

# M

COMPANIES FORM No. 395

034440/65

# 395

CHWP000

Please do not  
write in  
this marginPlease complete  
legibly, preferably  
in black type, or  
bold block lettering

## Particulars of a mortgage or charge

A fee of £13 is payable to Companies House in  
respect of each register entry for a mortgage  
or charge.

Pursuant to section 395 of the Companies Act 1985

To the Registrar of Companies  
(Address overleaf - Note 6)

For official use

Company number

5

00597920

Name of company

\* insert full name  
of Company

\* Sotheby's Financial Services Limited (the "Charging Company")

Date of creation of the charge

5 October 2005

Description of the instrument (if any) creating or evidencing the charge (note 2)

Debenture (the "Debenture") dated 5 October 2005 made between, inter alios, the Charging  
Company and Bank of America, N.A. as Collateral Agent.

Amount secured by the mortgage or charge

Please refer to Part 2 of the attached Continuation Sheet.

Names and addresses of the mortgagees or persons entitled to the charge

Bank of America, N.A., Agency Management - East, 335 Madison Avenue 4th Floor, NY1-503-04-03,  
New York, NY 10017 USA (the "Collateral Agent")

Postcode

Presentor's name address and  
reference (if any) :Shearman & Sterling (London)  
LLP, Broadgate West, 9 Appold  
Street, London EC2A 2AP

Time critical reference

For official Use (06/2005)  
Mortgage Section

Post room

LD4  
COMPANIES HOUSE488  
18/10/2005

Short particulars of all the property mortgaged or charged

Please refer to Part 3 of the attached Continuation Sheet.

Part 4 of the attached Continuation Sheet contains covenants by and restrictions on the Charging Company which protect and further define the Charges and which must be read as part of the Charges.

N.B. Please refer to Part 1 of the attached Continuation Sheet for definitions.

Please do not write in this margin

*Please complete legibly, preferably in black type, or bold block lettering*

Particulars as to commission allowance or discount (note 3)

Nil

*A fee is payable to Companies House in respect of each register entry for a mortgage or charge. (See Note 5)*

Signed Shearman + Sterling (London) LLP Date 18 October 2005

On behalf of ~~[company/mortgagee]~~ chargee]†

† delete as appropriate

**Notes**

- 1 The original instrument (if any) creating or evidencing the charge, together with these prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of creation of the charge (section 395). If the property is situated and the charge was created outside the United Kingdom delivery to the Registrar must be effected within 21 days after the date on which the instrument could in due course of post, and if dispatched with due diligence, have been received in the United Kingdom (section 398). A copy of the instrument creating the charge will be accepted where the property charged is situated and the charge was created outside the United Kingdom (section 398) and in such cases the copy must be verified to be a correct copy either by the company or by the person who has delivered or sent the copy to the registrar. The verification must be signed by or on behalf of the person giving the verification and where this is given by a body corporate it must be signed by an officer of that body. A verified copy will also be accepted where section 398(4) applies (property situate in Scotland or Northern Ireland) and Form No. 398 is submitted.
- 2 A description of the instrument, eg "Trust Deed", "Debenture", "Mortgage", or "Legal charge", etc, as the case may be, should be given.
- 3 In this section there should be inserted the amount or rate per cent. of the commission, allowance or discount (if any) paid or made either directly or indirectly by the company to any person in consideration of his:
  - (a) subscribing or agreeing to subscribe, whether absolutely or conditionally, or
  - (b) procuring or agreeing to procure subscriptions, whether absolute or conditional,for any of the debentures included in this return. The rate of interest payable under the terms of the debentures should not be entered.
- 4 If any of the spaces in this form provide insufficient space the particulars must be entered on the prescribed continuation sheet.
- 5 A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
- 6 The address of the Registrar of Companies is: Companies House, Crown Way, Cardiff CF14 3UZ

Continuation Sheet to Form 395

PART 1

Definitions

In this Form 395, so far as the context admits, the following expressions have the following meanings:-

**"Administrator"** means an administrator appointed under Schedule B1 of the Insolvency Act 1986;

**"Bank Balances"** means the amounts now or subsequently standing to the credit of any account which the Charging Company has or has an interest in, with any person (including the Charged Accounts) and the debts represented thereby;

