lynch will become a creditor of the Company for an amount equal to whatever amount it is required to pay in respect of that claim. As the total value of investor/client claims reduces, the dividend return back to Merrill Lynch increases because it becomes a relatively larger creditor.





## 7.2.2 Impact on client positions

The fall in the All Ordinaries index of the ASX may have an impact on the quantum of clients' proofs of debt if those clients have not closed out their securities lending agreements.

However, it is important for individual clients to consider their relative position in considering how a winding up the Company, commencing on 15 October 2008, will impact on the value of each client's proof of debt in a winding up of the Company. That is, even if the value of securities transferred by a client to the Company has fallen since 27 March 2008, that client's relative position may in any event have improved if the total value of client claims has fallen by a proportionately larger amount. The following hypothetical scenarios illustrate this issue:

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5	Scenario 6
Total net value of client claims	\$500	\$400	\$400	\$400	\$400	\$400
Net claim of client A	\$50	\$40	\$45	\$30	\$0	-\$10
Client A's proportionate share of assets available for distribution	10%	10%	11.25%	7.5%	0%	No distribution - Client A is a debtor

Notes:

*Scenario 1 assumes that the total net value of client claims is \$500 and that client A has a net claim worth \$50.*

*Scenarios 2 to 6 assume that the total net value of client claims has fallen by 20% from Scenario 1.*

*Scenarios 2 to 6 assume that the net claim of client A has also fallen since Scenario 1 by various amounts.*

*These scenarios assume that client A has no claims other than the close out value under the securities loan agreement.*

In Scenario 2, the relative position of client A has not changed even though the value of client A's net claim has fallen. In Scenario 3, the relative position of client A has improved even though the value of client A's net claim has decreased. In Scenarios 4, 5 and 6, the relative position of client A has declined owing to the fact that the value of client A's net claim has fallen by more than 20% (being the average decline of all clients' securities). Based on these scenarios, if a fixed fund of \$100 were to become available for distribution to unsecured creditors of the Company, client A would receive \$10 in Scenario 1. Client A would receive \$11.25 in Scenario 3 even though the value of client A's net claim is less than the value of client A's net claim in Scenario 1.

Based on our calculation of client positions carried out on 22 September 2008, we believe that the relative positions of 53% of clients have improved since our calculation of those client positions as at 27 March 2008. The total net value of client claims as at 27 March 2008 was approximately \$585 million. As at 22 September 2008, that figure had fallen to approximately \$400 million.

Owing to the continued volatility in the share market, this position is subject to change on a daily basis. We recommend that clients seek their own advice in relation to their individual positions.



### 7.3 Potential liquidator recoveries

We believe that the most significant assets of the Company are the liquidators' claims against ANZ and Merrill Lynch. Court proceedings can not be commenced in relation to these claims until the Company is in liquidation. Alternatively, it will be necessary for the Company to be in liquidation before any final settlement with ANZ or Merrill Lynch can be reached in relation to these claims. There may also be other recovery actions available to the liquidators of the Company which can only be commenced upon the liquidation of the Company.

The liquidation of the Company will also trigger an automatic close-out of the positions of clients who are debtors of the Company under securities lending agreements. Whilst the receivers and managers remain in place, it is possible (even likely) that the receivers and managers will seek to recover the amounts owing from those debtors. Should the liquidators' claims against ANZ be successful, then the receivers and managers will retire. The liquidators would then propose negotiating debt collection with each debtor.

We believe that there will not be any significant assets available for distribution to unsecured creditors unless the Company goes into liquidation and the liquidators' claims against ANZ or Merrill Lynch, or both, are successful. As discussed above, all of the other assets of the Company remain in the possession of the receivers and managers.

## 8 Claims against the NGF

The SEGC, which is a subsidiary of the ASX, is the trustee of, and administers, the NGF. The NGF is governed by Division 4 of Part 7.5 of the Corporations Act and Corporations Regulations.

The NGF is a statutory compensation scheme and provides relief to clients of the Company who meet the conditions set out in the Corporations Act and Corporations Regulations.

It is not our intention to provide an opinion or recommendation in relation to potential claims on the NGF. It is for creditors to seek their own advice regarding any claim on the NGF. We do not propose making claims on the NGF on behalf of creditors. Those creditors who believe they have a claim against the NGF can obtain further information from the SEGC website at <http://www.segc.com.au> and from the NGF Information Booklet which is available online at [http://www.segc.com.au/pdf/National Guarantee Fund information booklet.pdf](http://www.segc.com.au/pdf/National_Guarantee_Fund_information_booklet.pdf).

You should note that all claims on the NGF must be made within **6 months** after the day on which the claimant became entitled to make a claim unless the SEGC determines otherwise. On that basis, we encourage all clients who think that they may be entitled to make a claim on the NGF to contact the SEGC and lodge their claim as soon as possible.

You should note that while some individual clients may benefit if a claim on the NGF is successful, NGF will be subrogated to the extent of successful claims. Therefore, any successful claim on the NGF will not reduce the quantum of proofs of debt in a winding up.

## 9 Future action

We set out our likely future actions assuming that creditors resolve to wind up the Company at the second meeting of creditors convened for 11.00am on Wednesday, 15 October 2008.



## 9.1 Mediation

As stated earlier, the parties have agreed to extend the mediation period to 20 October 2008. If mediation fails to settle the claims against ANZ and Merrill Lynch, it will be open for the liquidators to initiate litigation. Such litigation will require funding which we would seek either from creditors or through a specialist litigation funder.

Following the outcome of mediation, we will communicate further with creditors on this matter.

## 9.2 Investigations, other recovery action and statutory reporting

Investigations to date have been principally directed toward the ANZ Transaction, the Merrill Lynch Transaction and the issue of the solvency of the Company and other Opes Prime Group entities given that these matters represent the major potential avenue of recovery for creditors.

Liquidators would undertake further investigations to determine whether there are any other causes of action which might result in the recovery of funds for the creditors' benefit.

## 9.3 Creditor claims and dividend

If liquidators ultimately recover funds for the benefit of creditors, we would then call for formal proofs of debt from creditors, adjudicate claims and pay a dividend.

