

DBS Bridge Bank Limited Supplemental and Onward Property Transfer Instrument 2009

Made - - - - - 30 June 2009

Coming into force - - - - - 1 July 2009

This Instrument is made by the Bank of England in the exercise of the powers conferred by sections 34, 35, 36, 37, 38, 40, 42(2), 43(2) and 84 of the Banking Act.

In accordance with section 2B of the Bank of England Act 1998, the Bank of England has obtained advice from the Financial Stability Committee.

In accordance with sections 42(5) and 43(7) of the Banking Act, the Bank of England has consulted the FSA and the Treasury.

In accordance with section 4(2) of the Banking Act the Bank of England has had regard to the special resolution objectives.

In accordance with section 5(4) of the Banking Act, the Bank of England has had regard to the code of practice issued by the Treasury under section 5 of the Banking Act.

Accordingly, the Bank of England makes the following Instrument —

PART 1 GENERAL

Citation and commencement

1.—(1) This Instrument may be cited as the DBS Bridge Bank Limited Supplemental and Onward Property Transfer Instrument 2009.

(2) This Instrument comes into force at the first supplemental transfer time.

Non-application of sections 93 to 102D of the Building Societies Act

2. This Instrument is to have effect without causing sections 93 to 102D (mergers and transfers) of the Building Societies Act to apply.

Termination rights

3.—(1) Section 38(6) of the Banking Act (which makes provision in respect of “default event provisions”) is applied by this Instrument.

(2) But section 38(6) does not apply to the extent that it would be incompatible with —

- (a) Directive 1998/26/EC (on settlement finality in payment and securities settlement systems), Directive 2002/47/EC (on financial collateral arrangements) or any other enforceable European Community right; or
- (b) article 9 of the Partial Property Transfers Order.

Interpretation: general

4. In this Instrument:

“the Banking Act” means the Banking Act 2009, (c. 1);

“Bridge Bank” means DBS Bridge Bank Limited, a company with the registered number SC356970 incorporated in Scotland whose registered office is at Caledonia House, Carnegie Avenue, Dunfermline KY11 8PJ;

“Building Societies Act” means the Building Societies Act 1986 (c.53);

“deposit” has the meaning given by article 5 of the Regulated Activities Order (disregarding the exclusions in articles 6 to 9AA of that Order);

“Dunfermline” means Dunfermline Building Society (in building society special administration procedure), incorporated under the Building Societies Act with register number 9B(S);

“Dunfermline additional loan” means any loan or mortgage loan made by Dunfermline and which at 8 a.m. on 30 March 2009 (being the time at which the Dunfermline Building Society Property Transfer Instrument 2009 came into force) was designated in Dunfermline’s books and records with a reference number set out in Schedule 1 to this Instrument;

“first onward transfer” means the transfer effected by paragraph 12;

“first onward transfer time” is the time immediately after the first supplemental transfer time;

“first supplemental transfer” means the transfer effected by paragraph 5;

“first supplemental transfer time” is 00:01 a.m. on 1 July 2009;

“FSA” means the Financial Services Authority;

“housing association” means a society, body of trustees, or company, which is established for the purpose of, or amongst whose objects or powers are included those of providing, constructing, improving or managing, or facilitating or encouraging the construction or improvement of housing accommodation, and which does not trade for profit or whose constitution or rules prohibit the issue of capital with interest or dividend exceeding such rate as may be described by the Treasury, whether with or without differentiation as between share and loan capital and including a registered social landlord under the Housing (Scotland) Act 2001;

“housing association deposit” means any deposit made by a housing association and vested in Bridge Bank immediately prior to the first onward transfer time (including any such deposit at the first onward transfer time that is designated in Bridge Bank’s books and records with a reference number set out in Schedule 3 to this Instrument);

“housing association loan” means:

