



4 August 2010

Trustees Executors Limited  
Level 5  
10 Customhouse Quay  
PO Box 10519  
Wellington

Dear

**CROWN RETAIL DEPOSIT GUARANTEE SCHEME – SOUTH CANTERBURY  
FINANCE LIMITED (“SCF”) – TRUST DEED DATED 12 APRIL 1976 (AS  
AMENDED) (“TRUST DEED”)**

I refer to our meeting of 29 July 2010.

At that meeting it was agreed that we would provide you with written particulars of a proposal to facilitate the early payout of stockholders under the SCF Trust Deed. As you are aware, most of the stockholders under the Trust Deed are also “Creditors” for the purposes of the Crown deeds of guarantee to which SCF is party (the “Crown Guarantee”).

Since that meeting we have formulated an alternative proposal for facilitating an early payout of stockholders under the SCF Trust Deed.

The main differences between the two proposals are as follows.

- The first proposal involves loans to be made by the Crown to a receiver of SCF (if and when appointed) for the purpose of funding a partial payout of all stockholders in an amount that approximates that equal to the Crown's expectation of the value of recoveries in any SCF receivership (currently estimated to be between 35% and 40% of the money owing to each stockholder).
- The second proposal involves—
  - direct payment to the Trustee under the Crown Guarantee (as a “Creditor”) of an amount equal to all moneys owing to all stockholders and depositors under the Trust Deed. (This includes full payout of both stockholders and depositors, regardless of whether or not they are eligible as Creditors under the current Crown Guarantees or subject to the existing \$1 million liability cap). We can do this by making the

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currently "ineligible" stockholders and depositors, and the Trustee, deemed Creditors under the Crown Guarantee by the issue of a Nomination)<sup>1</sup> and;

- a secured loan to be made by the Crown to a receiver of SCF (if and when appointed), to discharge the existing Prior Charges (as defined in the Trust Deed), secured by a Prior Charge.

The two proposals also share some common features, not least of which is the requirement for various consents, directions and administrative actions on the part of the Trustee. It is understood that such consents, directions and actions will need to be consistent with the Trustee's legal duties, including its duty to act in accordance with the terms of the Trust Deed and otherwise in the best interests of all the stockholders generally.

We attach a "term sheet" for each of the two proposals ("Term Sheet"). The rest of this letter provides additional commentary around the reasoning behind the different features of the two proposals and some of the issues that we have discussed.

## **Proposal 1 – Loan(s) to the Receivers for Part Payment of All Secured Stockholders**

### **1. Overall objectives**

- a) To enable all secured stockholders (but not depositors) to be paid their respective entitlements under the Trust Deed up to an amount equivalent to that anticipated to be realised from the sale of company assets in a receivership, within a time frame considerably shorter than that anticipated in a receivership that is not funded by a loan from the Crown or that anticipated for a payment by the Crown under the Crown Guarantee.<sup>2</sup>
- b) To enable early repayment and discharge of all Prior Charges, without the complications of multiple receiverships and early asset realisations to satisfy the senior lenders' prior claims.
- c) To enable the receiver to focus solely on effecting recoveries, with a view to maximising asset values over a longer period, in circumstances where stockholder claims will be met, first, through funding sourced from the Crown loan, secondly, for those who are eligible, from payments to stockholders who are Creditors under the Crown Guarantee and thereafter, from the proceeds of the realisation<sup>3</sup>.
- d) To effect a funding mechanism that is relatively straightforward and that avoids the complexities of other options.

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<sup>1</sup> See clause 2.5 of the Crown Guarantee.

<sup>2</sup> In a "normal" receivership of this size and complexity that depends on recoveries before distributions, it is unlikely that stockholders would receive a final dividend for a number of years.

<sup>3</sup> The Loan will be repayable first from the proceeds of asset realisation. Thereafter, residual claims will rank *pari passu* with, or behind (as the case may be) with the Crown's indemnity rights to those realisation proceeds.

## **2. Timing**

It is thought that the simplest approach is to “pre-package” the loans in anticipation of a receivership rather than to make a (standby) loan to SCF now. A loan to SCF would likely require the directors to consider issues relevant to the discharge of their duties and would likely require shareholder approval as a major transaction.