## 10 Current dividend estimate

In our interim report, we advised of an initial dividend estimate of up to 30 cents in the dollar noting there was no guarantee as to what a dividend, if any, might ultimately be.

While there has been significant progress on major issues, particularly the mediation referred to above and the basis for determining creditor claims for dividend purposes, it remains the case that the amount and timing of any dividend to creditors cannot, at this stage, be more accurately estimated.

The situation is complicated by the fact that we do not yet know what will be the final outcome of the mediation and creditor claims will not be known until there is a close-out of all of the securities lending agreements upon liquidation.

## 11 Second meeting of creditors

The second meeting of creditors is convened for 11.00am, Wednesday, 15 October 2008. Pursuant to section 439A(4)(b) of the Corporations Act, we are required to provide creditors with a statement setting out our opinion on whether it is in the creditors' interests for the:

- i. Administration to end;
- ii. Company to be wound up;
- iii. Company to execute a DOCA;
- iv. Adjourn the meeting for up to 45 business days.



## **12 Administrators' opinion and recommendations**

### **12.1 Administration to End**

Creditors may resolve that the administration should end if it appears the Company is solvent or, for some other reason, control of the Company should revert to its directors.

The Company is insolvent. There is no valid reason why control of the Company should revert to its directors.

Therefore, our opinion is that it is not in the creditors' interest for the administration to end.

### **12.2 DOCA**

We have not received any proposals for a DOCA. Nevertheless, an option for creditors may be the execution by the Company of a "holding" DOCA which could provide for a moratorium on claims against the Company and could postpone the automatic close-out of client positions under securities lending agreements until the expiry of the DOCA.

The advantage of a holding DOCA would be that clients could postpone the close-out of their securities lending agreements with the Company in the hope that the share market will improve.

Therefore, a holding DOCA may be in the interests of some clients of the Company including those clients who have become debtors.

However, the major disadvantage of any DOCA will be that no liquidator recovery actions can be commenced until the Company is in liquidation.

### **12.3 Adjournment**

We also note that, under section 439B(2) of the Corporations Act, creditors can resolve that the meeting be adjourned for up to 45 business days. This would also postpone the automatic close-out of client positions under securities lending agreements. Similarly, it would delay the commencement of litigation against ANZ and Merrill Lynch and any other action available to the liquidators.

### **12.4 Winding up of Company**

The consequences of a winding up are set out in section 7 of our report.

At present, the Company's only known significant avenue of recovery for the benefit of creditors is the claims against ANZ and Merrill Lynch. A liquidation of the Company will allow liquidators to pursue the claims or to provide appropriate releases to the banks in the event that a settlement is achieved under the present mediation arrangements.

On balance, in order to:

- Create certainty as to creditor positions in terms of the close-out of securities lending agreements
- Enable proceedings to be commenced (if necessary) by the liquidators against ANZ and Merrill Lynch



- Enable the liquidators to provide releases to ANZ and Merrill Lynch should any settlement be reached in the mediation
- Maximise the prospect of funds becoming available to unsecured creditors
- Enable the liquidators to investigate any other potential claims

we consider that it would be in the creditors' interests for the Company to be wound up. Furthermore, on the basis of the matters set out above, we believe that it is in the interests of the majority of creditors for the liquidation of the Company not to be postponed by way of a holding deed of company arrangement or adjournment.

On that basis, we recommend that the creditors resolve to wind up the Company.

We note that it is not possible to provide a meaningful dividend estimate or an accurate estimate of liquidation costs at this stage.

### 13 Administrators' and Liquidators' remuneration

Pursuant to Section 446E of the Corporations Act, we enclose as **Annexure B** the Administrators' Remuneration Report. At the second meeting of creditors, we intend seeking approval of the remuneration set out in the remuneration report. Details of disbursements incurred and/or paid are also included in the Remuneration Report.

If we are appointed liquidators, we recommend that a Committee of Inspection be formed by resolution at the second meeting of creditors to consider and approve the liquidators' remuneration in due course. We make this recommendation given that it is too difficult to provide any meaningful estimate of the liquidators' prospective remuneration.

We set out in the remuneration report Administrators' fees to date and estimated fees for the period from 30 September 2008 to 15 October 2008. We also set out legal costs including counsels' fees incurred to date. Save for counsels' fees, such fees and costs will only be paid if recoveries are made. Ferrier Hodgson has accepted liability for counsels' fees and expects to pay costs of approximately \$250,000 shortly.

### 14 Further Queries

We will advise creditors in writing of any additional matters that come to our attention after the dispatch of this report that are material to creditors' deliberations.

In the meantime, should creditors have any queries, please do not hesitate to contact Ms Megan Velo or Mr Phillip Speake of this office.

DATED this 6<sup>th</sup> day of October 2008

JOHN LINDHOLM  
ADMINISTRATOR

ADRIAN BROWN  
ADMINISTRATOR

PETER MCCLUSKEY  
ADMINISTRATOR



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# **Annexure A**

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## **Summary of claims issued against the Company and Leveraged Capital**

## Summary of claims issued against the Company and Leveraged Capital

### DEFENDANT: The Company (referred to in the following table as, "OPSL")

Parties	Court Proceeding	Description of relief sought	Status of matter
Asia Pacific Links Limited v OPSL, Merrill Lynch International (Australia) Ltd and Merrill Lynch (Singapore) Pte Ltd	Federal Court of Australia, New South Wales District Registry, No NSD 878 of 2008	Plaintiff seeks declaratory relief and an order for the restoration of shares, and equitable compensation or damages.	The Plaintiff has sought leave to file and serve an amended statement of claim. The Merrill Lynch parties have made an application to strike out the Plaintiff's statement of claim. Both matters are to be heard on 10 December 2008.
Beconwood Securities Pty Ltd and Beconwood Ltd v ANZ, OPSL and ANZ Nominees Ltd	Federal Court of Australia, Victoria District Registry, No VID 206 of 2008	Plaintiffs seek an injunction restraining ANZ and ANZ Nominees Ltd from selling certain shares and seek redelivery of those shares. Plaintiffs seek declaratory relief against OPSL. Plaintiffs also seek equitable compensation, costs and interest.	Matter is in pre-trial discovery. In a preliminary hearing on the construction of the securities lending agreement, Justice Finkelstein found that clients of OPSL transferred beneficial ownership of shares to OPSL and that clients have no equity of redemption in respect of the shares transferred.  Matter is listed for trial in March 2009.
CMG Equity Investments Pty Ltd, Solen Pty Limited, Jason Dixon and Gull Investments Pty Ltd v ANZ, ANZ Nominees Ltd, OPSL, John Lindholm, Peter	Federal Court of Australia, Victoria District Registry, No VID 186 of 2008	Injunction application brought by the plaintiffs seeking declaratory relief, orders that certain shares be returned to the plaintiffs, plus	The injunction application was dismissed on 3 April 2008.

