

DR. IUR. H. C. GERHARD STRATE
KLAUS-ULRICH VENTZKE

RECHTSANWÄLTE

An die
Staatsanwaltschaft Hamburg
z. Hdn. Herrn Staatsanwalt **Gies**
Gorch-Fock-Wall 15
20355 H a m b u r g

Hamburg, am 3.2.2010/gs

Betr.: Ermittlungsverfahren gegen Verantwortliche der HSH Nordbank AG

Ihr Aktenzeichen: 5550 Js 4/09

Sehr geehrter Herr Staatsanwalt Gies,

mir ist zu Beginn der letzten Woche noch ein Stapel an Unterlagen übergeben worden, die ein Kreuzgeschäft zwischen der HSH Nordbank AG (HSH) und der in München ansässigen Hypo Real Estate Group (HRE) am Jahresende 2007 betreffen. Die Beteiligten versahen dieses Projekt damals mit dem Code-Namen „St Pancras“, wobei nicht klar ist, was als Vorbild dieser Namensgebung diente: die früher etwas schmutzige Bahnstation gleichen Namens in London oder der heilige St. Pankratius, bei den Engländern bekannt als „*the champion of oaths and treaties*“.

An der Umsetzung des Projekts, welches um den 20.12.2007 durch die Unterschriften jeweils sämtlicher Vorstandsmitglieder beider Banken „ratifiziert“ worden war, hatten sich im Monat Dezember zeitweise mehr als 50 Personen beteiligt. Neben den Mitarbeitern der Banken waren das sechs Anwälte der Anwaltsfirma Clifford Chance; diese waren – da das Geschäft im wechselseitigen Einvernehmen ohnehin nicht von langer Dauer sein sollte – aus praktischen Erwägungen gleich von allen Parteien parallel mandatiert worden; des weiteren Banker der Bank of New York, die in ihrer Frankfurter Dependence die Konten für die erforderlichen Zahlungsflüsse einrichteten und ansonsten – so ihre Selbstbeschreibung – als „*trustee, agent, custodian, account bank, etc*“ für die von der HSH und der HRE installierten drei Zweckgesellschaften dienten; schließlich zwei Anwälte der in Dublin beheimateten Kanzlei McCann Fitzgerald, welche unmittelbar vor Ort die Zweckgesellschaften einrichteten und mit sich selbst die erforderlichen Vorstandssitzungen für die frisch gegründeten Gesellschaften abhielten. Letztlich kam noch hinzu ein in New York City ansässiger Hedge Fonds namens Dynamic Credit Partners LLC, dem für das kurzzeitige Halten einer Scheinbeteiligung an einer der Zweckgesellschaften ein Profit von 30% auf die kurzzeitig (vier Monate) eingelegte Summe von sechs Millionen US-Dollar versprochen worden war.

Worum ging es?

Die HSH und die HRE hatten ein gemeinsames Problem: die Relation zwischen dem Eigenkapital und den risikogewichteten Aktiva (den sog. Risk Weighted Assets) stimmte nicht mehr. Um dies bei der Erstellung des Jahresabschlusses 2007 nicht deutlich werden zu lassen und ein aufsichtsbehördliches Eingreifen des Bundesamtes für Finanzdienstleistungen (BaFin) zu vermeiden, sannten beide auf Abhilfe. Diese wurde gefunden in Aktionen, welche für jede Bank unter dem Motto standen: „*optimisation of its Risk Weighted Assets*“.

Wie wurde dies erreicht?

Sowohl HSH als auch HRE lagerten jeweils parallel ein gleich strukturiertes Portfolio von Immobilienkrediten mit einem Gesamtvolumen in Höhe von 3,8 Milliarden US-Dollar¹ aus in eine (in ihrer Bilanz jeweils nicht konsolidierte) Zweckgesellschaft. Die beiden Portfolien

¹ Weshalb sämtliche Geschäftsvorgänge in dieser Sache in US-Dollar (und nicht in Euro) beziffert wurden, erschließt sich aus den mir vorliegenden Papieren nicht unmittelbar; möglicherweise geschah dies mit Rücksicht auf die beiden in NYC ansässigen Parteien.

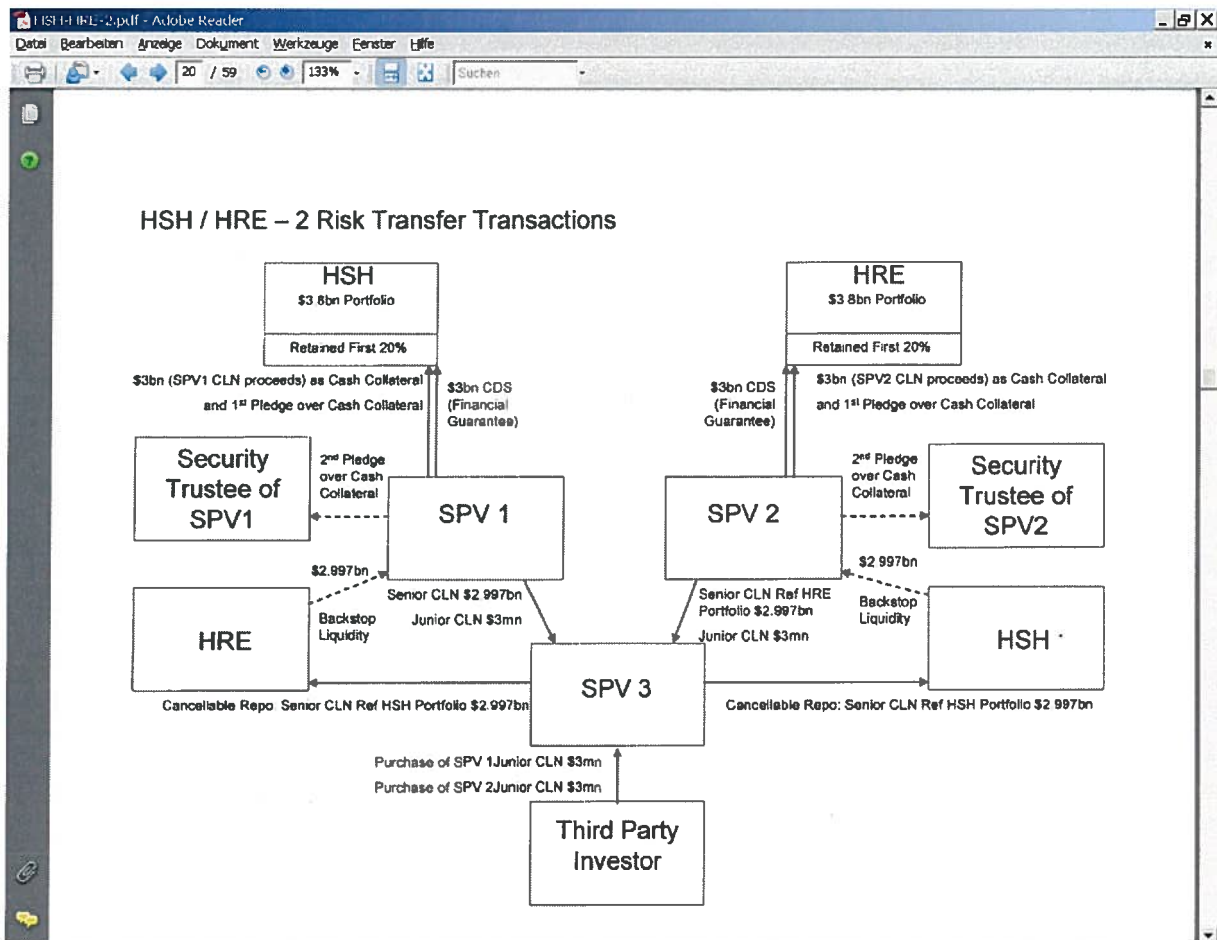
wurden gebündelt in Credit Link Notes (CLN) mit einem Nominalvolumen von 3 Milliarden US-Dollar. Im Gegenzug erhielten die beiden Banken für die CLN jeweils 3 Milliarden US-Dollar in „Cash“. Beide Zweckgesellschaften – in den Kreditvorlagen an die Vorstände als „SPV1“ und „SPV2“ bezeichnet – hatten natürlich kein Geld, um freihändig 3 Milliarden US-Dollar in „Cash“ zu bezahlen. Woher bekamen sie das Geld? Von den Banken, denen sie das Geld zu zahlen hatten. Ein reines Kreislaufgeschäft.

Um das Kreislaufgeschäft allerdings nicht sofort offenbar werden zu lassen und kritischen Nachfragen der Abschlussprüfer sowie der Bankenaufsicht vorzubeugen, wurde hinter die auf gleicher Ebene agierenden SPV1 und SPV2 noch eine weitere Zweckgesellschaft geschaltet, in der Kreditvorlage „SPV3“ genannt. Diese SPV3 kaufte von der SPV1 und der SPV2 die von denen zuvor erworbenen CLN's (der HSH und der HRE) in einem Gesamtvolumen von nunmehr 6 Milliarden US-Dollar. Die SPV3 hatte natürlich ebenso wenig Geld wie die SPV1 und die SPV2. Dieses Geld bekam die SPV3 als Kredit jeweils von der HSH und der HRE in Form einer „Repo Facility“, wobei jede der beiden Banken, vermittelt über die SPV3, kreuzweise jeweils die SPV der anderen Bank damit freihalten wollte (zusätzlich geschah dies, was hier aber nicht weiter erläutert werden soll, mit einer „Backstop Facility“ gegenüber der jeweils anderen SPV). Die HSH zahlte also letztlich auf die Verbindlichkeiten der SPV3 gegenüber der SPV der HRE, die HRE auf die Verbindlichkeiten der SPV3 gegenüber der SPV der HSH.