## **3. Borrower**

It is considered that the most appropriate borrower is the receiver acting as agent of SCF. Subject to first obtaining the Trustee’s consent, a receiver has power under the Trust Deed to borrow money on the security of the Charged Assets on such terms as the receivers think fit (clause 20.5(g)). The Trust Deed provides expressly that one of the purposes for which the receiver may borrow money is for “carrying on the business of [SCF]” and “for any other purposes of [the Trust] Deed”. Our view is that borrowing the loan to discharge Prior Charges and to repay money owed to investors are both purposes for which the Trust Deed has been entered into.

## **4. Security**

All moneys received by the receivers on or after the date of enforcement under the Trust Deed must (subject to payment of Prior Charges and section 30(2) of the *Receivership Act 1993*) be applied, first, to pay, among other things, liabilities incurred by or on behalf of the receivers under the Trust Deed (clause 20.11(a)). These liabilities (which will include the liabilities incurred by the receiver as SCF’s agent under the loans the subject of this proposal) are in turn secured by the assets and undertaking of SCF pursuant to the terms of the Trust Deed.

The structuring of the Crown’s rights to repayment and the ranking of those claims in the manner outlined in the preceding paragraph has the virtue of obviating the need for the grant of new security to the Crown in respect of the loans. This approach also has the benefit of operating comfortably within the existing Trust Deed framework. The Crown would be seeking the Trustee’s confirmation that moneys advanced to the receiver, as agent of SCF under this loan proposal, are liabilities of the receiver for the purposes of clause 20.11 of the Trust Deed.

The Crown has a preference for securing its loans in this manner, but has not at this time entirely excluded the notion that a Prior Charge should be granted to secure the receiver’s loan liabilities.

## **5. Payment of Prior Charge holders and stockholders**

It is in the interests of both the Trustee and the Crown that payment of Prior Charge holders and payment of stockholders be effected as efficiently and expeditiously as possible.

The payment of the Prior Charge holders would be undertaken through the draw down of "Facility A" and "Facility B" in the manner described in paragraphs 3(a) and 3(b) of the attached Term Sheet. Stockholders would be paid from the proceeds of "Facility C" (as described in the Term Sheet). That would result in part re-payment of all the stockholders (eligible and ineligible) on a *pro-rata* basis, subject and pursuant to the terms of the Trust Deed.

It is anticipated that each of the loan facilities would be drawn down by the receiver with a direction to the Crown to make payment (or pre-payment) directly to the Prior Charge holders (in respect of Facilities A and B) and to the Trustee (in respect of Facility C). The Trustee itself would give direction that the proceeds of Facility C be paid to it, prior to the receiver's direction being given to the Crown.

It is thought that the mechanics of payment can be best undertaken by Computershare, as agent of the receiver. The Crown has currently retained Computershare as its payment agent, for other payouts under the Crown deeds of guarantee. A payout under the Trust Deed should be simpler (devoid as it is of having to make determinations as to the eligibility or ineligibility of stockholders). While Computershare is best known as a provider of registry services (including for SCF's bond issues and Treasury's Debt Management Office), it is frequently called upon to act as paying agents for receivers as well.

## **6. Conditions precedent**

These are outlined in the attached Term Sheet.

We have requested from SCF all the documentation associated with the Prior Charges. We expect that to be received by the end of this week.

It is expected that the Crown will satisfy itself as regards the arrangements to be put in place by Computershare prior to the date on which the loans are to be drawn down.

The conditions precedent that relate to the Trustee are as stated. Are there any other Trustee-related conditions precedent that the Trustee considers may be necessary?

## **7. Interest**

The Crown anticipates that it will need to charge interest on the loans. Concern has been expressed that the levying of a commercial rate of interest may represent an impost on the stockholders that fall within classes that are "ineligible" for the purposes of the Crown Guarantee – an "impost" that would not be imposed if a receivership was to proceed without a Crown loan.<sup>4</sup> We will

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<sup>4</sup> Of course, the concept of "ineligibility" is foreign to the terms of the Trust Deed. It is accepted, however, that the Trustee should not be oblivious to the reality of the Crown Guarantee, in a manner that is reconcilable and consistent with the Trustee's duties under the Trust Deed and the general law.

respond separately tomorrow in relation to some of the factors we see as relevant for further consideration of this issue. The Crown is of course open to consideration of principled options suggested by the Trustee that would reduce the impact (or perceived impact) of interest in relation to the ineligible stockholders.