(a) any loan or mortgage loan (including, for the avoidance of doubt, any committed but unfunded loan or mortgage loan) made to a housing association and vested in Bridge Bank immediately prior to the first onward transfer time (including any such loan or mortgage loan at the first onward transfer time that is designated in Bridge Bank’s books and records with a reference number set out in Schedule 4 to this Instrument); and

(b) any pipeline loan;

“initial bridge bank business” means the property, rights and liabilities transferred by paragraph 12;

“mortgage loan” means a loan which is fully or substantially secured on heritable, leasehold or other real property;

“Nationwide” means Nationwide Building Society, incorporated under the Building Societies Act with register number 355B;

“Nationwide additional loan” means any loan or mortgage loan made by Dunfermline and which at 8 a.m. on 30 March 2009 (being the time at which the Dunfermline Building Society Property Transfer Instrument 2009 came into force) was designated in Dunfermline’s books and records with a reference number set out in Schedule 2 to this Instrument;

“Partial Property Transfers Order” means The Banking Act 2009 (Restriction of Partial Property Transfers) Order 2009 (S.I. 2009/322);

“pipeline loan” means any future potential loan classified as a category 2 pipeline loan by Bridge Bank in connection with the initial bridge bank business immediately prior to the first onward transfer time (including any such future potential loan at the first onward transfer time that is designated in Bridge Bank’s books and records with a reference number set out in Schedule 5 to this Instrument);

“Regulated Activities Order” means The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

“second onward transfer” means the transfer effected by paragraph 27;

“second onward transfer time” is the time immediately after the second supplemental transfer time;

“second supplemental transfer” means the transfer effected by paragraph 20;

“second supplemental transfer time” is the later of the first supplemental transfer time and the time immediately after the time at which the draft Amendments to Law (Resolution of Dunfermline Building Society) (No.2) Order 2009 laid before Parliament by Her Majesty’s Treasury under section 75(7)(b) of the Banking Act, if approved by resolution of each House of Parliament in accordance with section 75(7) of the Banking Act, comes into force;

“subsequent bridge bank business” means the property, rights and liabilities transferred by paragraph 27;

“tax” means all taxes, whether of the United Kingdom or otherwise, including those taxes listed in section 74(2) of the Banking Act and value added tax; and

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

PART 2

FIRST SUPPLEMENTAL TRANSFER

First supplemental transfer

5. By virtue of this Instrument, all property, rights and liabilities of Dunfermline specified in paragraphs 8 and 9 (including relevant property, rights and liabilities specified in paragraphs 8 and 9 that fall within any of the descriptions specified in section 35(1) of the Banking Act) are transferred to Bridge Bank, other than the Dunfermline additional loans excluded property, rights and liabilities.

6. The first supplemental transfer takes place at the first supplemental transfer time.

7. “Dunfermline additional loans excluded property, rights and liabilities” means —

(1) any liability specified in paragraph 10(7);

(2) any liability in respect of (i) any award of damages or any fine imposed on or against Dunfermline by any court, tribunal or public body where the proceedings or investigations giving rise to that liability commenced before the first supplemental transfer time and (ii) any legal or other costs incurred by Dunfermline in connection with the defence of the

proceedings or investigations that gave rise to that liability except that this sub-paragraph (2) does not apply to the extent that it would be incompatible with TUPE;

(3) all rights and liabilities in respect of tax; and

(4) any property, rights and liabilities the transfer of which would constitute a contravention of articles 3 to 7 of the Partial Property Transfers Order.

Dunfermline additional loans property, rights and liabilities

8. All property, rights and liabilities in respect of the Dunfermline additional loans.

9. All property, rights and liabilities in respect of any customer databases owned by Dunfermline relating exclusively to the property, rights and liabilities referred to in paragraph 8.

Dunfermline additional loans continuity

10.—(1) As from the first supplemental transfer time, Bridge Bank is to be treated for all purposes necessary to give effect to the first supplemental transfer as the same person as Dunfermline except in relation to the Dunfermline additional loans excluded property, rights and liabilities.