McCluskey and Adrian Brown (in their capacities as Administrators of OPSL) and Southeastern Capital Ltd		damages, interest and costs	
Imobilari Pty Limited v OPSL, ANZ, ANZ Nominees Ltd and Merrill Lynch (Australia) Ltd	Federal Court of Australia, Victorian District Registry, No VID 395 of 2008	<p>The proceeding is a representative (or class action) proceeding. Consequently, the number and names of plaintiffs (apart from Imobilari Pty Ltd) are not presently known.</p> <p>The plaintiffs seek declaratory relief against the defendants. The plaintiffs also seek orders rescinding the agreement between the plaintiffs and OPSL, and damages against OPSL. The plaintiffs seek orders that shares and proceeds from the sale of shares held by the ANZ parties and Merrill Lynch are held on trust for the plaintiffs and are to be returned to the plaintiffs.</p>	On 3 September 2008, Imobilari's application for leave amend its statement of claim, and Merrill Lynch (Australia) Ltd and the ANZ parties' applications to strike out the statement of claim, were heard. The parties are awaiting judgment.
Nicholas and Judith Mather (as Trustees of the Mather Superannuation Fund) and Samuel Capital Pty Ltd v OPSL, Christopher Campbell and Salvatore Algeri (as Receivers of OPSL) and John Lindholm, Peter McCluskey and Adrian Brown (as Administrators of OPSL)	Supreme Court of Queensland, No BS2765 of 2008	The plaintiffs sought declaratory relief, orders for the return of shares, plus damages and costs.	The matter has settled.
Melewar Steel Ventures	Supreme Court of New	The plaintiff seeks declaratory relief	The plaintiff's application for



Limited v OP SL, ANZ, ANZ Nominees Ltd, Green Frog and Merrill Lynch (Australia) Ltd	South Wales, No 2149 of 2008	against the Defendants. The plaintiff also seeks orders rescinding the agreement between the plaintiff and OP SL, and orders that shares held by the defendants are held on trust for the plaintiff and are to be returned to the plaintiff. Plaintiff also seeks equitable compensation and/or damages, interest and costs.	leave to file and serve a further amended statement of claim was heard on 26 September 2008. The application was opposed by Merrill Lynch and the ANZ parties. The parties are awaiting judgment.
Merrill Lynch Far East Limited and Merrill Lynch International v AAM China Fund and OP SL	High Court of the Hong Kong Special Administrative Region, HCMP 804 of 2008	Interpleader action brought by the Merrill Lynch parties seeking declarations in relation to ownership of certain shares and to who shares should be returned. Both AAM China Fund and OP SL claim ownership of the relevant shares.	OP SL is to file its outline of evidence by 23 October 2008. The matter is listed for directions on 23 October 2008.
Panopus PLC v OP SL, ANZ and ANZ Nominees Ltd	Supreme Court of Victoria, No 5835 of 2008	The plaintiff seeks declaratory relief against OP SL, and orders that OP SL and/or the ANZ parties return shares to the plaintiff or purchase replacement shares for the plaintiff, plus damages, interest and costs.	Pleadings as between the plaintiff and the ANZ parties have closed and those parties are making discovery. The plaintiff's application for leave to proceed against OP SL pursuant to s 440D of the <i>Corporations Act</i> is to be heard on 17 October 2008.
PhiSci Pty Ltd v Green Frog and OP SL	Federal Court of Australia, Victoria District Registry, No MLG 265 of 2008	The plaintiff seeks declaratory relief against OP SL, as well as injunctions compelling OP SL and Green Frog to return shares to the plaintiff upon payment by the plaintiff to OP SL. Plaintiff also seeks damages and costs.	OP SL and Green Frog's defences are due to be filed and served by 8 October 2008. Discovery is to be completed by 15 October 2008, and the matter is to then proceed to mediation.

<p>Terpu and Valleybrook Investments Pty Ltd v OPSL, ANZ and ANZ Nominees Ltd</p>	<p>Supreme Court of New South Wales, No 2204 of 2008</p>	<p>The plaintiffs seek declaratory relief against the Defendants. The plaintiffs also seek orders rescinding the agreement between the plaintiffs and OPSL, and orders that shares held by the defendants are held on trust for the plaintiffs and are to be returned to the plaintiffs. Plaintiffs also seek equitable compensation and/or damages, interest and costs.</p>	<p>The plaintiffs' application for leave to file and serve a further amended statement of claim was heard on 26 September 2008. The application was opposed by the ANZ parties. The parties are awaiting judgment.</p>
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## DEFENDANT: LEVERAGED CAPITAL

Parties	Court Proceeding	Description of relief sought	Status of matter
<p>Altinova Nominees Pty Limited v Leveraged Capital, Lirim (also known as Laurie) Emini and Green Frog</p>	<p>Federal Court of Australia, New South Wales District Registry, No NSD 654 of 2008</p>	<p>Plaintiff seeks declaratory relief against the Defendants, plus damages, interest and costs.</p>	<p>Plaintiff has foreshadowed that it will seek leave to file a statement of claim. The matter is listed for directions on 23 October 2008.</p>



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# **Annexure B**

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## **Administrators' Remuneration Report**

**CORPORATIONS ACT 2001**

**Section 449E**

**OPES PRIME STOCKBROKING LTD  
(ADMINISTRATORS APPOINTED)  
(RECEIVERS AND MANAGERS APPOINTED) (“THE COMPANY”)  
ACN 086 294 028**

**REMUNERATION REPORT**

The Administrators' Remuneration Report, prepared pursuant to Section 449E of the Corporations Act 2001, takes the following format.