Der Zufluss der „Repo Facility“ in Höhe von jeweils 3 Milliarden US-Dollar erlaubte es der SPV3, die an sie weitergereichten HRE- und HSH CLN's zu bezahlen. Die SPV1 und die SPV2 konnten daraufhin ihre (faktisch natürlich fiktiven) Schulden bei der HRE und der HSH begleichen. Jeweils 3 Milliarden US-Dollar gelangten wieder dorthin zurück, wo sie hergekommen waren: bei der HSH und bei der HRE.

Um die SPV3 als formell unabhängig von ihren beiden Sponsoren erscheinen zu lassen, verfielen die Initiatoren auf die Idee, noch einen „*Third Party Investor*“ an der SPV3 zu beteiligen. Zu diesem Zweck wurden, wie bei strukturierten Papieren üblich, die bei der SPV3 angelegten CLN's in zwei Tranchen aufgeteilt: eine „Senior Tranche“ von jeweils 2,997 Milliarden US-Dollar und eine „Equity Tranche“ (in den Papieren auch als „First Loss Tranche“ bezeichnet) in Höhe von 3 Millionen US-Dollar. Die beiden Equity-Tranchen erwarb alsdann der Hedge Fonds Dynamic Credit Partners LLC für einen Gesamtpreis von 6 Millionen US-Dollar. Die bekam er dann bei der Rückabwicklung des gesamten Projekts Mitte April 2008 wieder zurückerstattet zuzüglich eines „Returns“ von 30% Zinsen auf die Laufzeit der Einlage.

Ein Schaubild aus den mir vorliegenden Papieren mag über die Struktur des ganzen einen ersten Überblick geben:



In den zwischen den Parteien geschlossenen Verträgen waren – jedenfalls dem Wortlaut nach – die begebenen CLN's den Laufzeiten des zugrunde liegenden Immobilienkreditportfolios angepasst. Dies geschah, um den formellen Anforderungen der Bankenaufsichtsbehörde an einen wirksamen Risikotransfer zu genügen und die gewünschte Entlastung der Eigenkapitalanforderung (in einer erstrebten Höhe von 235,3 Millionen US-Dollar) zu erreichen.

In dem immer noch gültigen Rundschreiben 10/1999 des Bundesaufsichtsamtes für das Kreditwesen heißt es zur bilanzrechtlichen Wirksamkeit eines Risikotransfers mit Hilfe von Kreditderivaten²:

1.3 Laufzeitkriterium im Anlagebuch

Für eine bankaufsichtliche Anerkennung ist das zu besichernde Risikoaktivum grundsätzlich für seine gesamte Restlaufzeit durch ein Kreditderivat abzusichern.

Ist die Restlaufzeit des Kreditderivats kürzer als die des zu besichernden Risikoaktivums - Laufzeitunterdeckung - verbleibt beim Sicherungsnehmer das Kreditrisiko für den künftig ungesicherten Zeitraum. Nach den üblichen Anforderungen, die an Garantien oder Besicherungen gestellt werden, könnte in diesen Fällen die Absicherung durch ein Kreditderivat nicht zu einer Minderung der Eigenkapitalanforderungen führen. Der besondere, in der Einleitung umrissene Charakter von Kreditderivaten läßt allerdings eine in engen Grenzen abweichende Behandlung zu. Danach wird bei Laufzeitunterdeckung für den Zeitraum der Absicherung des Risikoaktivums eine Besicherungswirkung anerkannt, solange die Restlaufzeit des Kreditderivats mindestens ein Jahr beträgt.

(...)

Ist bei Laufzeitinkongruenz die Restlaufzeit des Kreditderivats allerdings kürzer als ein Jahr, ist eine anrechnungsmindernde Besicherungswirkung auszuschließen.

² Im Internet unter:

http://www.bafin.de/cln_152/nn_722754/SharedDocs/Veroeffentlichungen/DE/Service/Rundschreiben/ba__bis__042002/rs__9910__ba.html

Entscheidend ist hierbei der letzte Satz:

Ist bei Laufzeitinkongruenz die Restlaufzeit des Kreditderivats allerdings kürzer als ein Jahr, ist eine anrechnungsmindernde Besicherungswirkung auszuschließen.

Dies bedeutet, dass eine auf den Bilanzstichtag bezogene Auslagerung von Teilen des Kreditportfolios in Zweckgesellschaften jedenfalls dann keine bankaufsichtliche Anerkennung findet, wenn sie von vornherein darauf angelegt ist, binnen weniger Monate innerhalb des folgenden Jahres wieder zurückabgewickelt zu werden.

Genau dies geschah im vorliegenden Falle:

Bereits am 30.1.2008 teilte die für die HRE tätige Fiona Gegan dem bei der HSH tätigen Christopher Tessler in einer Email mit:

„Finally, as discussed on the phone please take this as formal notification that we would like to call (...) our bilateral transaction on 21 Dezember 2007 (St Pancras). As discussed, Chris – you will take responsibility for informing all relevant HSH personell. If you could confirm for me via email that HSH are also happy to call the transaction on 15 April 2008, then we can begin procedures to ensure this happens as smoothly as possible.“

(Schließlich, wie wir schon am Telefon besprochen haben, nimm dies als formelle Benachrichtigung, dass wir unsere zweiseitige Transaktion vom 21. Dezember 2007 kündigen wollen. Wie besprochen, Chris, Du übernimmst es, alle relevanten Mitarbeiter bei der HSH zu informieren. Wenn Du mir bestätigen könntest, dass die HSH ebenfalls glücklich wäre, die Transaktion zum 15. April 2008 zu kündigen, können wir das Verfahren einleiten, um sicherzustellen, dass alles so reibungslos [sanft] wie möglich abläuft.)

Anlage 1.

So geschah es dann auch. Der 15.4.2008 war der naheliegende Termin, weil dann die Abschlussprüfer aus dem Haus waren. Denen – wie wahrscheinlich auch der BaFin – ist demgegenüber die Transaktion als eine auf lange Sicht angelegte präsentiert worden, um eben jenen Effekt zu erreichen, der in der Credit Application (die von den Vorstandsmitgliedern der HSH um den 20.12.2007 abgesegnet worden war) für das ausgelagerte Kreditportfolio mit einem Nominalwert von 3 Milliarden US-Dollar wie folgt beschrieben wird: „*achieving a 0% RWA*“ (das Erreichen einer Risikogewichtung von null Prozent).

Die Credit Application vom 11.12.2007 (mitsamt einer leicht überarbeiteten Fassung vom 14.12.2007) sowie die Stellungnahme des Risk Management der HSH vom 14.12.2007, wie sie schließlich wenige Tage später von den Mitgliedern des Vorstandes beschlossen wurden, überreiche ich als

A n l a g e 2.

Dass den Mitgliedern des Vorstandes der HSH die Absicht der Bilanzfälschung sowie – damit zusammenhängend – die Täuschung der Aufsichtsbehörde BaFin nicht entgangen ist, sondern von ihnen mit vollem Vorsatz verfolgt wurde, ergibt sich schon daraus, dass im Monat Dezember 2007 gleich mehrere, jeweils mit Dutzenden von Mitarbeitern besetzte Teams an gleich liegenden Transaktionen gearbeitet hatten. Hierzu gehört auch das Ihnen bereits bekannte Projekt Omega 55. Hierzu passt auch, dass noch Ende März 2008 unter Anwesenheit des jeweiligen Vorstandsvorsitzenden ein „Closing Dinner“ stattgefunden haben muss. Dies ist jedenfalls zu vermuten, denn in der bereits zitierten Email von Fiona Gregan an Christopher Tessler heißt es:

„Secondly, I do appreciate that you will confirm by c.o.b. today what HSH want us to do with respect to the organisation of the closing dinner. We can happily attempt to find a mutually convenient date at the end of March so that your CEO can attend – we just need to know if this is what you want to do and await aour instruktion.“

(Zweitens, ich würde es begrüßen, wenn Du mir noch heute durch c.o.b. [?] bestätigen könntest, was HSH von uns hinsichtlich des Abschlusssessens erwartet. wir können glücklicherweise versuchen einen wechselseitig passenden Termin Ende März zu finden, so dass Euer CEO teilnehmen kann – wir müssen nur wissen, ob es das ist, was Ihr von uns wünscht, und erwarten Deine Instruktion.)

Ein ähnliches Essen hatte bereits anlässlich des ebenfalls in gleicher Frist rückabgewickelten Omega-55-Deals am 11.2.2008 in Hamburg unter Anwesenheit des (damaligen) HSH-Vorstandsmitglieds Peter Rieck stattgefunden (vgl. das Ihnen bereits vorliegende Paul-Duffy-Papier). Es fragt sich nur, was es im Hinblick auf Geschäfte, die ohnehin innerhalb kurzer Frist wieder aus der Welt geschafft wurden, überhaupt zu feiern gab? Die gelungene Täuschung der Abschlussprüfer und des BaFin?