#### **8. Term and Repayment**

Principal amounts of the loan will be repaid as and when Charged Assets are realised, to the extent of the realisation proceeds, provided that the receiver may retain sufficient money from those proceeds to meet its obligations to pay preferential creditors and costs, charges, expenses and liabilities incurred by the Trustee or the receiver.

While the loans will be repayable on demand (for the reasons stated in the Term Sheet), the date for final repayment will, for all practical purposes, be the date the receiver has realised Charged Assets up to an amount equal to the loans outstanding and other monies owing.

#### **9. Other terms and conditions**

The most important of these are covered by:

- limitation of obligation to repay (paragraph 16 of the Term Sheet); and
- liability of receivers (paragraph 17 of the Term Sheet).

The Crown would also wish to provide for the appointment of an advisory committee (paragraph 15 of the Term Sheet) and to include very limited undertakings (principally those described in the Term Sheet).

### **Proposal 2**

**(1) Full payout of all stockholders and depositors (including ineligible stockholders and depositors) via a direct payment to the Trustee under the Crown Guarantee.**

**(2) Loan(s) to the receiver for discharge of Prior Charge holders.**

#### **1. Overall objectives**

- a) To enable all stockholders (whether currently eligible or ineligible under the Crown Guarantee, and whether or not subject to the existing liability cap in the Crown Guarantee) to be paid their respective entitlements under the Trust Deed in full.
- b) To discharge the Crown's obligations under the Crown Guarantee in the simplest way possible.

- c) To enable early repayment and discharge of all Prior Charges, without the complications of multiple receiverships and early asset realisations to satisfy the senior lenders' prior claims.
- d) To enable the receiver to focus solely on effecting recoveries, with a view to maximising asset values over a longer period.
- e) To effect a funding mechanism that is relatively straightforward and that avoids the complexities of other options.

## **2. Timing**

The objective would be to pay the Trustee under the Crown Guarantees and advance the loan as soon as possible after a receiver is appointed to SCF.

## **3. Direct payment to the Trustee under the Crown Guarantees**

Given that it is unlikely that all stockholders would be repaid in full and all depositors paid anything if SCF is placed in receivership, we suggest that it would be in the stockholders' and depositors' interests for the Crown to pay to the Trustee an amount sufficient to enable the Trustee to repay all the stockholders and depositors in full, regardless of whether they are eligible "Creditors" under the Crown Guarantee or their claims would exceed the liability cap in the Crown Guarantee. In turn, it is in the Crown's interests to make such a payment because almost all SCF stockholders and depositors are eligible "Creditors" for the purposes of the Crown Guarantee.

To authorise the Crown to make a direct payment to the Trustee, the Crown would nominate the Trustee to be a "Creditor" for the purposes of the Crown Guarantee. The nomination would make it clear that the Trustee is an eligible "Creditor", notwithstanding that some of the beneficiaries under the Trust Deed would be ineligible Creditors in their own right and/or have claims which would exceed the Crown Guarantee liability cap. The nomination would also make it clear that the Trustee could claim up to the full amount owing to all stockholders and depositors under the Trust Deed.

## **4. Payment amount**

Because neither party can know precisely how much money SCF owes to its stockholders on the date SCF is placed in receivership, in order to ensure that the Trustee receives the full amount necessary to repay all stockholders and depositors, the Crown proposes to pay the Trustee an amount that is certain to be more than the amount required. Therefore, from the date the Trustee receives the payment, the Trustee would hold the surplus on bare trust for the Crown to be reimbursed to the Crown once all stockholders have been paid in full.

## **5. Payment to stockholders**

The Crown proposes to pay the Trustee by creating an account in the Trustee's name with the Crown's Debt Management Office (which is operated through The Treasury). The payment would be deposited into that account, where the Trustee would hold the money on trust for all SCF stockholders and depositors (and the surplus on trust for the Crown).