**Part A**

- A1 Schedule of hourly rates and general guide to staff experience
- A2 Tasks undertaken by the Administrators and remuneration calculation for the period 27 March 2008 to 30 September 2008
- A3 Schedule of the Administrators' anticipated tasks and remuneration estimate for the period 1 October 2008 to 15 October 2008
- A4 Where liquidators are appointed, our recommendation regarding approval of liquidators' remuneration from 15 October 2008 to the conclusion of the administration
- A5 Remuneration approved and drawn to date
- A6 Resolutions to be put to creditors at the meeting convened for 15 October 2008

**Part B**

- B1 Administrators' disbursements
- B2 Summary of Receipts and Payments for the period 27 March 2008 to 1 October 2008
- B3 Other creditor information on remuneration

The Remuneration Report must be read in conjunction with the interim report to creditors dated 24 April 2008, subsequent creditor circulars and the report to creditors dated 6 October 2008.

## PART A

### A1 SCHEDULE OF HOURLY RATES & GENERAL GUIDE TO STAFF EXPERIENCE

Title	Rate (\$)	Experience
Partner/Principal/ Appointee	595	The Partner/Appointee is a registered liquidator and member of the ICAA and IPA bringing specialist skills to the administration or insolvency task. For specific experience and other details of the appointee/s, please visit our website at <a href="http://www.ferrierhodgson.com">www.ferrierhodgson.com</a>
Director	495	Generally, minimum of 12 years experience at least 2 years of which is to be at Manager level. University degree; member of the ICAA and IPAA with deep knowledge and lengthy experience in relevant insolvency legislation and issues.
Senior Manager	440	Generally, more than 7 years experience with at least 2 years as a Manager. University degree; member of the ICAA and IPAA; very strong knowledge of relevant insolvency legislation and issues.
Manager	370	Generally, 5-7 years chartered accounting or insolvency management experience. University degree; member of the ICAA and IPAA; sound knowledge of relevant insolvency legislation and issues.
Supervisor	310	Generally, 4-6 years chartered accounting or insolvency management experience. University degree; member of the ICAA; completing IPAA Insolvency Education Program. Good knowledge of relevant insolvency legislation and issues.
Senior 1	280	Generally, 2-4 years chartered accounting or insolvency management experience. University degree; completing the ICAA's CA, program. Good knowledge of basic insolvency legislation and issues.
Senior 2	250	Generally, 2-3 years chartered accounting or insolvency management experience. University degree, ICAA's CA program commenced.
Intermediate 1	220	0 to 2 years experience. Has completed or substantially completed a degree in finance/accounting. Under supervision, takes direction from senior staff in completing administrative tasks.
Intermediate 2	190	0 – 1 year's experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes direction from senior staff in completing more complex administrative tasks.
Professional Staff Junior	150	0 – 1 year's experience. Undertaking a degree part-time in finance/accounting. Under supervision, takes directions from senior staff in completing administrative tasks.
Senior Secretary	165	Appropriate skills including machine usage.
Computer Operator	120	Appropriate skills including machine usage.
Clerk	135	Generally non qualified administrative assistant. Classification depends on experience, salary and complexity of work to be completed.
Typist	85	Appropriate skills including machine usage.
Office Assistant	65	Completed schooling and plans to undertake further studies. Required to assist in administration and day to day field work under the supervision of more senior staff.

#### Notes:

- The hourly rates are exclusive of GST and effective from 1 July 2008. A schedule of hourly rates for the period to 30 June 2008 was provided to creditors in the Administrators' circular dated 31 March 2008. Rates are subject to change from time to time.
- The guide to staff experience is intended only as a general guide to the qualifications and experience of our staff engaged in the administration. Staff may be engaged under a classification that we consider appropriate for their experience.
- Time is recorded and charged in six-minute increments.

**A2. Tasks undertaken by the Administrators and remuneration calculation for the period 27 March 2008 to 30 September 2008**

<b>Assets</b>	Asset realisations	<ul style="list-style-type: none"> <li>▪ Liaising with the receivers and managers regarding the identification of assets, their location, their value and action taken by the receivers and managers in their realisation</li> <li>▪ Internal meetings to discuss and review information received and assess future strategy and action</li> </ul>
	Other assets including potential surplus from Financiers	<ul style="list-style-type: none"> <li>▪ Detailed assessment of what amounts may be payable by the Financiers under AMSLA/IPBA</li> <li>▪ Financier stock position analyses</li> <li>▪ Numerous discussions and meetings with solicitors and internal meetings regarding the potential surplus from Financiers and other assets</li> </ul>
<b>Creditors</b>	Creditor enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintain records of creditor queries</li> <li>▪ Prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Communications, including meetings, with committee of creditors members</li> <li>▪ Prepare and post updates to creditors on website</li> <li>▪ Liaise with solicitors for the SEGC regarding the NGF</li> </ul>
	Secured creditors	<ul style="list-style-type: none"> <li>▪ Review of charges, Co-operation Deed and other documents underpinning the ANZ Transaction and the Merrill Lynch Transaction</li> <li>▪ Review of AMSLAs/IPBAs</li> <li>▪ Numerous meetings and discussions with secured creditors and their advisors</li> <li>▪ Numerous meetings, discussions, correspondence and emails with solicitors</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Initial circular to creditors dated 31 March 2008</li> <li>▪ Interim report to creditors dated 24 April 2008</li> <li>▪ Circulars to creditors dated 30 May, 30 June, 11 July, 1 August and 18 September 2008</li> <li>▪ Prepare report pursuant to section 439A of the Act.</li> <li>▪ Prepare Remuneration Report</li> </ul>
	Dealing with proofs of debt and determining client positions	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Corresponding with OSR and ATO regarding POD's when not related to a dividend</li> <li>▪ Detailed analyses to determine client positions</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Preparation of meeting notices, proxies and advertisements</li> <li>▪ Forward notice of first meeting to all known creditors</li> <li>▪ Arrangements regarding meeting venue</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting.</li> <li>▪ Preparation and lodgement with ASIC of minutes of meeting</li> <li>▪ Respond to stakeholder queries and questions immediately following meeting</li> <li>▪ Preparation for committee of creditors meeting</li> <li>▪ Convene and attend committee of creditors meetings</li> </ul>