Bemerkenswert ist auch eine Email des HSH-Mitarbeiter Christopher Tessler an den HRE-Mitarbeiter Thomas Glynn vom 18.12.2007, in welchem über mündliche Vereinbarungen mit „Jim“ (gemeint: James Finkel von dem Hedge Fonds Dynamic Credit Partners LLC) berichtet wird:

*„I am pleased to forward the first loss underwriting commitment from dynamic. When we met jim a couple of weeks ago we agreed to pay legal costs in the event that the transaction was subject to a regulatory investigation and to provide him with any legal opinion or comments that the deal is in order.
...“*

(Ich freue mich, die Zeichnungsverpflichtung Dynamic für das “first loss” (gemeint ist die von Dynamic Credit von der SPV3 zu erwerbende Equity-Tranche) vorlegen zu können. Als wir Jim vor einigen Wochen getroffen hatten, waren wir darin überein, dass wir alle Rechtsverfolgungskosten zahlen, falls die Transaktion zum Gegenstand von Ermittlungen durch die Aufsichtsbehörde wird; wir wollten ihn auch versorgen mit jeglichen rechtlichen Gutachten und Kommentaren, dass der Deal in Ordnung ist.)

A n l a g e 3.

Dies bedarf keiner weiteren Kommentierung.

Ich stelle **Strafanzeige** gegen die für dieses Geschäft im Dezember 2007 verantwortlichen Mitglieder des Vorstandes der HSH Nordbank AG. Es besteht der Verdacht eines gravierenden Falles der Bilanzfälschung im Sinne des § 331 Nr. 1 und Nr. 2 HGB. Darüber hinaus dürften auch die Abschlussprüfer der HSH getäuscht worden sein, strafbar gemäß § 331 Nr. 4 HGB.

Daneben kommt auch in Betracht eine Beihilfe zur Bilanzfälschung bei der HRE. Die Mitglieder des Vorstandes der HSH wussten darum, dass das „Cross-Deal“ mit der HRE dazu diente, auch diesem Institut eine verfälschte Darstellung der Eigenkapitalquote zu ermöglichen. Diese Beihilfe wiegt deshalb besonders schwer, weil es sich bei der HRE um ein börsennotiertes Unternehmen handelt, in welches zum Zeitpunkt der Veröffentlichung der HRE-Bilanz (April 2008) noch viele Kleinaktionäre ihre Hoffnung setzten. Denen wurde im Jahresabschluss vorgespiegelt, das Jahresergebnis lasse unproblematisch die Ausschüttung von 101 Mio. Euro (entsprechend 0,50 Euro je Aktie) zu³. Damit wurde ein Großteil der Aktionäre in Sicherheit gewogen und davon abgehalten, Aktien zu verkaufen. Später bekamen sie dafür nahezu nichts. Diese Fehlvorstellungen über die tatsächliche Lage der Bank waren nur möglich geworden durch die manipulative Reduzierung der risikogewichteten Aktiva. Bei dieser Bilanzfälschung durch die Mitglieder des Vorstandes der HRE haben die Mitglieder des Vorstandes der HSH tatkräftig mitgeholfen.

Ich werde im Laufe der kommenden Woche im Rahmen eines ergänzenden Schriftsatzes die Strukturierung des Geschäfts, wie es in der Credit Application sowie der Stellungnahme des Risk Management dargestellt ist, noch im einzelnen näher kommentieren. Die Dokumente lesen sich kompliziert, sind es aber letztlich nicht. Im Übrigen liegt mir ein Konvolut Email-Korrespondenz vor, welches ich gerne vollständig der Staatsanwaltschaft zur Verfügung stelle.

³ Im Internet unter:

<http://www.hyporealestate.com/6375.php#> (dort S. 15 – „Aktionärsbrief des Vorstands“)

Wegen des engen Sachzusammenhangs mit dem bei der Staatsanwaltschaft München I geführten Ermittlungsverfahren gegen Verantwortliche der HRE habe ich eine Ablichtung dieses Schreibens der dortigen Staatsanwaltschaft zur Verfügung gestellt.

Mit freundlichen Grüßen!

A handwritten signature in blue ink, appearing to read 'Strate', with a large, stylized initial 'S'.

(Gerhard Strate)
Rechtsanwalt



----- Original Message -----

From: Fiona Gregan [Fiona.Gregan@hpfb.com]

Sent: 30/01/2008 15:13 GMT

To: Christopher Tessler

Cc: Fiona Gregan <fiona.gregan@hpfb.com>; Beate Schnabl

Subject: St Pancras transaction call notification

Dear Chris,

Further to our phone conversation a few moments ago please find attached copy of an article that we would like you to investigate internally as to the source of this information as it would obviously in breach of our confidentiality agreement. We are less than pleased to have such information in a public domain.

Secondly, I do appreciate that you will confirm by c.o.b. today what HSH want us to do with respect to the organisation of the closing dinner, We can happily attempt to find a mutually convenient date at the end of March so that your CEO can attend - we just need to know if this is what you want to do and await your instruction.

Finally, as discussed on the phone please take this as formal notification that we would like to call (regulatory call in the documentation) our bilateral transaction closed on 21 December 2007 (St Pancras). As discussed, Chris - you will take responsibility for informing all relevant HSH personnel. If you could confirm for me via email that HSH are also happy to call the transaction on 15 April 2008, then we can begin procedures to ensure this happens as smoothly as possible.

Many thanks, Chris, for your assistance in all these matters.

Kind regards

Fiona Gregan
European Head of Securitisation

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Credit application

SHS NORDBANK

11/12/2007	BU: FMD and Real Estate OE: Structured Credit Analysis, London Branch	New	Competence Level 1
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1. Borrower Data

Borrower, Bearer of economic Risk (TWR)	
1) A new SPV to be established, with such a name to be agreed between the parties ("NewCoSPV2")	
2) A new SPV to be established, with such a name to be agreed between the parties ("NewCoSPV3")	
Borrower Unit, TWR-Group, (if necessary: Internal Risk Unit)	
NewCoSPV2	
NewCoSPV3	
Industrial Sector	Risk Country
Special Purpose Vehicle ("SPV")	Ireland

Relationship since	n/a
Strategy Compliant Opportunistic	x
Rating HSH Nordbank	LCR 1(AAA)
External Rating	n/a
Großkredit	☐
Organkredit	☐
Risk Provision [EUR m]	

Essential notes

The transactions contemplated with NewCoSPV2 and NewCoSPV3 reflects HSH's desire for optimisation of its Risk Weighted Assets. Recourse will be limited to the assets held by the SPVs. The KYC process of HSH in co-operation with the Compliance Officer will commence upon receipt of credit approval for this transaction. However as NewCoSPV2 and NewCoSPV3 are SPVs partly sponsored by HSH no problems are immediately foreseen. Given the similarity on the risk profile the facilities for both NewCoSPV2 and NewCoSPV3 are applied for together in this one application.

2. Economic equity requirement

as per	Economic Equity [EUR million]			LGD	Comment
	Existing	New	Total		
Borrower / TWR	0	TBA	TBA	TBA	
Borrower Unit/TWR-Group	0	TBA	TBA	TBA	

all amounts in EUR million

3. Application

Credit Type	Amount	Sec. acc. to Guidelines	Maturity	Purpose
1. Liquidity Facility	2,250		364 days	Standby Liquidity (NewCoSPV2)
2. Repo Line	45		364 days	Repo line (NewCoSPV3)
Sum	2,295			

Collateral	MW	BLW	Terms
CLN „secured“ by a portfolio of Real Estate Loans			

Other details regarding the application

Implicit interest, currency and/or liquidity components of an option	Yes	☐	No	☐
Loan contract includes "syndication clause"	Yes	☐	No	☐

(see 5.1)

4. Commitment Summary

all amounts in EUR million

a) Borrower/TWR HSH Nordbank AG Incl. application

as per 02/11/2007		Prior Line	New Line	Sec. acc. to Guidelines	External lines	Outstanding
Credit Type						
Credits (current accounts, loans)	up to 1 y (NewCoSPV2)	0	2,250		2,250	
	for 1 y and up to 5 yrs					
	for more than 5 yrs					
Guarantees, Letters of Credit						
Trading Lines (NewCoSPV3)		0	45		45	
Netting Lines						
Individual decision trading activities						
General Credit Lines						
Participations						
Commitment Foreign Branches						
Sum prior to Syndication			2,295		2,295	
/. Share for Syndication						
Sum			2,295		2,295	
Settlement Lines						
				Guarantee Commitment	Amount	
				Tenant/ Charterer Commitment	Amount	

b) Borrower Unit/TWR-Group HSH Nordbank-Group incl. application

as per 02/11/2007		Prior Line	New Line	Sec. acc. to Guidelines	External lines	Outstanding
Credit Type						
Credits (current accounts, loans)	up to 1 y (NewCoSPV2)		2,250		2,250	
	for 1 y and up to 5 yrs					
	for more than 5 yrs					
Guarantees, Letters of Credit						
Trading Lines (NewCoSPV3)			45		45	
Netting Lines						
Individual decision trading activities						
General Credit Lines						
Participations						
Commitment Foreign Branches						
Commitment Subsidiaries						
Sum prior to Syndication			2,295		2,295	
/. Share for Syndication						
Sum			2,295		2,295	
Settlement Lines						
				Guarantee Commitment	Amount	
				Tenant/ Charterer Commitment	Amount	