**"Book Debts"** means all book and other debts and monetary claims now or subsequently due or owing to the Charging Company the proceeds of the same and the benefit of all Investments, Liens and guarantees or other rights of any nature now or subsequently enjoyed or held by it in relation thereto (other than Bank Balances);

**"Charged Accounts"** means any bank account maintained by the Charging Company;

**"Charged Assets"** means the assets from time to time the subject of any Liens created or purported to be created by or pursuant to the Debenture and, where the context permits, the proceeds of sale of such assets;

**"Charged Investments"** means Investments forming part of the Charged Assets;

**"Charges"** means Liens from time to time created by or pursuant to the Debenture;

**"Collateral Agent"** means Bank of America, N.A. acting in its capacity as collateral agent and trustee for the Secured Parties in relation to the Collateral Documents or such other agent as may from time to time be appointed under the Loan Documents;

**"Collateral Documents"** has the meaning ascribed thereto in the Credit Agreement;

**"Credit Agreement"** means the credit agreement dated as of September 7, 2005 between, inter alios, Sotheby's, Inc. as the Company, Sotheby's Holdings, Inc. as Holdings, certain U.K. Subsidiaries of Holdings named therein as U.K. Borrowers, Banc of America Securities LLC as Sole Lead Arranger and Sole Book Manager, Bank of America, N.A. as Administrative Agent, Swing Line Lender and L/C Issuer, LaSalle Bank N.A. as Syndication Agent and the other Lenders party thereto;

**"Delegate"** means a delegate or sub-delegate appointed, directly or indirectly, pursuant to Clause 8.3 (*Delegation*) of the Debenture;

**"Event of Default"** has the meaning ascribed thereto in the Credit Agreement;

**"Intellectual Property"** means all patents, trademarks, service marks, all brand and business names, all copyrights (including any rights in computer software) and rights in the nature of copyright, all design rights, all registered designs, all logos, get-up, inventions (including any software), topography and similar rights, database rights, domain name rights, all trade secrets, know-how and all other intellectual property rights owned by the Charging Company throughout the world or the interests (including by way of licence) of the Charging Company in any of the foregoing (whether or not registered and including all applications for the same and any associated goodwill and all rights to bring proceedings for infringement), and all rights under any agreements entered into by or for the benefit of the Charging Company relating to the use or exploitation of any such rights;

**"Investment"** means any debenture, bond, share, stock, certificate of deposit, or other security or investment in the future owned at law or in equity by the Charging Company and all dividends, interest and other moneys paid or payable in respect thereof and all rights, moneys and assets related to or accruing or offered or arising thereon from time to time, whether by way of redemption, conversion, exercise of option rights, substitution, exchange, preference, bonus or otherwise;

**"Lien"** means any mortgage, pledge, hypothecation, assignment, deposit, arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing);

**"Loan Documents"** has the meaning ascribed thereto in the Credit Agreement;

**"Personal Chattels"** means plant, machinery, vehicles, computers and other equipment, goods, effects and personal chattels (including all spare parts, replacements, modifications and additions) but not Fixtures or stock in trade;

**"Property"** means freehold and leasehold property of the Charging Company;

**"Receiver"** means an administrative receiver, receiver and manager or other receiver appointed in respect of the Charged Assets by the Collateral Agent pursuant to the Debenture;

**"rights"** shall be construed as including rights, benefits, privileges, consents, authorities, discretions, remedies and powers and **"right"** shall be construed accordingly;

**"Scheduled Investments"** means the Investments described in Schedule 2 (*Details of the Scheduled Investments*) to the Debenture as such Investments are set out in Part 5 of this Continuation Sheet;

**"Secured Parties"** has the meaning ascribed thereto in the Credit Agreement.

## PART 2

### Amount Secured by the Debenture

All present and future obligations and other liabilities of any nature of the Charging Company due, owing or incurred under or in connection with the Loan Documents (or any of them) to the Collateral Agent and/or the Secured Parties and/or any Receiver (including, without limitation, under any amendments, supplements or restatements of any of the Loan Documents or in relation to any new or increased advances or utilisations thereunder), and whether indebtedness or liabilities originally owed to all or any of the Secured Parties and/or any Receiver or any other person or persons actual or contingent, matured or not matured, liquidated or unliquidated, whether incurred solely or jointly and/or severally or in any other capacity whatsoever and whether as principal or surety, in any currency or currencies, including all interest accruing thereon (calculated in accordance with Clause 2.3 (*Interest*) of the Debenture), after as well as before judgement, and all costs, charges and expenses incurred in connection therewith (the **"Secured Liabilities"**).