<p><b>Employees</b></p>	<p>Employee enquiries</p>	<ul style="list-style-type: none"> <li>▪ Receive and follow up employee enquiries via telephone</li> <li>▪ Meetings with key staff</li> <li>▪ Engaging staff to assist with administration. Calculation &amp; payment of salaries and preparation of PAYG summaries</li> </ul>
<p><b>Investigation</b></p>	<p>Conducting investigation</p>	<ul style="list-style-type: none"> <li>▪ Liaising with the receivers and managers regarding the forensic imaging of data, collection of company books and records and various matters relating to the Company's activities and assets</li> <li>▪ Detailed search, analysis and recording of forensically imaged data; particularly, email communications</li> <li>▪ Numerous communications, including meetings, with ASIC</li> <li>▪ Review of affidavit and other material regarding court proceedings</li> <li>▪ Reviewing Company's books and records and director statements prepared pursuant to section 437B of the Corporations Act</li> <li>▪ Interviews of relevant Company staff and directors</li> <li>▪ Detailed review of Company background, nature and history</li> <li>▪ Conducting and summarising statutory searches</li> <li>▪ Review and analysis of formal audited accounts and Company produced accounts</li> <li>▪ Liaise with Company staff regarding finalisation of March 2008 accounts</li> <li>▪ Review of specific transactions and determination of inter company loan positions</li> <li>▪ Liaising with directors regarding certain transactions</li> <li>▪ Review of Blumberg statutory declaration and that of Mr G Efron</li> <li>▪ Preparation of investigation file</li> <li>▪ Financial analyses</li> <li>▪ Detailed solvency analysis and preparation of a report on solvency</li> <li>▪ Preparation of report to ASIC pursuant to section 438D of the Corporations Act</li> <li>▪ Consider correspondence from the ASX and liaise with the ASX</li> </ul>
	<p>Litigation / Recoveries</p>	<ul style="list-style-type: none"> <li>▪ Internal meetings and meetings with legal advisers in developing strategy for a mediated settlement of claims against ANZ and Merrill Lynch</li> <li>▪ Negotiate formal mediation agreement</li> <li>▪ Administrative arrangements for mediation</li> <li>▪ Numerous meetings with solicitors and counsel</li> <li>▪ Review position papers prepared for mediation purposes by parties to the mediation</li> <li>▪ Prepare detailed solvency report</li> <li>▪ Attend preliminary and substantive mediation meetings</li> <li>▪ Attend to numerous communications etc regarding litigation arising from the collapse of Opes Prime</li> <li>▪ Attend to Administrators' application to the Court for Directions and extensions of the convening period</li> <li>▪ Review and consider impact of various court decisions on the Company's administration</li> </ul>
	<p>ASIC reporting</p>	<ul style="list-style-type: none"> <li>▪ Preparing statutory investigation reports</li> <li>▪ Liaising with ASIC</li> </ul>

<b>Administration</b>	Planning / Review	<ul style="list-style-type: none"> <li>▪ Numerous meetings, discussions and other communications regarding status/strategy and management of the Company's administration</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>▪ Review of general correspondence received</li> <li>▪ Preparation of general correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Administration reviews</li> <li>▪ Filing of documents</li> <li>▪ File reviews</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Identification of potential issues requiring attention of insurance specialists</li> <li>▪ Correspondence with Willis regarding initial and ongoing insurance requirements</li> <li>▪ Reviewing insurance policies</li> <li>▪ Correspondence with previous brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Preparing correspondence and opening account</li> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank</li> </ul>
	ASIC Forms and other lodgements	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms including 505, 911 etc</li> <li>▪ Correspondence with ASIC regarding statutory forms</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Notification of appointment</li> <li>▪ Preparing BAS'</li> </ul>
	Media	<ul style="list-style-type: none"> <li>▪ Preparation and issuing of media releases</li> <li>▪ Dealing with media enquiries</li> </ul>

Ferrier Hodgson hourly rates applicable for the period 27 March 2008 to 30 June 2008 were provided to creditors with our circular dated 31 March 2008. Remuneration for the period 27 March 2008 to 30 September 2008 has been calculated based on the rates applicable for the period 27 March 2008 to 30 June 2008 and for the period 1 July 2008 to 30 September 2008.