Other Information

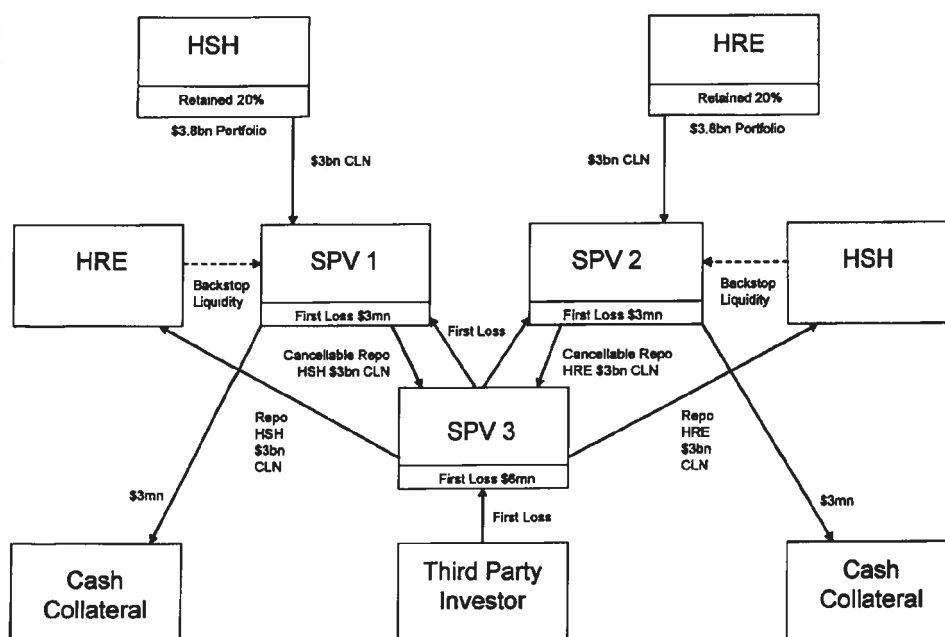
The Liquidity line requirement is USD3bn, which has been converted at 1.467 plus a 10% add on for currency fluctuations. The rating of NewCoSPV2 and NewCoSPV3 will be finalised as a result of the due diligence review and analysis of the HRE portfolio in conjunction with KRM. The rating will be based on the fact that they only holds assets that are either cash or have securities that have in built credit enhancement required for an approximate AAA rating.

5. Analysis

5.1 Notes on the application/ object/ project

Global Head Book
London

Structured Credit Analysis in co-operation with BU Real Estate and Global markets has been working with Hypo Real Estate Bank International AG ("HRE") on a mutually beneficial structure to optimise both HSH's and HRE's Risk Weighted Asset ("RWA") exposure. Based on the result of this work, this credit application seeks approval for a solution that reduces RWA on a HSH portfolio of Real Estate assets of up to \$3.8bn (the "Portfolio"), whilst providing a segregated backstop liquidity facility to a new SPV, NewCoSPV2. Importantly this transaction has received approval from Legal and Compliance Department in Kiel that it meets the BaFin requirements for Basel I purposes and has also been reviewed by external legal counsel at Clifford Chance. The transaction can be represented as follows:



In order to reduce the current RWA of the Portfolio, HSH will issue a Credit Linked Note which references the Portfolio (the "HSH CLN"). It is proposed that HSH, to the extent possible within the timeframe, also pledge the underlying Portfolio to the HSH CLN holder. The nominal value of the HSH CLN will be \$3bn (the "Protected Portfolio") and will therefore incorporate a retained first loss of approximately 20% (the "Unprotected Portfolio"). Whilst the HSH CLN will not be rated due to the credit enhancement the implied rating will be AAA. The HSH CLN will be purchased in cash by NewCoSPV1 and as a result will mean that the Protected Portfolio will receive an RWA of 0%. Contemporaneously, with the issuance and purchase of the HSH CLN, HRE (rated A/A1/A*+ by S&P/Moody's/Fitch respectively) will also issue a Credit Linked Note of \$3bn (the "HRE CLN") referencing a portfolio of \$3.8bn equivalent of real estate assets which the separate NewCoSPV2 will purchase. Again, to the extent possible the underlying HRE portfolio will also be pledged to the note purchaser.

To finance the purchase of the HSH CLN and the HRE CLN, NewCoSPV1 and NewCoSPV2 will both enter into repurchase agreements with a separate entity, NewCoSPV3. In turn NewCoSPV3 will finance itself with separate repos with HSH and HRE the collateral for which will be the HRE CLN and HSH CLN respectively. Importantly, HSH will not repo a CLN referencing assets originated by itself i.e. the HSH CLN.

An external 3rd party investor will purchase 100% of the equity of NewCoSPV3. NewCoSPV3 will purchase the equity of both NewCoSPV1 and NewCoSPV2 both of which will represent approximately 51% of the first loss.

HSH will provide a 364 day Backstop Liquidity Facility ("BLF") to support NewCoSPV2 in the event that the repo facility with NewCoSPV3 is unavailable to provide funding. Again, whilst it is not envisaged to be drawn, to the extent that the BLF is actually drawn this will be secured by the HRE CLN. HRE will provide a separate backstop liquidity facility to NewCoSPV1.

The actual assets that will form the Portfolio have not been finalised as yet. Therefore detailed analysis including the weighted average rating, spread, expected loss and economic capital requirement cannot be included in this application. In addition HRE have still to provide details on their likely portfolio, which will be subject to due diligence analysis by BU Real Estate. However, in view of the extremely tight timeframe for approval, documentation and execution, and the fact that this application requires Competence 1 level approval anyway, it is proposed that once the Portfolio has been finalised (and the aforementioned calculations made) this information be confirmed to KRM.

5.2 Notes on the borrower / TWR

NewCoSPV2 is to be a bankruptcy remote SPV to be incorporated in the Republic of Ireland or other suitable jurisdiction. NewCoSPV2 is a new SPV and will be set up to meet the usual SPV requirements i.e. bankruptcy remote, no employees etc. The appropriateness of the legal documentation will be reviewed and verified by HSH legal counsel before any transaction with NewCoSPV2 is executed. NewCoSPV2 will not be explicitly rated.

NewCoSPV1 is to be a bankruptcy remote SPV to be incorporated in the Republic of Ireland or other suitable jurisdiction again meeting the usual SPV requirements. NewCoSPV1 will not be explicitly rated. Despite the fact that HSH will not be transacting directly with NewCoSPV1, the appropriateness of the legal documentation will be reviewed and verified by HSH legal counsel.

Finally, NewCoSPV3 is to be a bankruptcy remote SPV to be incorporated in the Republic of Ireland or other suitable jurisdiction meeting standard SPV requirements. NewCoSPV3 will not be explicitly rated. The appropriateness of the legal documentation will be reviewed and verified by HSH legal counsel before any transaction with NewCoSPV3 is executed.

5.3 Legal Situation

The transactions that NewCoSPV2 and NewCoSPV3 executes with HSH will be legally ring-fenced and also bankruptcy remote. HSH internal and or external legal counsel will review all documentation. In addition Legal Department in Kiel have reviewed the structure and confirmed that the Basel I RWA treatment described within this application is appropriate.

5.4 Industrial Sector / Market / Evaluation Portfolio Management

The financing of NewCoSPV2 is to be in the form of repo lines from NewCoSPV3. As the repo is to be fully funded at inception, minimal risk is foreseen for this element of the transaction. It is expected that NewCoSPV2 and therefore NewCoSPV3 will be financed by repo throughout the duration of the transaction.

The HSH CLN and the HRE CLN will be issued to match the maturity profile of the underlying respective real estate portfolios. It is proposed that the actual repo transactions will be structured to roll on the same day on a monthly basis. Whilst the HSH CLN and HRE CLN are funded via the repo facility the default risk will be assumed by the relevant repo counterparty after the equity position which is ultimately assumed by the third party investor. The documentation of the repos will be such that 100% of the financing of NewCoSPV3's CLNs must be via the repos with HSH and HRE simultaneously. In the event that the HSH and HRE repos cannot be rolled then NewCoSPV3 will not roll the repos with NewCoSPV1 and NewCoSPV2 which will ultimately trigger a funding requirement under the HRE liquidity facility and the BLF.

HSH will retain the right to terminate the repo with SPV2 if it determines that the price of the repo has exceeded the market level appropriate for the underlying HRE CLN. HRE will have the same right with respect to its repo between itself and SPV1.

HSH's ultimate recourse will be to the assets of NewCoSPV2, being the HRE CLN and the cash collateral. Whilst we are still awaiting the exact details of the HRE portfolio to be included in this transaction it is understood that it will be largely European based commercial real estate. In view of the short time available it is proposed that this application is on the basis that approval is subject to a satisfactory due diligence of the portfolio by BU Real Estate Department analysts plus KRM. As the HRE portfolio is likely to be denominated largely in Euro, HRE will either enter into suitable cross currency hedge with NewCoSPV2 and or ultimately assume any cross currency risk via the issuance of USD CLN's against a Euro portfolio.

In addition to the detailed review of the HRE portfolio, NewCoSPV2 and NewCoSPV3, and therefore HSH via the repo and possibly the BLF, will benefit from the credit enhancement provided by HRE. Over and above rating agency methodology it is proposed that the credit enhancement is sized at approximately 20% thus

ensuring a AAA risk profile. For the avoidance of doubt neither the HSH CLN nor the HRE CLN will be rated and therefore the AAA rating is implied only.