Payments to each stockholder could then be made from this account as and when each stockholder or depositor proves its claim in the usual way. While the money is on deposit, it will earn bank interest, which each stockholder and depositors will receive *pro-rata* up to the date it is paid.

The Crown prefers to use an account with the Debt Management Office to prevent such a large sum moving around the banking system. In addition, the Debt Management Office currently has sufficient funds available to make the payment.

## **6. Security**

The Crown would not seek any additional security for the direct payment to the Trustee under the Crown Guarantee. Instead, the Crown would rely on the law of subrogation to enable it to claim from SCF the full amount the Crown has paid to the Trustee (to the extent the assets are capable of doing so).

The Crown would seek a Prior Charge over SCF's assets as security for the loan. However, given that the loan itself would swiftly discharge the existing Prior Charge holders, the Crown would not require its Prior Charge to be a first ranking charge in priority to those existing Prior Charge holders. The Crown would simply seek a charge that ranks in priority to the security of the Trust Deed.

In this regard, we note that, subject to obtaining the Trustee's consent, the Trust Deed authorises the receiver to "borrow money on the security of the Charged Assets in priority to the Moneys and the security" constituted by the Trust Deed.

To the extent that the Trustee's consent to such a charge does not automatically waive the Prior Charge restrictions (which the loan would exceed), the Trustee would also need to waive those restrictions.

## **7. Borrower and other loan terms**

The borrower of the loan would be the same as that contemplated under the first proposal, namely the receiver as agent for SCF.

The other terms of the loan under the second proposal are largely the same as those discussed above with respect to the first proposal. These are outlined in the attached Term Sheet.

## **Time Frames and Processes**

It is anticipated that Ministerial sanction will be required, if either of the two proposals discussed above are to proceed. Informal discussions have already occurred in this regard.

The current plan is to send a Treasury Report to the Minister's office on or before 13 August. Treasury will not be in a position to take matters forward to conclusion until it has received an indication of whether any of the proposals outlined are acceptable, and if so, whether there is a preference for one of the two proposals over the other.

The objective, therefore, is that before the Treasury Report is circulated, "in principle" agreement is obtained from the Trustee in respect of an agreed form of Term Sheet for each of the proposals, together (if time permits) with the underlying agreements that fully evidence the terms of the two funding mechanisms.

Therefore, it would be very helpful if we could receive confirmation from the Trustee before COB 6 August 2010 that it is ready to work with the Crown towards "in principle" agreement as regards the terms of the two proposals. That would provide the Crown with comfort that the Trustee will be in a position to provide the consents and directions required of it in respect of both proposals, subject of course to terms of agreement that are mutually acceptable to both parties (and to the person(s) likely to be appointed receiver).

## **Concluding Remarks**

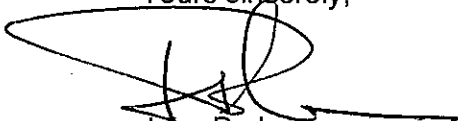
We look forward to your early response to the matters canvassed in this letter and its attachments. We would also be keen to understand how the Trustee considers it would involve a prospective receiver in the discussions and when that might occur.

If it is thought that a further early meeting would assist, then that can be arranged at short notice. Naturally, such a meeting will be most constructive if it is fully planned and structured in advance of its date.

Finally, for the avoidance of doubt, it should be clearly understood that the proposals set out in this letter are presented to the Trustee simply as "proposals". Nothing in this letter is to be construed as constituting a commitment on the part of the Crown to proceed with these "proposals", or as creating or imposing any legal or other duty or obligation on the Crown, or otherwise giving rise to any legal or equitable right or remedy against the Crown on any basis whatsoever.

We look forward to hearing from you at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'John Park', written over a large, loopy scribble.

John Park  
for the Secretary to the Treasury



## ATTACHMENT ONE

### PROPOSED FACILITY – INDICATIVE HIGH LEVEL DESCRIPTION OF TERMS

#### COMMERCIAL IN CONFIDENCE PRIVILEGED

1. **Lender:** Her Majesty the Queen in right of New Zealand, acting by and through [the Treasury] for and on behalf of the Minister of Finance.
2. **Borrower:** South Canterbury Finance Limited (in receivership) – facility agreement to be executed by the receivers as agent for SCF.