T  
10

PART 3

Short Particulars of all property mortgaged or charged

1. Pursuant to Clause 3.2 (*Investments*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities, charged with full title guarantee by way of first fixed charge in favour of the Collateral Agent, the Scheduled Investments and all Investments subsequently belonging to the Charging Company or held on its behalf by any nominee.
2. Pursuant to Clause 3.3 (*Intellectual Property*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities, charged with full title guarantee by way of first fixed charge in favour of the Collateral Agent, all rights in respect of the Intellectual Property now or subsequently belonging to the Charging Company.
3. Pursuant to Clause 3.4 (*Insurance*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities, charged with full title guarantee by way of first fixed charge in favour of the Collateral Agent, all benefits, rights and interest of the Charging Company under or in respect of any present or future contract or policy of insurance and any claim or return of premium or proceeds paid or payable in relation thereto (to the extent, that the same are not otherwise subject to an effective fixed charge or assignment pursuant to Clause 3 (*Liens*) of the Debenture). 95
4. Pursuant to Clause 3.5 (*Plant and Machinery*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities, charged with full title guarantee by way of first fixed charge in favour of the Collateral Agent, all Personal Chattels now or subsequently belonging to the Charging Company and its interest in any such Personal Chattels in its possession.
5. Pursuant to Clause 3.6 (*Contracts*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities, charged by way of first fixed charge in favour of the Collateral Agent, all its rights (including, without limitation, the right to receive any compensation) now or subsequently of the Charging Company in respect of:
  - (a) any agreement to which it is a party;
  - (b) any warranty, bond, guarantee or letter of credit issued in its favour; and
  - (c) any bill of exchange or any other negotiable instrument held by it,

to the extent that the same are not otherwise subject to an effective fixed charge pursuant to Clauses 3.2 (*Investment*) to 3.5 (*Plant and Machinery*) of the Debenture inclusive or Clauses 3.7 (*Pension Fund*) or 3.8 (*Other Charges*) of the Debenture or to an effective security assignment under Clause 3.9 (*Assignment by way of Security*) of the Debenture.
6. Pursuant to Clause 3.7 (*Pension Funds*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities, charged by way of first fixed charge in favour of the Collateral Agent, any interest, claim or right it has now or subsequently in respect of any pension fund or plan.
7. Pursuant to Clause 3.9 (*Assignment by way of Security*) of the Debenture, the Charging Company as security for the payment of the Secured Liabilities:
  - (a) has assigned absolutely (subject to if applicable, obtaining the relevant third party consent in accordance with paragraph (c) below and the proviso for reassignment on redemption) to the Collateral Agent all rights and interest present or future of the Charging Company in respect of each present or future contract or policy of insurance of it together with the benefit of all its rights, claims and remedies in respect of those Charged Assets.

- (b) Until the Charges become enforceable in accordance with Clause 5.2(b) (*Enforceability of Security*) of the Debenture, the Charging Company shall be entitled to exercise all its rights in each present or future contract of insurance assigned by it pursuant to paragraph (a) above, subject to the other provisions of the Debenture.
  - (c) If the rights of the Charging Company under any instrument or agreement cannot be the subject of any assignment which the Debenture purports to assign pursuant to Clause 3.9(a) (*Assignment by way of Security*) of the Debenture without the consent of another party:
    - (i) the Charging Company shall notify the Collateral Agent promptly;
    - (ii) the Debenture will charge all amounts which the Charging Company may receive, or has received, under that document; and
    - (iii) the Charging Company will use all reasonable endeavours to promptly obtain the consent of the relevant third party for such rights to be charged under the Debenture and shall, if such consent is obtained, promptly provide a copy of such consent to the Collateral Agent and, until such consent is obtained, such rights will be excluded from the assignment.
8. Pursuant to Clause 3.10 (*Floating Charge*) of the Debenture:
- (a) the Charging Company as security for the payment of the Secured Liabilities, charged by way of first floating charge, its undertaking and all its assets both present and future not otherwise effectively mortgaged, charged or assigned by the Debenture. The floating charge created by the Charging Company under Clause 3.10(a) (*Floating Charge*) of the Debenture shall,
    - (i) except as otherwise agreed in writing by the Collateral Agent, rank in priority to any other Lien which shall subsequently be created or permitted to arise by the Charging Company or any Lien created by a Receiver appointed under the Debenture; and
    - (ii) be a qualifying floating charge for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.
  - (b) The Collateral Agent may by notice to the Charging Company convert the floating charge created by the Charging Company pursuant to Clause 3.10(b) (*Floating Charge*) of the Debenture into a fixed charge as regards such assets as may be specified (whether generally or specifically) in such notice if:
    - (i) an Event of Default is outstanding; or
    - (ii) the Collateral Agent reasonably considers those assets to be in jeopardy of being seized or sold pursuant to any distress, attachment, execution, sequestration or other legal process.
  - (c) Notwithstanding any other provision of the Debenture (and without prejudice to the circumstances in which the floating charge created under this Clause 3 (*Liens*) of the Debenture will crystallise under general law) but subject to Clause 3.10(d) (*Floating Charge*) of the Debenture:
    - (i) if any person presents or makes an application for a warrant of execution, writ of *feiri facias*, garnishee order or charging order or otherwise levies or attempts to levy any distress, execution, attachment, expropriation, sequestration or other legal process