As well as the risk of both the real estate portfolio covered by the HSH CLN and the HRE CLN, NewCoSPV2 will also be exposed to the credit risk on HRE as it is these entities that will issue the respective CLN's. In order to mitigate against a completely unsecured position, HRE and HSH have both undertaken to make all attempts possible within the timeframe permitted to arrange a pledge over the underlying assets and thus create security. However, this feature is being explored in conjunction with legal counsel and therefore on a worst case scenario that a suitable pledge cannot be arranged in time in the event that HRE were to default then it is likely that NewCoSPV1 would experience a severe loss. However, in the interests of fairness, either both or neither of the HSH CLN and the HRE CLN will have the pledge feature. In the event that the pledge is not achieved in time, then both parties as far as possible will work towards arranging the pledge after closing – again to be executed contemporaneously.

Whilst of course HSH provides both the BLF and the repo to NewCoSPV1 and NewCoSPV3 respectively, given the restricted nature of transactions that the SPVs will conduct it is reasonable to assume that HSH has indirect exposure to HRE via this transaction as contemplated and vice versa. A separate application for limits on HRE is therefore being prepared. As a mitigant against potential long dated counterparty exposure the transaction it is proposed that the HSH CLN and the HRE CLN will have a regulatory call feature at the option of the respective issuer.

5.5 Economic Situation

The main driver for the transactions contemplated is to optimise HSH's Basel I capital charge. As a result of executing the transactions HSH stands to make significant Basel I capital savings as follows:

Description	Risk Weight	Capital Ratio	Basel I Capital
Existing \$3.8bn Portfolio as currently booked	100 ¹ %	8%	\$304,000,000
\$3bn Protected Portfolio	0%	8%	\$0
\$0.8bn Unprotected Portfolio (less 1 st loss)	100%	8%	\$61,600,000
First Loss of Unprotected Portfolio	100% * 3	100%	\$7,100,00
NewCoSPV2 Liquidity Facility	0%	8%	\$0
NewCoSPV3 \$3bn Repo Facility	100%	See below	\$0 (minimal)
Maximum Total Basel I Capital "Saving" to HSH			\$235,300,000

Whilst the Portfolio remains to be finalised an initial draft provided by BU Real Estate has an expected loss of approximately 6.2 basis points. Based on this expected loss, the above table is consistent with Legal and Compliance Department's approach to the capital treatment of retained first loss pieces, such as that for the Unprotected Portfolio, which requires that 3 times the amount of the expected loss must be treated as a one for one deduction of capital. Any residual portion of the first loss that is outside of this calculation may be treated as a 100% RWA with an 8% capital ratio applied.

BU Group Treasury has confirmed that the issuance of the HSH CLN can be achieved utilising HSH's existing issuance programme. Reflecting the fact that the HSH CLN will be purchased for cash by NewCoSPV1, the Protected Portfolio will enjoy 0% RWA. In addition as the BLF will be structured as a 364 day contingent facility to be drawn in the event that the repo cannot be rolled and not against defaulted assets this too will enjoy a 0% RWA treatment.

The repos are to be booked onto the Global Markets Trading Book. In discussions with Group Risk Management as the repos are for less than one year the required line is calculated as the total nominal repo line times by 2% (i.e. 2,250,000 x 2% = €45mn equivalent). However, as advised by Group Risk Management, capital charges will only be incurred to the extent that the line is utilised. Utilisation will only be as a result of mark to market movements in the underlying collateral, which in this case for HSH will be the HRE CLN. As the HRE CLN will benefit from the 20% credit enhancement and be referenced to a bespoke portfolio of HRE originated assets it is expected that the price will not significantly deviate from par. Assuming this is the case and the HRE CLN does not experience negative credit events within the underlying reference portfolio, little to no capital charges are expected as a result of the repo line.

¹ Please note that the portfolio is not certain at this point and that a lower average risk weight on the portfolio reduces the RWA savings.

As discussed, Global Markets are working with various third party external investors to purchase 100% of the equity of NewCoSPV3 (the "Equity"). NewCoSPV3 will purchase the equity of NewCoSPV1 and NewCoSPV2. The sizing requirement of both these equity stakes will be calculated as at least 51% of the total expected loss of the HSH CLN and the HRE CLN respectively. However, as both the HSH and HRE real estate portfolios are to be finalised the exact amount of the Equity is unclear but it is expected to be in the region of \$6mn. Terms have not as yet been agreed on the return that will be payable on the Equity but it is expected to be in the region of 15-30%. Whilst a high number as the actual nominal amount is small the cost is deemed acceptable in view of the RWA savings achieved.

Again, as the Portfolio remains to be finalised, the weighted average spread of the Portfolio is unknown but via the structure will continue to accrue and be payable for the benefit of HSH. The cost of issuing the HSH CLN, which gives rise to the Protected Portfolio achieving a 0% RWA, will be less than the margin on the Portfolio. Whilst as not yet determined the margin on both the HSH CLN and the HRE CLN will be sufficient to pay the spread on the repo, the commitment on the BLF, the return on the Equity and the SPVs running costs.

5.6 Commitment Strategy

This transaction is consistent with HSH's desire to optimise its Basel I RWA within an efficient framework.

5.7 Other essential notes

It should be noted that whilst HSH does not take a direct exposure to HRE as both the BLF and repo facilities are provided to NewCoSPV2 and NewCoSPV3 respectively, there is none the less a sizeable indirect exposure given the limited purpose nature of NewCoSPV2 and NewCoSPV3. Whilst technically no limit is required, KRM and Group Risk Management are being consulted as to the most prudent way in which this indirect exposure should be captured in HSH's systems. The approval of this application recognises that the indirect HRE exposure that HSH assumes is a crucial element of the transaction which may require, in due course, an appropriate line recorded against it.

5.8 Summary

	Opportunities/Strengths	Risks/Weaknesses
5.8.1	- This transaction meets HSH requirements to optimise its RWA at minimal cost within an efficient framework.	- Execution: Risk of HRE not completing the transaction as contemplated or in time. - Mitigant: HRE is a respected counterparty which has an equally pressing requirement for RWA optimisation.
5.8.2	- The transaction has been initially approved by Legal & Compliance Department as BaFin compliant for Basel I purposes, subject to satisfactory final documentation.	- Equity investor execution: Risk of the third party external investor not completing the transaction as contemplated or in time. - Mitigant: Several existing clients have already been identified and expressed a strong interest. The Equity offers an attractive return for the small nominal risk assumed.
5.8.3	- Respected co-arranger in HRE who have the same drivers as HSH.	- Additional exposure: Via the repo and BLF HSH will be exposed to both real estate assets from HRE and HRE itself. - Mitigants: HSH will conduct a due diligence review of the HRE portfolio, which itself benefits from 20% credit enhancement provided by HRE. HRE has the same rating profile as HSH and is considered unlikely to default within the short timeframe of the transaction.
5.8.4	- Reference entity risk is to assets that HSH have already assessed or in the HRE portfolio case will be subject to due diligence plus the benefit of the 20% credit enhancement.	- Basel I to Basel II framework: After 2007 HSH will primarily need to comply with Basel II. - Mitigant: HSH retains a regulatory call option.
5.8.5	-	- Exit: HRE and HSH might not agree to terminate their CLN's simultaneously. - Mitigant: This risk has been discussed at a senior management level and is considered acceptable.
5.8.6	-	- HSH Downgrade risk: In the event that HSH is downgraded below A- / A3 then HSH might be drawn under the BLF.

- Mitigant: understood risk, considered unlikely given the short timing of the transaction.

First Risk Assessment

Aggregate Appraisal

The transaction is supported as:

- It achieves HSH's desire to reduce its RWA exposure within an efficient framework;
- The additional risk of both the HRE real estate portfolio and HRE itself appears acceptable, given the likely short term nature of the transaction and the significant credit enhancement available; and
- The structure has been reviewed and initially approved by Legal and Compliance.

Conditions

Approval is subject to:

- Satisfactory legal review of documentation;
- Satisfactory due diligence review of HRE real estate assets; and
- Completed analysis by BU Real Estate of Portfolio, including expected loss.

Originator	Name of Votour Market-BU	UB Real Estate	Global Heads
Steve Powell	Luis Marti Sanchez	Michael Schwalba	Paul Duffy /Frank Otten
Marc Schack	General Manager London Branch	Lars Quandt	Head of Originations
Structured Credit Analysis			

Credit application

HSB NORDBANK

14/12/2007

BU: FMD and Real Estate
OE: Structured Credit Analysis, London Branch

New

Competence Level 1

1. Borrower Data

Borrower, Bearer of economic Risk (TWR)

1) A new SPV to be established, with such a name to be agreed between the parties ("NewCoSPV1")

2) A new SPV to be established, with such a name to be agreed between the parties ("NewCoSPV2")

2) A new SPV to be established, with such a name to be agreed between the parties ("NewCoSPV3")

Borrower Unit, TWR-Group, (if necessary: Internal Risk Unit)

NewCoSPV1, NewCoSPV2, NewCoSPV3

Relationship since n/a
Strategy Compliant x
Opportunistic
Rating HSB Nordbank LCR 1(AAA)

External Rating n/a

Großkredit ☐

Organkredit ☐

Risk Provision
[EUR m]

Industrial Sector

Risk Country

Special Purpose Vehicle ("SPV")

Ireland

Essential notes

The transactions contemplated reflects HSB's desire for optimisation of its Risk Weighted Assets. Recourse will be limited to the assets held by the SPVs. The KYC process of HSB in co-operation with the Compliance Officer will commence upon receipt of credit approval for this transaction. However the SPVs are SPVs partly sponsored by HSB no problems are immediately foreseen. Given the similarity on the risk profile the facilities for the SPVs are applied for together in this one application.