Employee	Position	\$ / hour (ex GST)	Total actual hours	Total (\$)	Task Area														
					Assets		Creditors		Employees		Trade On		Investigation		Dividend		Administration		
					Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	
Lindholm, John, R.	Partner	575.00	459.40	264,155	37.10	21,332	37.10	21,332	0.00	0	0.00	0	0.00	197.60	113,620	0.00	0	187.60	107,870
McCluskey, Peter, D.	Partner	575.00	60.60	34,845	0.00	0	5.10	2,932	0.00	0	0.00	0	0.00	0.00	0	0.00	0	55.50	31,912
Meredith, Gregory, P.	Partner	575.00	30.30	17,422	0.00	0	2.50	1,438	0.00	0	0.00	0	0.00	3.50	2,012	0.00	0	24.30	13,972
Brown, Adrian, L.	Partner	575.00	267.60	153,970	0.90	518	60.20	34,615	0.10	58	0.00	0	0.00	143.20	82,340	0.00	0	63.20	36,340
Cave, Michael	Director	475.00	205.50	97,612	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0	0.00	0	205.50	97,612
Birnbaum, David, I.	Manager 1	425.00	307.40	130,645	2.70	1,148	71.40	30,345	0.00	0	0.00	0	0.00	193.20	82,110	0.00	0	40.10	17,042
Caldwell, David	Manager 1	425.00	84.10	35,742	0.00	0	0.00	0	0.00	0	0.00	0	0.00	84.10	35,742	0.00	0	0.00	0
Silvestri, Tonia	Manager 1	425.00	67.10	28,518	0.00	0	27.70	11,772	0.00	0	0.00	0	0.00	30.50	12,982	0.00	0	8.90	3,762
Sutherland, Prue	Manager 1	425.00	256.90	109,182	19.00	8,075	34.60	14,705	8.70	3,698	0.00	0	0.00	169.20	71,910	0.00	0	25.40	10,795
Hansell, Joseph	Supervisor	295.00	0.10	30	0.00	0	0.00	0	0.10	30	0.00	0	0.00	0.00	0	0.00	0	0.00	0
Fairhurst, Kate	Supervisor	295.00	108.70	32,066	0.00	0	18.60	5,487	0.00	0	0.00	0	0.00	81.90	24,160	0.00	0	8.20	2,418
Lichomeis, Ilona	Intermediate 1	210.00	32.20	6,762	0.00	0	4.80	1,008	0.00	0	0.00	0	0.00	0.00	0	0.00	0	27.40	5,754
Miller, Matthew	Intermediate 1	210.00	9.70	2,037	0.00	0	9.70	2,037	0.00	0	0.00	0	0.00	0.00	0	0.00	0	0.00	0
Lim, Stanley	Intermediate 1	210.00	25.60	5,376	0.00	0	4.20	882	0.00	0	0.00	0	0.00	16.70	3,507	0.00	0	4.70	987
Joost, Michelle	Intermediate 2	180.00	8.40	1,512	0.00	0	8.40	1,512	0.00	0	0.00	0	0.00	0.00	0	0.00	0	0.00	0
Speake, Phillip	Intermediate 2	180.00	21.20	3,816	0.00	0	18.70	3,366	0.00	0	0.00	0	0.00	0.00	0	0.00	0	2.50	450
Velo, Megan	Intermediate 2	180.00	51.10	9,198	0.00	0	36.10	6,498	0.00	0	0.00	0	0.00	0.00	0	0.00	0	15.00	2,700
Bryant, Georgia	Intermediate 2	180.00	24.90	4,482	0.00	0	9.30	1,674	0.00	0	0.00	0	0.00	3.60	648	0.00	0	12.00	2,160
Plastra, Nicolas	Intermediate 2	180.00	7.50	1,350	0.00	0	0.00	0	0.00	0	0.00	0	0.00	7.50	1,350	0.00	0	0.00	0

Employee	Position	\$ / hour (ex GST)	Total actual hours	Task Area															
				Assets		Creditors		Employees		Trade On		Investigation		Dividend		Administration			
			Total (\$)	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$		
Rando, Christopher	Intermediate 2	180.00	11.10	0.00	0	8.30	1,484	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	2.80	504
Hitch, Christopher	Intermediate 2	180.00	242.40	0.20	36	142.80	25,704	0.40	72	0.00	0	80.80	14,508	0.00	0	18.40	3,312		
Stavropoulos, Nancy	Senior Secretary	180.00	21.80	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	21.80	3,488		
Pope, Danielle	Senior Secretary	180.00	7.50	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	7.50	1,200		
Tzotzis, Kathie	Senior Secretary	180.00	4.50	0.00	0	0.50	80	0.00	0	0.00	0	0.00	0	0.00	0	4.00	640		
Vella, Lisa, M.	CP Operator	115.00	1.40	0.00	0	0.70	80	0.00	0	0.00	0	0.00	0	0.00	0	0.70	80		
Mikhael, John	CP Operator	115.00	0.40	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.40	46		
Gilbert, Michael	CP Operator	115.00	2.20	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	2.20	253		
Livingston, Nicole	Office Assistant	60.00	0.40	0.40	24	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0		
Glucina, Christina	Office Assistant	60.00	14.60	0.00	0	14.60	876	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0		
<b>Total Hours</b>			2,354.60	60.30	60.30	515.30	9,300	9.30	1,011.60	1011.60	0.00	738.10	0.00	0.00	0.00	738.10	0.00		
<b>TOTAL (\$)</b>			991,019.50	31,132.50	167,838.50	3,856.50	444,871.00	3,856.50	444,871.00	444,871.00	0.00	343,321.00	0.00	0.00	0.00	343,321.00	0.00		
<b>GST (\$)</b>			99,101.95																
<b>TOTAL (including GST)</b>			1,090,121.45																
<b>Average hourly rate (ex GST)</b>			424.49	516.29	325.71	414.68	499.77	414.68	499.77	499.77	0.00	465.14	0.00	0.00	0.00	465.14	0.00		

Remuneration Report  
 Opes Prime Stockbroking Ltd  
 Client Code: 4079 Matter Code: 45003  
 Date: 1/07/2008 to 30/09/2008