*Comments: Once the Receivers have obtained Trustee consent, the Trust Deed authorises the Receivers to borrow money on the security of the Charged Assets<sup>5</sup>.*

3. **Purpose of Facilities:** The current proposal is that there will be three separate facilities, each with its own purpose, as described below:
  - (a) **Facility A:** to repay all indebtedness owed to [Torchlight] secured by Prior Charges.
  - (b) **Facility B:** a standby facility to repay other indebtedness secured by Prior Charges (which is understood to be contingent) as it becomes due and payable.
  - (c) **Facility C:** to repay, in part, indebtedness on a *pro-rata* basis owed to investors (both “eligible” and “ineligible” under the terms of the Original Crown Guarantee and the Extended Crown Guarantee).

4. **Loan Amount:** [to be determined]

*Comments: Current thinking is that the Loan Amount is likely to be determined by reference to the Crown's expectations of recovery.*

5. **Security:** The Lender will have the benefit of the first ranking security position under the Trust Deed:
  - (a) provided that all Prior Charges have been repaid and released; and
  - (b) on the basis that the Money Owing is a liability incurred by the Receivers under the Trust Deed.

*Comments: It is anticipated that the Lender's rights to repayment under the Loan will have the first ranking benefit of the Trustee's security over the Charged Assets under the Trust Deed, on the basis that the Loan is a liability incurred by the Receivers for the purposes of the Trust Deed.*

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<sup>5</sup> Clause 20.5(g) of the Trust Deed.

6. **Availability Period:** The Loan document will be agreed in principle, but not executed until after Receivers are appointed to SCF. The Availability Period will be:

(a) from the date on which the Lender is satisfied that all conditions precedent have been met or waived; and

(b) to **[a date yet to be determined]**.

*Comments: paragraph (b) above will be determined by the time period the Crown decides is necessary to determine whether or not Tranche B will be required.*

7. **Term:** From the first Draw Date until the Termination Date.

8. **Termination Date:** The earlier of:

(a) the date the Borrower has realised Charged Assets up to an amount equal to the Loan and all other Money Owed; and

(b) the date [#] Business Days after the Lender demands repayment.

*Comments: The Crown's preference is for the Loan (and other Money Owed) to be repayable on demand. This avoids the need to deal with unworkable repayment milestones or acceleration triggers, both of which will be cumbersome, given that the Borrower will already be insolvent and have unreliable cash flows as Charged Assets are realised. The risks for the Borrower (i.e., the Receivers as agent for SCF) with an on-demand facility are addressed by the limitation of recourse provisions in the Loan document.*

9. **Repayment:** Principal amounts of the Loan will be repaid as and when Charged Assets are realised, to the extent of the realisation proceeds, provided that the Borrower may retain sufficient money from those proceeds to meet its obligations to pay Prior Charge debts due and payable (if any), and costs, charges, expenses and liabilities incurred by the Trustee or the Receivers.

*Comments: The Crown may also include a minimum repayment amount and subsequent minimum repayment multiples so that prepayment obligations arise only for amounts that are meaningful and easy to administer.*

10. **Interest Rate:** **[to be determined]**

*Comments: Interest primarily intended to be a reimbursement for the Crown's cost of funds. The Crown is prepared to consider principled options for reducing the overall interest impost.*

11. **Interest Periods:** **[to be determined]**

*Comments: The principal purpose of interest periods is to align interest calculations and payments with the Crown's own funding arrangements.*

12. **Interest Payment Dates:** Last Business Day of each Interest Period.