2. Economic equity requirement

as per	Economic Equity (EUR million)			LGD	Comment
	Existing	New	Total		
Borrower / TWR	0	TBA	TBA	TBA	
Borrower Unit/TWR-Group	0	TBA	TBA	TBA	

all amounts in EUR million

3. Application

Credit Type	Amount	Sec. acc. to Guidelines	Maturity	Purpose
1. CDS Line	2,250	2,052	2034	Cash collateralised CDS
2. Liquidity Facility	2,250		364 days	Standby Liquidity (NewCoSPV2)
2. Repo Line	45		364 days	Repo line (NewCoSPV3)
Sum	2,295			

Collateral

MW

BLW

Terms

CLN „referencing“ a portfolio of Real Estate Loans and secured by cash.

Other details regarding the application

Implicit interest, currency and/or liquidity components of an option
Loan contract includes "syndication clause"

Yes ☐ No ☐
Yes ☐ No ☐

(see 5.1)

4. Commitment Summary

all amounts in EUR million

a) Borrower/TWR HSH Nordbank AG incl. application

as per 02/11/2007

Credit Type

	Prior Line	New Line	Sec. acc. to Guidelines	External lines	Outstanding
Credits up to 1 y (NewCoSPV2)	0	2,250		2,250	
(current accounts, loans) for 1 y and up to 5 yrs					
for more than 5 yrs					
Guarantees, Letters of Credit					
Trading Lines (NewCoSPV3)	0	45		45	
Trading Lines (NewCoSPV1)	0	2,250	2,052	198	
Individual decision trading activities					
General Credit Lines					
Participations					
Commitment Foreign Branches					
Sum prior to Syndication		4,545	2,052	2,493	
./. Share for Syndication					
Sum		4,545	2,052	2,493	

Settlement Lines

Guarantee Commitment	Amount
Tenant/ Charterer Commitment	Amount

b) Borrower Unit/TWR-Group HSH Nordbank-Group incl. application

as per 02/11/2007

Credit Type

	Prior Line	New Line	Sec. acc. to Guidelines	External lines	Outstanding
Credits up to 1 y (NewCoSPV2)	0	2,250		2,250	
(current accounts, loans) for 1 y and up to 5 yrs					
for more than 5 yrs					
Guarantees, Letters of Credit					
Trading Lines (NewCoSPV3) – Repo	0	45		45	
Trading Lines (NewCoSPV1) - CDS	0	2,250	2,052	198	
Individual decision trading activities					
General Credit Lines					
Participations					
Commitment Foreign Branches					
Commitment Subsidiaries					
Sum prior to Syndication		4,545	2,052	2,493	
./. Share for Syndication					
Sum		4,545	2,052	2,493	

Settlement Lines

Guarantee Commitment	Amount
Tenant/ Charterer Commitment	Amount

Other information

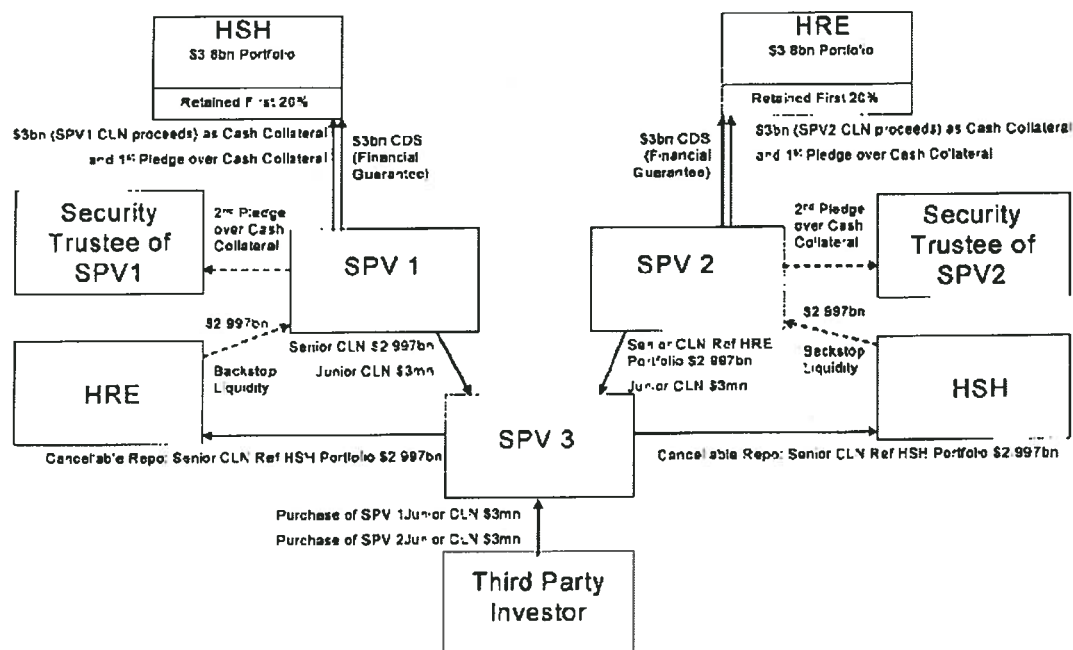
The Liquidity & CDS line requirement is USD3bn, which has been converted at 1.467 plus a 10% add on for currency fluctuations. The rating of the SPVs will be finalised as a result of the due diligence review and analysis of the HRE portfolio in conjunction with KRM. The rating will be based on the fact that they only holds assets that are either cash or have securities that have in built credit enhancement required for an approximate AAA rating.

5. Analysis

5.1 Notes on the application/ object/ project

Global Head Book
London

Structured Credit Analysis in co-operation with BU Real Estate and Global markets has been working with Hypo Real Estate Bank International AG ("HRE") on a mutually beneficial structure to optimise both HSH's and HRE's Risk Weighted Asset ("RWA") exposure. Based on the result of this work, this credit application seeks approval for a solution that reduces RWA on a HSH portfolio of Real Estate assets of up to \$3.8bn (the "Portfolio"), whilst providing a segregated backstop liquidity facility to a new SPV, NewCoSPV2. Importantly this transaction has received approval from Legal and Compliance Department in Kiel that it meets the BaFin requirements for Basel I purposes and has also been reviewed by external legal counsel at Clifford Chance. The transaction can be represented as follows:



In order to reduce the current RWA of the Portfolio, HSH will purchase Credit Default Swap protection referencing the Portfolio (the "HSH CDS") from NewCoSPV1. The nominal value of the HSH CDS will be \$3bn (the "Protected Portfolio") and will therefore incorporate a retained first loss of approximately 20% (the "Unprotected Portfolio"). NewCoSPV1 will provide \$3bn cash to HSH to collateralise its exposure. As a result the Protected Portfolio will receive an RWA of 0%. NewCoSPV1 will finance the collateral via the issuance of a \$2.997bn Senior CLN (the "SPV1 SnrCLN") and a \$3mn Junior CLN (the "SPV1 JnrCLN").

Contemporaneously, with the above, HRE (rated A/A1/A*+ by S&P/Moody's/Fitch respectively) will purchase \$3bn CDS protection (the "HRE CDS") from NewCoSPV2 which will be fully cash collateralised. The HRE CDS will reference a portfolio of \$3.8bn equivalent of real estate assets. Similarly, NewCoSPV2 will finance the collateral via the issuance of a \$2.997bn Senior CLN (the "SPV2 SnrCLN") and a \$3mn Junior CLN (the "SPV2 JnrCLN").

To finance the purchase of the CLNs, NewCoSPV1 and NewCoSPV2 will both enter into repurchase agreements with a separate entity, NewCoSPV3. In turn NewCoSPV3 will finance itself with separate repos with HSH and HRE the collateral for which will be the respective Senior CLNs. Importantly, HSH will not repo a CLN referencing assets originated by itself i.e. the SPV1 SnrCLN. Whilst both the Senior CLNs will not be rated due to the credit enhancement the implied ratings will be AAA.

An external 3rd party investor will purchase 100% of the equity of NewCoSPV3. NewCoSPV3 will purchase the equity of both NewCoSPV1 and NewCoSPV2 both of which will represent approximately 51% of the first loss.

HSH will provide a 364 day Backstop Liquidity Facility ("BLF") to support NewCoSPV2 in the event that the

repo facility with NewCoSPV3 is unavailable to provide funding. Again, whilst it is not envisaged to be drawn, to the extent that the BLF is actually drawn this will be secured by the SPV2 SnrCLN. HRE will provide a separate backstop liquidity facility to NewCoSPV1.

The actual assets that will form the Portfolio have not been finalised as yet. Therefore detailed analysis including the weighted average rating, spread, expected loss and economic capital requirement cannot be included in this application. In addition HRE have still to provide details on their likely portfolio, which will be subject to due diligence analysis by BU Real Estate. However, in view of the extremely tight timeframe for approval, documentation and execution, and the fact that this application requires Competence 1 level approval anyway, it is proposed that once the Portfolio has been finalised (and the aforementioned calculations made) this information be confirmed to KRM.

The transaction as considered above has been reviewed and approved as acceptable by NPNM (see attached NPNM vote). The daily mark to market of the Senior CLNs issued by SPV1 and SPV2 will be provided by HRE and HSH respectively. BU Real Estate will arrange for their credit analysts to ensure a suitable valuation is provided taking into account the loans the retained 20% and the first loss. This is a feature of the transaction.