Employee	Position	\$ / hour (ex GST)	Total actual hours	Task Area														
				Total (\$)	Assets Hrs	Assets \$	Creditors Hrs	Creditors \$	Employees Hrs	Employees \$	Trade On Hrs	Trade On \$	Investigation Hrs	Investigation \$	Dividend Hrs	Dividend \$	Administration Hrs	Administration \$
Lindholm, John, R.	Partner	585.00	339.90	202,240	0.00	0	11.60	6,902	0.00	0	0.00	0	325.80	193,851	0.00	0	2.50	1,468
McCluskey, Peter, D.	Partner	585.00	34.60	20,557	0.00	0	0.00	0	0.00	0	0.00	0	18.50	11,008	0.00	0	16.10	9,560
Meredith, Gregory, P.	Partner	585.00	49.50	29,452	0.00	0	0.00	0	0.00	0	0.00	0	31.70	18,862	0.00	0	17.80	10,591
Brown, Adrian, L.	Partner	585.00	157.80	93,891	0.00	0	14.50	8,628	0.00	0	0.00	0	134.00	78,730	0.00	0	9.30	5,534
Caldwell, David	Director	485.00	6.70	3,316	0.00	0	0.00	0	0.00	0	0.00	0	6.70	3,316	0.00	0	0.00	0
Cave, Michael	Director	485.00	4.50	2,228	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	4.50	2,228
Birnbaum, David, I.	Manager 1	440.00	225.10	99,044	0.00	0	12.80	5,632	0.00	0	0.00	0	204.10	89,804	0.00	0	8.20	3,608
Silvestri, Tonia	Manager 1	440.00	77.40	34,056	0.70	308	3.80	1,672	0.00	0	0.00	0	68.00	29,920	0.00	0	4.90	2,156
Sutherland, Prue	Manager 1	440.00	74.60	32,824	1.80	792	8.90	3,916	3.20	1,408	0.00	0	53.60	23,584	0.00	0	7.10	3,124
Mullins, Wynand	Supervisor	310.00	0.90	279	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.90	279
Fairhurst, Kate	Supervisor	310.00	110.80	34,379	0.00	0	2.30	713	0.00	0	0.00	0	102.60	31,806	0.00	0	6.00	1,860
Le, Lieu	Supervisor	310.00	2.60	806	0.00	0	0.00	0	0.00	0	0.00	0	2.60	806	0.00	0	0.00	0
Yang, David	Senior 1	280.00	8.20	2,296	0.00	0	3.80	1,064	0.00	0	0.00	0	4.40	1,232	0.00	0	0.00	0
Dent, Richard	Senior 2	250.00	1.40	350	1.40	350	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00	0
Piastra, Nicolas	Intermediate 1	220.00	4.30	946	0.00	0	0.00	0	0.00	0	0.00	0	4.10	902	0.00	0	0.20	44
Rando, Christopher	Intermediate 1	220.00	7.90	1,738	0.00	0	0.00	0	0.00	0	0.00	0	7.90	1,738	0.00	0	0.00	0
Hitch, Christopher	Intermediate 1	220.00	76.30	16,786	0.00	0	60.70	13,354	1.90	418	0.00	0	10.50	2,310	0.00	0	3.20	704
Speake, Phillip	Intermediate 2	190.00	2.00	380	0.00	0	0.60	114	0.00	0	0.00	0	0.00	0	0.00	0	1.40	266
Velo, Megan	Intermediate 2	190.00	16.40	3,116	0.00	0	7.40	1,406	0.00	0	0.00	0	4.30	817	0.00	0	4.70	893

Employee	Position	\$ / hour (ex GST)	Total actual hours	Task Area													
				Assets		Creditors		Employees		Trade On		Investigation		Dividend		Administration	
			Total (\$)	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Bryant, Georgia	Intermediate 2	190.00	15.00	0.00	0.00	0.00	0.00	0.00	0.00	14.00	2,660.00	0.00	0.00	0.00	0.00	1.00	190.00
Stavropoulos, Nancy	Senior Secretary	165.00	6.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6.20	1,023.00	
Pope, Danielle	Senior Secretary	165.00	3.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3.20	528.00	
Tzoizis, Kathie	Senior Secretary	165.00	8.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8.60	1,419.00	
Pelc, Marysia	Senior Secretary	165.00	1.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.00	165.00	
Vella, Lisa, M.	CP Operator	120.00	0.40	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	48.00	
Mikhael, John	CP Operator	120.00	0.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.10	12.00	
Gilbert, Michael	CP Operator	120.00	0.30	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.30	36.00	
Temp Secretary	Typist	85.00	14.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14.10	1,198.00		
<b>Total Hours</b>			1,249.90	3.90	126.40	5.10	0.00	0.00	992.80	0.00	0.00	0.00	0.00	0.00	121.70		
<b>TOTAL (\$)</b>			585,994.50	1,450.00	43,400.50	1,826.00	0.00	0.00	492,345.50	0.00	0.00	0.00	0.00	0.00	46,972.50		
<b>GST (\$)</b>			58,599.45														
<b>TOTAL (Including GST)</b>			644,593.95														
<b>Average hourly rate (ex GST)</b>			468.83	371.79	343.36	358.04	0.00	0.00	495.92	0.00	0.00	0.00	0.00	0.00	385.97		



### A3 Schedule of anticipated tasks and Administrators' estimated prospective remuneration for the period 1 October 2008 to 15 October 2008

Based on the following anticipated tasks, we estimate the Administrators' fees for the above period, including the holding of the second meeting of creditors, at between \$100,000 and \$125,000.

<b>Assets</b>	Asset Realisations	<ul style="list-style-type: none"> <li>▪ Liaise with receivers and managers on progress of asset realisations</li> <li>▪ Internal meeting to discuss and review information received and assess future strategy and action</li> </ul>
	Surplus from Financiers	<ul style="list-style-type: none"> <li>▪ Re-assessment of amounts potentially payable by the Financiers</li> <li>▪ Meeting with solicitors and external meetings regarding the surplus from financiers</li> <li>▪ Financier stock position analysis</li> </ul>
<b>Creditors</b>	Creditor Enquiries	<ul style="list-style-type: none"> <li>▪ Receive and follow up creditor enquiries via telephone and email</li> <li>▪ Maintain record of creditor enquiries</li> <li>▪ Review and prepare correspondence to creditors and their representatives via facsimile, email and post</li> <li>▪ Communications with committee of creditors members</li> <li>▪ Liaise with solicitors for the SEGC</li> </ul>
	Secured creditors	<ul style="list-style-type: none"> <li>▪ Meetings and discussions with secured creditors and their advisors</li> </ul>
	Creditor reports/circulars	<ul style="list-style-type: none"> <li>▪ Finalise and distribute report to creditors pursuant to section 439A of the Corporations Act</li> </ul>
	Dealing with proofs of debt	<ul style="list-style-type: none"> <li>▪ Receipting and filing POD's when not related to a dividend</li> <li>▪ Client position analysis as at a pre-determined date to determine amounts for which investor creditors will be entitled to vote at the second meeting</li> <li>▪ Advising investor creditors of amounts for which they will be entitled to vote at the second meeting of creditors</li> </ul>
	Meeting of Creditors	<ul style="list-style-type: none"> <li>▪ Finalise preparation of meeting notice, proxy and advertisements</li> <li>▪ Forward notice of meeting to all known creditors</li> <li>▪ Post details on website. Update website</li> <li>▪ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting</li> <li>▪ Respond to stakeholder queries and questions regarding meeting</li> <li>▪ Liaise with committee of creditors</li> <li>▪ Administrative arrangements regarding the meeting venue</li> <li>▪ Attendance of Administrators and staff at second meeting of creditors</li> </ul>
<b>Investigation</b>	Conducting investigation	<ul style="list-style-type: none"> <li>▪ Matters arising out of mediation requiring further enquiry</li> <li>▪ Maintenance of investigation file</li> <li>▪ Finalise and lodge report with the ASIC pursuant to section 438D of the Corporations Act</li> </ul>
	Litigation / Recoveries	<ul style="list-style-type: none"> <li>▪ On-going matters arising from mediation</li> <li>▪ Liaising with solicitors regarding on-going litigation</li> </ul>
	ASIC reporting	<ul style="list-style-type: none"> <li>▪ Liaising with ASIC regarding statutory report</li> </ul>