(2) Agreements or other things done by or in relation to Dunfermline are, if they relate to the Dunfermline additional loans immediately prior to the first supplemental transfer time, to be treated as made or done by or in relation to Bridge Bank.

(3) Without limiting sub-paragraph (2), any payment received after the first supplemental transfer time by or in relation to Dunfermline that relates to the Dunfermline additional loans immediately before the first supplemental transfer time other than a payment that relates to any Dunfermline additional loans excluded property, rights and liabilities is to be treated as received by or in relation to Bridge Bank.

(4) Subject to paragraph 7(2), anything (including legal proceedings) —

(a) that relates to some or all of the Dunfermline additional loans immediately prior to the first supplemental transfer time; and

(b) which is in the process of being done by or in relation to Dunfermline immediately before the first supplemental transfer time,

shall be continued by or in relation to Bridge Bank.

(5) Save in respect of the Dunfermline additional loans excluded property, rights and liabilities, any reference (express or implied) to Dunfermline in a relevant Dunfermline additional loans instrument or document is to have effect as if it were a reference to Bridge Bank.

(6) For the purposes of sub-paragraph (5), “a relevant Dunfermline additional loans instrument or document” is one which relates to some or all of the Dunfermline additional loans.

(7) Where any breach of contract or breach of duty in connection with some or all of the Dunfermline additional loans occurs before the first supplemental transfer time, any liability of Dunfermline in connection with that breach (whenever that liability may arise) remains that of Dunfermline.

(8) Sub-paragraph (7) does not apply to the extent that it would be incompatible with TUPE.

(9) Dunfermline and Bridge Bank may by agreement modify any provision of this Instrument to the extent permitted by section 36(7) of the Banking Act.

Provision of assistance

11. Dunfermline must provide Bridge Bank with such information and assistance as is reasonably requested by Bridge Bank in writing —

- (1) in relation to the Dunfermline additional loans; and
- (2) for any other purpose relating to, in connection with or in consequence of this Instrument.

PART 3 FIRST ONWARD TRANSFER

First onward transfer

12. By virtue of this Instrument, the property, rights and liabilities of Bridge Bank specified in paragraphs 15 to 17 (including relevant property, rights and liabilities specified in paragraphs 15 to 17 that fall within any of the descriptions specified in section 35(1) of the Banking Act) are transferred to Nationwide, other than the initial bridge bank excluded property, rights and liabilities.

13. The first onward transfer takes place at the first onward transfer time.

14. “initial bridge bank excluded property, rights and liabilities” means —

- (1) any property, rights and liabilities the transfer of which would constitute a contravention of articles 3 to 7 of the Partial Property Transfers Order;
- (2) all rights and liabilities in respect of tax;
- (3) any liability specified in paragraph 18(7); and
- (4) any liability in respect of (i) any award of damages or any fine imposed on or against Bridge Bank by any court, tribunal or public body where the proceedings or investigations giving rise to that liability commenced before the first onward transfer time and (ii) any legal or other costs incurred by Bridge Bank in connection with the defence of the proceedings or investigations that gave rise to that liability except that this sub-paragraph (4) does not apply to the extent that it would be incompatible with TUPE.

Initial bridge bank property, rights and liabilities

15. All property, rights and liabilities of Bridge Bank in respect of the housing association loans and the housing association deposits.

16. All property, rights and liabilities in respect of any customer databases owned by Bridge Bank relating exclusively to the property, rights and liabilities referred to in paragraph 15.

17. All property, rights and liabilities of Bridge Bank transferred to it by the first supplemental transfer by paragraph 5 of this Transfer Instrument.

Initial bridge bank continuity

18.—(1) As from the first onward transfer time, Nationwide is to be treated for all purposes necessary to give effect to the first onward transfer as the same person as Bridge Bank except in relation to the initial bridge bank excluded property, rights and liabilities.