5.2 Notes on the borrower / TWR

NewCoSPV2 is to be a bankruptcy remote SPV to be incorporated in the Republic of Ireland or other suitable jurisdiction. NewCoSPV2 is a new SPV and will be set up to meet the usual SPV requirements i.e. bankruptcy remote, no employees etc. The appropriateness of the legal documentation will be reviewed and verified by HSH legal counsel before any transaction with NewCoSPV2 is executed. NewCoSPV2 will not be explicitly rated.

NewCoSPV1 is to be a bankruptcy remote SPV to be incorporated in the Republic of Ireland or other suitable jurisdiction again meeting the usual SPV requirements. NewCoSPV1 will not be explicitly rated. Despite the fact that HSH will not be transacting directly with NewCoSPV1, the appropriateness of the legal documentation will be reviewed and verified by HSH legal counsel.

Finally, NewCoSPV3 is to be a bankruptcy remote SPV to be incorporated in the Republic of Ireland or other suitable jurisdiction meeting standard SPV requirements. NewCoSPV3 will not be explicitly rated. The appropriateness of the legal documentation will be reviewed and verified by HSH legal counsel before any transaction with NewCoSPV3 is executed.

5.3 Legal Situation

The transactions that NewCoSPV2 and NewCoSPV3 executes with HSH will be legally ring-fenced and also bankruptcy remote. HSH internal and or external legal counsel will review all documentation. In addition Legal Department in Kiel have reviewed the structure and confirmed that the Basel I RWA treatment described within this application is appropriate.

5.4 Industrial Sector / Market / Evaluation Portfolio Management

The financing of NewCoSPV2 is to be in the form of repo lines from NewCoSPV3. As the repo is to be fully funded at inception, minimal risk is foreseen for this element of the transaction. It is expected that NewCoSPV2 and therefore NewCoSPV3 will be financed by repo throughout the duration of the transaction.

The HSH CDS and the HRE CDS will be purchased to match the maturity profile of the underlying respective real estate portfolios. In turn the CLNs will also be issued to the same maturity. It is proposed that the actual repo transactions will be structured to roll on the same day on a monthly basis. Whilst the Senior CLNs are funded via the repo facility the default risk will be assumed by the relevant repo counterparty after the equity position which is ultimately assumed by the third party investor. The documentation of the repos will be such that 100% of the financing of NewCoSPV3's CLNs must be via the repos with HSH and HRE simultaneously. In the event that the HSH and HRE repos cannot be rolled then NewCoSPV3 will not roll the repos with NewCoSPV1 and NewCoSPV2 which will ultimately trigger a funding requirement under the HRE liquidity facility and the BLF.

HSH will retain the right to terminate the repo with NewCoSPV3 if it determines that the price of the repo has exceeded the market level appropriate for the underlying SPV2 SnrCLN. HRE will have the same right with respect to its repo.

HSH's ultimate recourse will be to the assets of NewCoSPV2, being the SPV2 SnrCLN and the cash collateral. Whilst we are still awaiting the exact details of the HRE portfolio to be included in this transaction it is understood that it will be largely European based commercial real estate. In view of the short time available it is proposed that this application is on the basis that approval is subject to a satisfactory due diligence of the portfolio by BU Real Estate Department analysts plus KRM. As the HRE portfolio is likely to be denominated largely in Euro, HRE will assume the cross currency risk with NewCoSPV2. HSH is protected as the SPV2 SnrCLN and the cash collateral will be in USD.

In addition to the detailed review of the HRE portfolio, NewCoSPV2 and NewCoSPV3, and therefore HSH via the repo and possibly the BLF, will benefit from the credit enhancement provided by HRE. Over and above rating agency methodology it is proposed that the credit enhancement is sized at approximately 20% thus ensuring a AAA risk profile. For the avoidance of doubt neither the Senior CLN's will be rated and therefore the AAA rating is implied only.

In order to mitigate against the risk of a default of HRE creating losses for NewCoSPV2, NewCoSPV3 or potentially HSH via the repo or BLF, Clifford Chance have advised that protection against this is afforded under German law. Immediately prior to a HRE bankruptcy HRE's CDS contract with NewCoSPV2 would be cancelled and the cash collateral returned. At this point it is highly likely that HSH would too choose to unwind it's protection from NewCoSPV1.

Notwithstanding the legal assessment and whilst of course HSH provides both the BLF and the repo to NewCoSPV1 and NewCoSPV3 respectively, given the restricted nature of transactions that the SPVs will conduct it is reasonable to assume that HSH has a degree of indirect exposure to HRE via this transaction as contemplated and vice versa. A separate application for limits on HRE is therefore being prepared. As a mitigant against potential long dated counterparty exposure the transaction it is proposed that the HSH and HRE will retain regulatory call features at the option.

5.5 Economic Situation

The main driver for the transactions contemplated is to optimise HSH's Basel I capital charge. As a result of executing the transactions HSH stands to make significant Basel I capital savings as follows:

Description	Risk Weight	Capital Ratio	Basel I Capital
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First Loss of Unprotected Portfolio	100% * 3	100%	\$7,100,00
NewCoSPV2 Liquidity Facility	0%	8%	\$0
NewCoSPV3 \$3bn Repo Facility	100%	See below	\$0 (minimal)
Maximum Total Basel I Capital "Saving" to HSH			\$235,300,000

Whilst the Portfolio remains to be finalised an initial draft provided by BU Real Estate has an expected loss of approximately 6.2 basis points. Based on this expected loss, the above table is consistent with Legal and Compliance Department's approach to the capital treatment of retained first loss pieces, such as that for the Unprotected Portfolio, which requires that 3 times the amount of the expected loss must be treated as a one for one deduction of capital. Any residual portion of the first loss that is outside of this calculation may be treated as a 100% RWA with an 8% capital ratio applied.

Reflecting the fact that the HSH CDS will be cash collateralised by NewCoSPV1, the Protected Portfolio will enjoy 0% RWA. In addition as the BLF will be structured as a 364 day contingent facility to be drawn in the event that the repo cannot be rolled and not against defaulted assets this too will enjoy a 0% RWA treatment.

The repos are to be booked onto the Global Markets Trading Book. In discussions with Group Risk Management as the repos are for less than one year the required line is calculated as the total nominal repo line times by 2% (i.e. 2,250,000 x 2% = €45mn equivalent). However, as advised by Group Risk Management, capital charges will only be incurred to the extent that the line is utilised. Utilisation will only be as a result of

¹ Please note that the portfolio is not certain at this point and that a lower average risk weight on the portfolio reduces the RWA savings.

mark to market movements in the underlying collateral, which in this case for HSH will be the SPV2 SnrCLN. As the SPV2 SnrCLN will benefit from the 20% credit enhancement and be referenced to a bespoke portfolio of HRE originated assets it is expected that the price will not significantly deviate from par. Assuming this is the case and the SPV2 SnrCLN does not experience negative credit events within the underlying reference portfolio, little to no capital charges are expected as a result of the repo line.

As discussed, Global Markets are working with various third party external investors to purchase 100% of the equity of NewCoSPV3 (the "Equity"). NewCoSPV3 will purchase the equity of NewCoSPV1 and NewCoSPV2. The sizing requirement of both these equity stakes will be calculated as at least 51% of the total expected loss of the underlying real estate portfolios. However, as both the HSH and HRE real estate portfolios are to be finalised the exact amount of the Equity is unclear but it is expected to be in the region of \$6mn. Terms have not as yet been agreed on the return that will be payable on the Equity but it is expected to be in the region of 30%. Whilst a high number as the actual nominal amount is small the cost is deemed acceptable in view of the RWA savings achieved.

Again, as the Portfolio remains to be finalised, the weighted average spread of the Portfolio is unknown but via the structure will continue to accrue and be payable for the benefit of HSH. The cost of purchasing the HSH CDS, which gives rise to the Protected Portfolio achieving a 0% RWA, will be less than the margin on the Portfolio. Whilst as not yet determined the premiums on the CDSs will be sufficient to pay the spread on the repo, the commitment on the BLF, the return on the Equity and the SPVs running costs.

5.6 Commitment Strategy

This transaction is consistent with HSH's desire to optimise its Basel I RWA within an efficient framework.

5.7 Other essential notes

It should be noted that whilst HSH does not take a direct exposure to HRE as both the BLF and repo facilities are provided to NewCoSPV2 and NewCoSPV3 respectively and it is the view of Clifford Chance that the cash collateral is not at risk due to a HRE bankruptcy, there is none the less a potential indirect exposure given the limited purpose nature of NewCoSPV2 and NewCoSPV3. Whilst technically no limit is required, KRM and Group Risk Management are being consulted as to the most prudent way in which this indirect exposure should be captured in HSH's systems. The approval of this application recognises that the indirect HRE exposure that HSH assumes is a crucial element of the transaction which may require, in due course, an appropriate line recorded against it.

Whilst HSH will purchase protection from NewCoSPV1 it is viewed that no lines are required for the vehicle due to the facts that i) the exposure will be fully cash collateralised and ii) it is intended that settlement for all parts of the structure will take place on a netted basis to the extent possible. However in the event that the latter is not possible then settlement lines might be required which again would be viewed as a pre-requisite of the transaction. However with the approval of this application any subsequent line required by NewCoSPV1 as contemplated herein is also considered to be approved.