13. **Interest Payments:** Interest will be payable from the realisation of Charged Assets. To the extent that there is insufficient money to pay all or part of any interest due on any Interest Payment Date, that amount of interest will be capitalised.
14. **Conditions precedent:**
- (a) The Lender has undertaken satisfactory due diligence on all Prior Charges to understand the amount secured and satisfy itself that the relevant liability can be repaid/prepaid.
- Comments: This is necessary as one of the key purposes of the Loan to is to repay Prior Charge liabilities.*
- (b) The Lender has satisfied itself that the Register is sufficiently accurate and complete to enable prompt and efficient part-payment of indebtedness owed to Stockholders.
- Comments: The Crown and the Receivers must be satisfied that the state of the Register will allow rapid repayment using the proceeds of Tranche C. The Crown has already taken steps to ascertain the state of the Register.*
- (c) The Lender has satisfied itself that Computershare is able to quickly and accurately part-repay indebtedness owed to Stockholders.
- (d) The Trustee has consented to:
- (i) the Receivers (acting as agent of SCF) borrowing the Loan, including each Tranche, and applying it to meet the relevant Purpose, for the purposes of the Trust Deed; and
- (ii) the Receivers paying the proceeds of Tranche C to repay Principal first rather than interest.
- Comments: As noted above, the Trustee's consent is required before the Receivers can borrow money. The Trustee will need to seek its own advice on this issue, but we anticipate that the Trustee's discretion will be exercised by reference to its legal duties to act in the interests of the beneficiaries of the Trust Deed generally (having regard to the ranking of claims of the various classes of investor).*
- (e) The Trustee has made a request to the Receivers (acting as agent of SCF) for the purposes of clause 5.2 of the Trust Deed to make payment to it of that part of the Principal Money equal to the Facility C Loan.
- (f) The Trustee has acknowledged that the Money Owing is a liability incurred by the Receivers under the Trust Deed, for the purposes of the Trust Deed.
15. **Advisory Committee:** An Advisory Committee is to be established comprised of the Receivers, [the Trustee] and [**to be determined**] appointed by the Crown to advise the Receivers on the conduct of the receivership of SCF.

*Comments: The purpose of the Advisory Committee is to provide the Crown with an opportunity to consult with and advise the Receivers. It is not intended to operate as a means for the Crown to direct or manage the Receivers.*

16. **Limitation of obligation to repay:** Recourse against the Borrower will be limited to the lesser of the Money Owing and net aggregate proceeds of realisation of Charged Assets less expenses ranking equally with the Money Owing under the Trust Deed.
17. **Liability of Receivers:** Except solely to the extent necessary to ensure the Receivers are entitled to claim against the proceeds of realisation of Charged Assets, Receivers' (and agents' and employees') personal liability in contract, tort, under statute or otherwise to the Lender is excluded.
18. **Other:** Very limited undertakings (relating to information disclosure, negative pledge relating to prior ranking debt and/or security), no representations, no events of default.

*Comments: Because the Loan is repayable on demand, and the Receivers are not personally liable, the Crown does not intend to seek any representations or many undertakings from the Borrower, or to include any Events of Default in the Loan document.*

## ATTACHMENT TWO

### LOAN AND ADJUSTED GUARANTEE PAYOUT PROPOSAL – INDICATIVE HIGH LEVEL DESCRIPTION OF TERMS

#### COMMERCIAL IN CONFIDENCE PRIVILEGED

19. This proposal consists of:
- (a) a loan described in paragraphs 20 to 37 below, with the purpose of repaying all indebtedness secured by Prior Charges (the **Loan Proposal**); and
  - (b) the payment to the Trustee of the amount sufficient to discharge SCF's indebtedness to all holders of its debt securities under the Crown Deeds of Guarantee, adjusted where necessary by Nominations to ensure payment in full (the **Adjusted Guarantee Proposal**). This is described in further detail in paragraphs 38 to 41 below.

#### ***Loan Proposal***

20. **Lender:** Her Majesty the Queen in right of New Zealand, acting by and through [the Treasury] for and on behalf of the Minister of Finance.
21. **Borrower:** South Canterbury Finance Limited (in receivership) – facility agreement to be executed by the receivers as agent for SCF.

*Comments: Once the Receivers have obtained Trustee consent, the Trust Deed authorises the Receivers to borrow money on the security of the Charged Assets<sup>6</sup>.*

22. **Purpose of Facilities:** The current proposal is that there will be two separate facilities, each with its own purpose, as described below:
- (a) **Facility A:** to repay all indebtedness owed to [Torchlight] secured by Prior Charges; and
  - (b) **Facility B:** a standby facility to repay other indebtedness secured by Prior Charges (which is understood to be contingent) as it becomes due and payable.
23. **Loan Amount:** An amount sufficient to repay the holders of all Prior Charges.
24. **Security:** The Lender will require the Receivers (as agents for SCF) to grant a Prior Charge for the Loan Amount.