(2) Agreements or other things done by or in relation to Bridge Bank or treated as made or done by or in relation to Bridge Bank are, if they relate to the initial bridge bank business immediately prior to the first onward transfer time, to be treated as made or done by or in relation to Nationwide.

(3) Without limiting sub-paragraph (2), any payment received, or treated as received, after the first onward transfer time by or in relation to Bridge Bank that relates to the initial bridge bank business immediately before the first onward transfer time other than a payment that relates to any initial bridge bank excluded property, rights and liabilities is to be treated as received by or in relation to Nationwide;

(4) Subject to paragraph 14(4), anything (including legal proceedings) —

(a) that relates to some or all of the initial bridge bank business immediately prior to the first onward transfer time; and

(b) which is in the process of being done by or in relation to Bridge Bank or continued by or in relation to Bridge Bank immediately before the first onward transfer time,

shall be continued by or in relation to Nationwide.

(5) Save in respect of the initial bridge bank excluded property, rights and liabilities, any reference (express or implied) to Bridge Bank in a relevant bridge bank instrument or document (including by virtue of paragraph 10(5)) is to have effect as if it were a reference to Nationwide.

(6) For the purposes of sub-paragraph (5), “a relevant bridge bank instrument or document” is one which relates to some or all of the initial bridge bank business.

(7) Where any breach of contract or breach of duty in connection with some or all of the initial bridge bank business occurs before the first onward transfer time, any liability of Bridge Bank in connection with that breach (whenever that liability may arise) remains that of Bridge Bank.

(8) Sub-paragraph (7) does not apply to the extent that it would be incompatible with TUPE.

(9) Bridge Bank and Nationwide may by agreement modify any provision of this Instrument to the extent permitted by section 36(7) of the Banking Act.

Provision of assistance

19. Bridge Bank must provide Nationwide with such information and assistance as is reasonably requested by Nationwide in writing —

(1) in relation to the initial bridge bank business; and

(2) for any other purpose relating to, in connection with or in consequence of this Instrument.

PART 4

SECOND SUPPLEMENTAL TRANSFER

Second supplemental transfer

20. By virtue of this Instrument, all property, rights and liabilities of Dunfermline specified in paragraphs 23 and 24 (including relevant property, rights and liabilities specified in paragraphs 23 and 24 that fall within any of the descriptions specified in section 35(1) of the Banking Act) are transferred to Bridge Bank, other than the Nationwide additional loans excluded property, rights and liabilities.

21. The second supplemental transfer takes place at the second supplemental transfer time.

22. “Nationwide additional loans excluded property, rights and liabilities” means —

(1) any liability specified in paragraph 25(7);

(2) any liability in respect of (i) any award of damages or any fine imposed on or against Dunfermline by any court, tribunal or public body where the proceedings or investigations giving rise to that liability commenced before the second supplemental transfer time and (ii) any legal or other costs incurred by Dunfermline in connection with the defence of the

proceedings or investigations that gave rise to that liability except that this sub-paragraph (2) does not apply to the extent that it would be incompatible with TUPE;

(3) all rights and liabilities in respect of tax; and

(4) any property, rights and liabilities the transfer of which would constitute a contravention of articles 3 to 7 of the Partial Property Transfers Order.

Nationwide additional loans property, rights and liabilities

23. All property, rights and liabilities in respect of the Nationwide additional loans.

24. All property, rights and liabilities in respect of any customer databases owned by Dunfermline relating exclusively to the property, rights and liabilities referred to in paragraph 23.

Nationwide additional loans continuity

25.—(1) As from the second supplemental transfer time, Bridge Bank is to be treated for all purposes necessary to give effect to the second supplemental transfer as the same person as Dunfermline except in relation to the Nationwide additional loans excluded property, rights and liabilities.

(2) Agreements or other things done by or in relation to Dunfermline are, if they relate to the Nationwide additional loans immediately prior to the second supplemental transfer time, to be treated as made or done by or in relation to Bridge Bank.