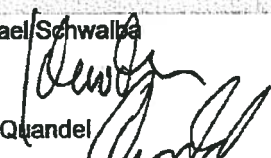
5.8 Summary

	Opportunities/Strengths	Risks/Weaknesses
5.8.1	- This transaction meets HSH requirements to optimise its RWA at minimal cost within an efficient framework. - The transaction has been initially approved by Legal & Compliance Department as BaFin compliant for Basel I purposes, subject to satisfactory final documentation.	- Execution: Risk of HRE not completing the transaction as contemplated or in time. - Mitigant: HRE is a respected counterparty which has an equally pressing requirement for RWA optimisation. - Equity investor execution: Risk of the third party external investor not completing the transaction as contemplated or in time.
5.8.2	- Respected co-arranger in HRE who have the same drivers as HSH.	- Mitigant: Several existing clients have already been identified and expressed a strong interest. The Equity offers an attractive return for the small nominal risk assumed.
5.8.3		- Additional exposure: Via the repo and BLF HSH will be exposed to both real estate assets from HRE and potentially HRE itself. - Mitigants: HSH will conduct a due diligence review of the HRE portfolio, which itself benefits from 20% credit

Conditions

Approval is subject to:

- Satisfactory legal review of documentation;
- Satisfactory due diligence review of HRE real estate assets; and
- Completed analysis by BU Real Estate of Portfolio, including expected loss.

Originator	Name of Voteur Market-BU	UB Real Estate	Global Heads
Steve Powell	Luis Marti Sanchez General Manager London Branch	Michael Schwalbe  Lars Quandt 	Paul Duffy / Frank Otten Head of Originations
Marc Schack			
Structured Credit Analysis			

Borrower: NewCo 2 . SPV / New Co 3. SPV / NewCo. 1

Date: 14.12.2007

Second Risk Assessment Credit Risk Management

Financial Markets Division and BU Real Estate jointly developed a transaction together with Hypo Real Estate Bank (HRE) to optimise both HSH's and HRE's Risk Weighted Assets (RWA).

The rationale of the structure is that HSH and HRE exchange the risk on USD 3. bln. real estates loan portfolio. As such, each bank will purchase a CDS (USD 3 bln. notional credit line is applied for) from an SPV, in respect of HSH it will be NewCO1. The CDS will reference a Real Estate Loan Portfolio of USD 3.8 bln., hence a first loss piece of 20% will be retained by each HSH and HRE.

NewCoSPV1 will provide cash-collateral to HSH to collateralize its exposure and hence reduce the RWA on the referenced USD 3 bln. portfolio to 0 %. This mechanism is taking place with HRE simultaneously. The refinancing of these structures creates credit risk for both HSH and HRE. In the following we only focus on HSH's risk:

NewCo2 will finance the collateral via the issuance of a USD 2.997 bln. Senior CLN and a USD 3 mn. Junior CLN, which will be funded by NewCoSPV3 via repurchase agreements (same structure applies to HRE's side). NewCoSPV3 will refinance it self via repos with HSH and HRE. The effect is that HSH refinances via the CLN the cash-collateralization of the CDS and by this takes the credit risk of a 3 bln. HRE loan portfolio, protected by a first loss piece of 20%. The purpose of the cash-collateral is to protect HRE against the default risk of HSH, because a default of HSH would lead to a collapse of the refinancing via repo agreement. From HSH perspective, the default risk of HRE is mitigated fairly by this feature, however a significant indirect risk and an operational risk remains.

HSH will provide a 364 day Backstop Liquidity Facility (BLF) to support NewCoSPV2, in the event that the repo facility with NewCoSPV3 is unavailable to provide funding. The NPNM process made it evident that neither HSH nor HRE are able to calculate market prices for the referenced portfolios, hence both counterparties will have to calculate the repo prices for their portfolios on their own. As a consequence both HSH and HRE have to rely on each others ability to calculate accurate evaluations of the portfolios.

The structure has been approved by BU Legal and BU Group Risk Management regarding Basle I treatment. BU CRM only comments on the credit risk incurred.

a) in accordance with the market-BU

The structure contains two risk profiles:

1. Default risk of Hypo Real Estate Bank:

Should HRE default during the life of the transaction, the whole transaction will collapse. Hence HSH's maximum risk is at USD 3 bln. derived from the transaction. This risk is fairly mitigated by the cash collateralization of the obligations of HRE under the refinancing of the CDS. However, it has been agreed that HSH will allocate credit lines in an amount of USD 3 bln. on HRE to reflect this indirect risk and therefore to limit HSH exposure to HRE. OU Financial Institutions of BU CRM provided the relevant credit application – see attached credit application.

2. Miscalculation risk

HSH has to rely on the market prices for the referenced loan portfolio provided by HRE. This risk is has to be accepted when incurring the transaction.

3. Default risk under the CLN/ CDS referencing a USD 3.8 bln real estates loan portfolio:

Borrower: NewCo 2. SPV / NewCo 3. SPV / NewCo. 1

Date: 14.12.2007

The referenced loan portfolio has not been fully disclosed to HSH yet. Prior to execution of the transaction, BU Real Estates will analyse the credit quality of the portfolio and BU CRM will cross-check. It is obligatory that the analysis results have to be acceptable. However, as the level of information provided by HRE is not as detailed as available if HSH were holding the loans on balance, the analysis undertaken can only be shallow. From the current status of information provided the currently seen granularity of the HRE portfolio is rather low, which increases the risk that the subordination is consumed by very few defaults and the CLN is affected.

We learned from BU Global Markets, that the relevant event of default has not been defined finally.

b) in disagreement with/in addition to the market-BU

a) In accordance with market-BU

HRE is a well respected counterpart and the credit risk on HRE is considered to be acceptable. A 20 % subordination provides a rather comfortable position, especially with respect to the short tenor of the transaction of max. one year. BU Real Estates will reject any loan from inclusion in the portfolio that shows negative aspects or gives any reason to concern - as long as detectable by the shallow analysis possible.

The structure will be rolled-over on a monthly basis and contain a regulatory call, meaning that early exits will be possible – latest date of exit is maturity date at years end 2008.

b) in disagreement with/in addition to the market-BU

The first layer of credit risk is the default risk of HRE which is considered by the applied credit lines. The remaining default risk within the referenced credit portfolio provided by HRE will be mitigated by the prior assessment (very shallow basis) of the portfolio by BU Real Estates / cross-check by BU CRM and the 20 % subordination provided by HRE. Nevertheless a certain degree of risk remains which we deem acceptable with regard to the short tenor of the transaction.

Borrower: NewCo 2. SPV / New Co 3. SPV / NewCo. 1

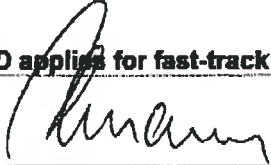
Date: 14.12.2007

As outlined by OU Financial Institutions, the indirect risk taken on HRE as a counterpart, though well respected, is at the very limits acceptable. For future deals, we strongly suggest to contact the risk responsible units for possible counterparts at an earlier stage of such transactions.

We cannot confirm the AAA rating for the transaction yet, as the underlying portfolio has not been determined finally. However, given the subordination, the rating is most likely going to be a AAA rating.

Due to the tight time frame, FMD applies for fast-track decision.

Credit Risk Management
Rating/Votierung
OE 3816 Real Estate


(Torsten Eylmann, ext. 11212)
(Andreas Arndt, ext. 11935)

- ☐ not approved
- ☐ approved based on the conditions imposed by market-BU and non-market BU CRM
- ☐ with the following exceptions ⁽¹⁾:
- ☐ the following recommendations are converted to conditions:
- ☐ additional conditions:

Mr. Friedrich:

Mr. Rieck:

Mr. Berger:

Mr. Strauß:

¹ Cancellation of conditions that are imposed by the non-market Business Unit (BU CRM) are solely to be decided within the scope of the escalation procedure pursuant to the Competence Guideline. Thereby, to make the decision in line with the escalation procedure, the involvement of the Head of BU CRM ("M1-Leitung") is required at competence level 4 respectively the involvement of HSH Nordbank AG's CRO at Competence Levels 2 and 3 is required.

3

Christopher Tessler/London
18/12/2007 20:54

To "Tom Glynn" <thomas.glynn@hyporealestate.com>, "Steven Powell" <Steven.Powell@hsh-nordbank.co.uk>, Michael McNicholas/London@UK, "Fiona Gregan"

cc

bcc

Subject Fw: St Pancras mandate letter

I am pleased to forward the first loss underwriting commitment from dynamic. When we met jim a couple of weeks ago we agreed to pay legal costs in the event that the transaction was subject to a regulatory investigation and to provide him with any legal opinions or comments that the deal is in order.. In the interest of getting the mandate letter back tonight, executed, i asked jim to insert a phrase to include that. If anyone has severe objections to the paragraph inserted we can rephrase- hopefully its ok?!!

----- Original Message -----

From: "Edward Benton" [EBenton@dynamiccredit.com]

Sent: 18/12/2007 15:29 EST

To: Christopher Tessler

Cc: James Finkel" <jkfinkel@dynamiccredit.com>

Subject: St Pancras mandate letter

Dear Chris--

Please find attached a pdf version of the executed mandate letter which includes our proposed language regarding regulatory matters at the end of section 2.

Best-Ed

Edward H. Benton, Esq.
General Counsel
Dynamic Credit Partners, LLC
690 Madison Avenue
New York, NY 10065
+1 212.710.6609 (direct)
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St Pancras mandate letter (Dynamic)_DCP Executed.pdf.zip