<b>Administration</b>	Planning / Review	<ul style="list-style-type: none"> <li>▪ Numerous internal meetings regarding strategy, management and job planning</li> <li>▪ Numerous meetings, discussions and other communications with solicitors</li> </ul>
	Correspondence	<ul style="list-style-type: none"> <li>▪ Review of general correspondence received</li> <li>▪ Preparation of general correspondence</li> </ul>
	Document maintenance/file review/checklist	<ul style="list-style-type: none"> <li>▪ Administration reviews</li> <li>▪ Filing of documents</li> <li>▪ Updating checklists</li> </ul>
	Insurance	<ul style="list-style-type: none"> <li>▪ Correspondence with insurance brokers</li> </ul>
	Bank account administration	<ul style="list-style-type: none"> <li>▪ Requesting bank statements</li> <li>▪ Bank account reconciliations</li> <li>▪ Correspondence with bank</li> </ul>
	ASIC Forms and other lodgements	<ul style="list-style-type: none"> <li>▪ Preparing and lodging ASIC forms</li> <li>▪ Correspondence with ASIC</li> </ul>
	ATO & other statutory reporting	<ul style="list-style-type: none"> <li>▪ Preparing BAS'</li> </ul>
	Media	<ul style="list-style-type: none"> <li>▪ Dealing with media enquiries</li> <li>▪ Preparation and issuing of media releases</li> </ul>



#### **A4 Liquidators' prospective remuneration from 15 October 2008**

The liquidators' prospective remuneration is, at this stage, very difficult to estimate. Liquidators' remuneration will depend upon many unknowns including the outcome of the current mediation. Final costs of liquidation depend heavily upon matters including:

- The outcome of the current mediation process.
- The potential for significant litigation against ANZ, Merrill Lynch and others.
- The final results of liquidators' investigations and any resulting recovery action.
- Assessment and adjudication of creditor claims.

We recommend that:

- Creditors elect a Committee of Inspection at the second meeting of creditors convened for Wednesday, 15 October 2008;
- A Committee of Inspection consider periodic remuneration reports prepared by the liquidators for the period post 15 October 2008.

We envisage convening a meeting of the Committee of Inspection, if formed, after the outcome of the current mediation is known.

#### **A5 Remuneration approved and drawn to date**

Creditors have not yet approved administrators/liquidators' remuneration. Accordingly, no remuneration has been drawn.

#### **A6 Resolutions to be put to creditors at the meeting convened for 15 October 2008**

At the meeting of creditors convened for 15 October 2008, creditors will be asked to consider the following resolution:

*"That the remuneration of the Administrators, as set out in the Administrators' remuneration report dated 6 October 2008 for the period 27 March 2008 to 30 September 2008 be fixed and paid in the sum of \$1,577,014 plus any applicable GST and, for the period from 1 October 2008, to the end of the administration period be fixed and paid to a maximum amount of \$125,000, plus any applicable GST"*

The resolution assumes there is no adjournment of the second meeting of creditors or a resolution for a DOCA. If there is such an adjournment, it is likely that the 'cap' will change. In that event, we would seek further fee approval.

### **PART B**

#### **B1 Administrators' Disbursements**

Disbursements are divided into three types; **D1**, **D2** and **D3**.

- D1 Disbursements are all externally provided professional services and are recovered at cost. An example of a D1 disbursement is legal fees.
- D2 Disbursements are externally provided non professional costs such as travel, accommodation and search fees. D2 disbursements are recovered at cost.
- D3 Disbursements are internally provided non professional costs such as photocopying and document storage. D3 disbursements are charged at cost except for photocopying & printing



which are charged at a rate which is intended to recoup both variable and fixed costs. The relevant rates are set out below.

Disbursements	Charges (Excluding GST)
Postage	At cost
Telephone	At cost
Photocopying	50 cents per copy
Facsimile	At cost
File Set Up	At cost
Advertising	At cost
Storage – Per Box	At cost
Storage – Per File	At cost
Couriers	At cost

Disbursements incurred and paid to date are shown in the attached Summary of Receipts and Payments.

Creditor approval for the payment of disbursements is not required. However, the Administrators must account to creditors. Creditors have the right to question the incurring of disbursements and can challenge disbursements in court.

Legal costs incurred to 30 September 2008 are approximately \$1,647,000. Disbursements incurred on account of counsels' fees on behalf of the Company and Leveraged Capital, for which Ferrier Hodgson has accepted liability, total approximately \$250,000 plus GST. We expect Ferrier Hodgson to pay that amount shortly.

## **B2 Summary of Receipts and Payments for the period 27 March 2008 to 1 October 2008**

Attached is a summary of Receipts and Payments for the period 27 March 2008 to 1 October 2008.

## **B3 Other creditor information on remuneration**

The partners of Ferrier Hodgson Victoria are members of the Insolvency Practitioners Association of Australia and follow the IPA Code of Professional Practice. A copy of the Code of Professional Practice may be found on the IPA website at [www.ipaa.com.au](http://www.ipaa.com.au)

An information sheet concerning approval of remuneration in external administrations can also be obtained from the IPA website.

Queries regarding remuneration should be directed, in the first instance, to Ms Megan Velo of this office on (03) 9604 5161.

Dated this 6<sup>th</sup> day of October 2008

  
 JOHN LINDHOLM  
 ADMINISTRATOR