(3) Without limiting sub-paragraph (2), any payment received after the second supplemental transfer time by or in relation to Dunfermline that relates to the Nationwide additional loans immediately before the second supplemental transfer time other than a payment that relates to any Nationwide additional loans excluded property, rights and liabilities is to be treated as received by or in relation to Bridge Bank.

(4) Subject to paragraph 22(2), anything (including legal proceedings) —

(a) that relates to some or all of the Nationwide additional loans immediately prior to the second supplemental transfer time; and

(b) which is in the process of being done by or in relation to Dunfermline immediately before the second supplemental transfer time,

shall be continued by or in relation to Bridge Bank.

(5) Save in respect of the Nationwide additional loans excluded property, rights and liabilities, any reference (express or implied) to Dunfermline in a relevant Nationwide additional loans instrument or document is to have effect as if it were a reference to Bridge Bank.

(6) For the purposes of sub-paragraph (5), “a relevant Nationwide additional loans instrument or document” is one which relates to some or all of the Nationwide additional loans.

(7) Where any breach of contract or breach of duty in connection with some or all of the Nationwide additional loans occurs before the second supplemental transfer time, any liability of Dunfermline in connection with that breach (whenever that liability may arise) remains that of Dunfermline.

(8) Sub-paragraph (7) does not apply to the extent that it would be incompatible with TUPE.

(9) Dunfermline and Bridge Bank may by agreement modify any provision of this Instrument to the extent permitted by section 36(7) of the Banking Act.

Provision of assistance

26. Dunfermline must provide Bridge Bank with such information and assistance as is reasonably requested by Bridge Bank in writing —

- (1) in relation to the Nationwide additional loans; and
- (2) for any other purpose relating to, in connection with or in consequence of this Instrument.

PART 5

SECOND ONWARD TRANSFER

Second onward transfer

27. By virtue of this Instrument, the property, rights and liabilities of Bridge Bank specified in paragraph 30 (including relevant property, rights and liabilities specified in paragraph 30 that fall within any of the descriptions specified in section 35(1) of the Banking Act) are transferred to Nationwide, other than the subsequent bridge bank excluded property, rights and liabilities.

28. The second onward transfer takes place at the second onward transfer time.

29. “subsequent bridge bank excluded property, rights and liabilities” means —

- (1) any property, rights and liabilities the transfer of which would constitute a contravention of articles 3 to 7 of the Partial Property Transfers Order;
- (2) all rights and liabilities in respect of tax;
- (3) any liability specified in paragraph 31(7); and
- (4) any liability in respect of (i) any award of damages or any fine imposed on or against Bridge Bank by any court, tribunal or public body where the proceedings or investigations giving rise to that liability commenced before the second onward transfer time and (ii) any legal or other costs incurred by Bridge Bank in connection with the defence of the proceedings or investigations that gave rise to that liability except that this sub-paragraph (4) does not apply to the extent that it would be incompatible with TUPE.

Subsequent bridge bank property, rights and liabilities

30. All property, rights and liabilities of Bridge Bank transferred to it by the second supplemental transfer by paragraph 20 of this Transfer Instrument.

Subsequent bridge bank continuity

31.—(1) As from the second onward transfer time, Nationwide is to be treated for all purposes necessary to give effect to the second onward transfer as the same person as Bridge Bank except in relation to the subsequent bridge bank excluded property, rights and liabilities.

(2) Agreements or other things done by or in relation to Bridge Bank or treated as made or done by or in relation to Bridge Bank are, if they relate to the subsequent bridge bank business immediately prior to the second onward transfer time, to be treated as made or done by or in relation to Nationwide.