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<sup>6</sup> Clause 20.5(g) of the Trust Deed.

*Comments: this will require the agreement of the Trustee to either modify or waive the existing Prior Charges cap in the Trust Deed.*

25. **Availability Period:** The Loan document will be agreed in principle, but not executed until after Receivers are appointed to SCF. The Availability Period will be:

- (a) from the date on which the Lender is satisfied that all conditions precedent have been met or waived; and
- (b) to **[a date yet to be determined]**.

*Comments: paragraph (b) above will be determined by the time period the Crown decides is necessary to determine whether or not Tranche B will be required.*

26. **Term:** From the first Draw Date until the Termination Date.

27. **Termination Date:** The earlier of:

- (a) the date the Borrower has realised Charged Assets up to an amount equal to the Loan and all other Money Owed; and
- (b) the date [#] Business Days after the Lender demands repayment.

*Comments: The Crown's preference is for the Loan (and other Money Owed) to be repayable on demand. This avoids the need to deal with unworkable repayment milestones or acceleration triggers, both of which will be cumbersome, given that the Borrower will already be insolvent and have unreliable cash flows as Charged Assets are realised. The risks for the Borrower (i.e., the Receivers as agent for SCF) with an on-demand facility are addressed by the limitation of recourse provisions in the Loan document.*

28. **Mandatory prepayment:** Principal amounts of the Loan will be repaid as and when Charged Assets are realised, to the extent of the realisation proceeds, provided that the Borrower may retain sufficient money from those proceeds to meet its obligations to pay Prior Charge debts due and payable (if any), and costs, charges, expenses and liabilities incurred by the Trustee or the Receivers.

*Comments: The Crown may also include a minimum repayment amount and subsequent minimum repayment multiples so that prepayment obligations arise only for amounts that are meaningful and easy to administer.*

29. **Interest Rate:** **[to be determined]**

*Comments: Interest is primarily intended to be a reimbursement for the Crown's cost of funds. Because all holders of SCF debt securities will be paid in full under the Adjusted Guarantee Proposal, the interest rate charged by the Crown should not be an issue of concern to the Trustee.*

30. **Interest Periods:** **[to be determined]**

*Comments: The principal purpose of interest periods is to align interest calculations and payments with the Crown's own funding arrangements.*

31. **Interest Payment Dates:** Last Business Day of each Interest Period.
32. **Interest Payments:** Interest will be payable from the realisation of Charged Assets. To the extent that there is insufficient money to pay all or part of any interest due on any Interest Payment Date, that amount of interest will be capitalised.

33. **Conditions precedent:**

- (a) The Lender has undertaken satisfactory due diligence on all Prior Charges to understand the amount secured and satisfy itself that the relevant liability can be repaid/prepaid.

*Comments: This is necessary as the key purpose of the Loan is to repay Prior Charge liabilities.*

- (b) The Lender has satisfied itself that the Register is sufficiently accurate and complete to enable prompt and efficient part-payment of indebtedness owed to Stockholders.

*Comments: The Crown and the Receivers must be satisfied that the state of the Register will allow rapid repayment using the proceeds of Tranche C. The Crown has already taken steps to ascertain the state of the Register.*

- (c) The Lender has satisfied itself that Computershare is able to quickly and accurately part-repay indebtedness owed to Stockholders.

- (d) The Trustee has consented to the Receivers (acting as agent of SCF) borrowing the Loan, including each Facility, applying it to meet the relevant Purpose, and granting the Prior Charge for the purposes of the Trust Deed.

*Comments: As noted above, the Trustee's consent is required before the Receivers can borrow money and/or grant any security, including a Prior Charge. The Trustee will need to seek its own advice on this issue, but we anticipate that the Trustee's discretion will be exercised by reference to its legal duties to act in the interests of the beneficiaries of the Trust Deed generally (having regard to the ranking of claims of the various classes of investor).*

- (e) The Trustee has agreed to modify or waive, as the case may be, the existing Trust Deed restrictions on the granting of a Prior Charge in respect of the Loan.