(3) Without limiting sub-paragraph (2), any payment received, or treated as received, after the second onward transfer time by or in relation to Bridge Bank that relates to the subsequent bridge bank business immediately before the second onward transfer time other than a payment that relates to any subsequent bridge bank excluded property, rights and liabilities is to be treated as received by or in relation to Nationwide;

- (4) Subject to paragraph 29(4), anything (including legal proceedings) —
- (a) that relates to some or all of the subsequent bridge bank business immediately prior to the second onward transfer time; and
 - (b) which is in the process of being done by or in relation to Bridge Bank or continued by or in relation to Bridge Bank immediately before the second onward transfer time,
- shall be continued by or in relation to Nationwide.
- (5) Save in respect of the subsequent bridge bank excluded property, rights and liabilities, any reference (express or implied) to Bridge Bank in a relevant bridge bank instrument or document (including by virtue of paragraph 25(5)) is to have effect as if it were a reference to Nationwide.
- (6) For the purposes of sub-paragraph (5), “a relevant bridge bank instrument or document” is one which relates to some or all of the subsequent bridge bank business.
- (7) Where any breach of contract or breach of duty in connection with some or all of the subsequent bridge bank business occurs before the second onward transfer time, any liability of Bridge Bank in connection with that breach (whenever that liability may arise) remains that of Bridge Bank.
- (8) Sub-paragraph (7) does not apply to the extent that it would be incompatible with TUPE.
- (9) Bridge Bank and Nationwide may by agreement modify any provision of this Instrument to the extent permitted by section 36(7) of the Banking Act.

Provision of assistance

32. Bridge Bank must provide Nationwide with such information and assistance as is reasonably requested by Nationwide in writing —

- (1) in relation to the subsequent bridge bank business; and
- (2) for any other purpose relating to, in connection with or in consequence of this Instrument.

The Governor and Company of the Bank of England

SCHEDULE 1

Reference numbers for Dunfermline additional loans

<i>Reference number</i>
277142
277151
360805
368709
487511

SCHEDULE 2

Reference numbers for Nationwide additional loans

<i>Reference number</i>
310689
829854
886378
944611

SCHEDULE 3

Reference numbers for housing association deposits

<i>Reference number</i>
19791
20237
20636
20664
20718
20752
20836
21011
21139
21213
20916
680083
701018
858118
1609127
1702332
1816547
2130258
2428781
2506435
2691778
2745487
2839797
7310312
11904916

SCHEDULE 4

Reference numbers for housing association loans

<i>Reference number</i>		
182788	381314	722812
184306	383082	722901
192791	391751	725790
200107	404608	729426
206202	405779	730939
214523	406635	737186
220388	406741	743135
222046	409774	743399
225592	418161	744298
226203	426199	745189
230171	429597	752959
233587	435431	753734
235440	439169	759007
238732	442887	762776
239534	443018	763781
240036	455296	776301
240559	455474	778117
240702	455687	782459
241571	467804	785571
245143	469815	785725
251330	482188	794635
251364	507415	801984
253359	521141	802948
255637	531804	805181
260274	538990	805599
260967	539082	816965
261211	564435	818852
262803	572322	824585
264016	588661	827983
264032	595047	830321
264695	595527	831069
267848	596213	841536
269859	596221	845833
269867	597970	850764
271586	605336	854352
274631	606669	880493
276766	606855	880752
279617	606952	881074
279625	607002	881538
280526	608751	883786
286516	608891	887064
291421	608904	887412
292184	610178	888958
295469	612448	896632
299871	621161	900168
303038	632473	900401
303500	641189	902233
304158	644129	904210
304743	656488	905739
312657	660256	907502

312673	663841	909831
312789	665827	913251
313912	666751	920371
314251	675580	920568
316431	679917	923656
318884	680117	927121
321061	685551	929565
323705	686361	932558
325961	686891	943002
327174	687103	943941
329606	687839	950718
332534	690708	954403
334341	690732	954691
335282	692573	956732
337978	693278	958492
347477	694487	960276
352683	694894	963291
352748	701653	964549
353001	703338	967173
355500	705390	970620
360937	718327	971090
362735	720003	971375
366099	720364	971839
372269	721263	

SCHEDULE 5

Reference numbers for pipeline loans

<i>Reference number</i>
7
8
9
10
11
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13
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