*Comments: The Crown wants a Prior Charge for the Loan. SCF has already granted Prior Charges which have used most if not all of the existing threshold limits to grant Prior Charges to other parties. This will require either modification to or waiver of the existing threshold to permit the Prior Charge to be granted prior to draw down of the Loan. A waiver may be most appropriate on the basis that the majority of the existing Prior Charges will be discharged on the same day that Facility A is drawn down. The Trustee will need to seek its own advice*

*on this issue, but we anticipate that the Trustee's discretion will be exercised by reference to its legal duties to act in the interests of the beneficiaries of the Trust Deed generally (having regard to the ranking of claims of the various classes of investor).*

(f) All conditions precedent to the Adjusted Guarantee Proposal have been or will be satisfied.

34. **Advisory Committee:** An Advisory Committee is to be established comprised of the Receivers, [the Trustee] and [**to be determined**] appointed by the Crown to advise the Receivers on the conduct of the receivership of SCF.

*Comments: The purpose of the Advisory Committee is to provide the Crown with an opportunity to consult with and advise the Receivers. It is not intended to operate as a means for the Crown to direct or manage the Receivers.*

35. **Limitation of obligation to repay:** Recourse against the Borrower will be limited to the lesser of the Money Owing and net aggregate proceeds of realisation of Charged Assets less expenses ranking equally with the Money Owing under the Trust Deed.

36. **Liability of Receivers:** Except solely to the extent necessary to ensure the Receivers are entitled to claim against the proceeds of realisation of Charged Assets, Receivers' (and agents' and employees') personal liability in contract, tort, under statute or otherwise to the Lender is excluded.

37. **Other:** Very limited undertakings (relating to information disclosure, negative pledge relating to prior ranking debt and/or security), no representations, no events of default.

*Comments: Because the Loan is repayable on demand, and the Receivers are not personally liable, the Crown does not intend to seek any representations or many undertakings from the Borrower, or to include any Events of Default in the Loan document.*

### **Adjusted Guarantee Proposal**

38. **Nomination:** The Crown will issue a Nomination in favour of the Trustee for the purposes of the Crown Deeds of Guarantee between the Crown and SCF. The Nomination will:

- (a) make the Trustee eligible as a Creditor in respect of SCF for the purposes of the Crown Deeds of Guarantee; and
- (b) specify that the Crown's liability to the Trustee under the Crown Deeds of Guarantee is limited only to the quantum of the Trustee's liability to holders of SCF debt securities under the Trust Deed; and
- (c) make all SCF stockholders and depositors eligible as a Creditor in respect of SCT for the purposes of the Crown Deeds of Guarantee.



39. **Amount:** An amount sufficient to repay all holders of SCF debt securities (regardless of eligibility status under the Crown Deeds of Guarantee).

*Comments:* The actual payment amount is likely to be greater than the amount actually necessary to repay all holders of SCF debt securities to minimise the risk of post-acceleration interest continuing to accrue. The Trustee will hold the amount of any over-payment on bare trust for the Crown and refund it once all holders of SCF debt securities have been paid in full.

40. **Security:** None.

*Comments:* The Crown will not be seeking security from the Trustee for the payment to the Trustee under the Crown Deeds of Guarantee. However, to the extent that the payment amount exceeds the Trustee's liability to holders of debt securities under the Trust Deed, the Crown expects repayment from the Trustee.

41. **Conditions precedent:**

- (a) The Trustee has made a request for the purposes of clause 5.2 of the Trust Deed for SCF to make payment to it rather than to the holders of debt securities.

*Comments:* The Crown must be satisfied that SCF's repayment obligations under the Trust Deed are to the Trustee.

- (b) The Trustee has agreed to make a claim under the Crown Deeds of Guarantee for the amount required to repay all holders of SCF debt securities.

- (c) The Trustee has agreed to direct the Crown to hold the payment amount on account of the Trustee pending payment to holders of SCF debt securities.

*Comments:* The Crown proposes for the payment amount to be held for and on behalf of the Trustee [in an interest bearing account] by [the Debt Management Office] in order to avoid the complications that would arise from the introduction of such a large amount into the banking system.