against any of the assets which are charged by way of the first floating charge of the Charging Company;

- (ii) a resolution is passed for the winding up or administration of the Charging Company or a petition is presented for the winding up or administration of the Charging Company which is not discharged within 60 days (in the case of a winding up petition) or 60 days (in the case of a petition for an administration order); or
- (iii) an Administrator or Receiver is appointed in respect of the Charging Company or the Collateral Agent receives notice of an intention to appoint an Administrator pursuant to paragraphs 15 or 26 of Schedule B1 of the Insolvency Act 1986 in respect of the Charging Company,

then with immediate effect and without notice the floating charge shall automatically convert into a fixed charge as regards such assets.

- (d) Any charge which has crystallised under paragraphs (b) or (c) above may be reconverted into a floating charge by notice given at any time by the Collateral Agent to the Charging Company concerned in relation to the assets specified in such notice.
9. Pursuant to Clause 3.11 (*Retention of Documents*) of the Debenture, the Collateral Agent shall be entitled to continue to retain any document delivered to it under the Debenture relating to a Charged Asset until the Charges over such Charged Asset are released in accordance with the Debenture. If, for any reason, it ceases to hold any such document before such time, it may by notice to the relevant Charging Company require that the relevant document be redelivered to it and the Charging Company shall promptly comply with that requirement or procure that it is complied with.
10. Pursuant to Clause 3.12 (*Fixed and Floating Security*) of the Debenture, it was agreed that, if for any reason any Lien in respect of any asset created or purported to be created pursuant to Clause 3 (*Liens*) of the Debenture as a fixed charge or assignment does not, or ceases to, take effect as a fixed charge or assignment, then it shall take effect as a first floating charge in respect of such asset. However it is the intent of the parties that the Lien over other Charged Assets shall remain unaffected.

#### PART 4

##### Covenants and Restrictions

1. Pursuant to Clause 2.1 (*Charging Company's Obligations Continuing*) of the Debenture, the Charging Company's obligations under Clause 2 (*Covenant to Pay*) of the Debenture and the Charges shall be continuing and will extend to the ultimate balance of Secured Liabilities payable by such Charging Company and will remain in full force and effect until no Secured Liabilities remain outstanding, unsatisfied or capable of arising under the Loan Documents regardless of any intermediate discharge in whole or in part.
2. Pursuant to Clause 4.1(a) (*General Restrictions and Obligations*) of the Debenture, except with the consent of the Collateral Agent, the Charging Company shall not:
- (a) create or permit to be outstanding any Lien over any Charged Assets save as expressly permitted pursuant to Section 7.01 (*Liens*) of the Credit Agreement; or
  - (b) unless required to do so by law, sell, transfer, assign, lease, hire out, grant, lend or otherwise dispose of any of the Charged Assets or the equity of redemption therein or permit any person to do any such thing except as permitted under the Credit Agreement.

3. Pursuant to Clause 4.2(a) (*Deposit of Documents*) of the Debenture the Charging Company shall, immediately upon the execution of the Debenture or, if later, upon it becoming entitled to the relevant Investment, deliver to the Collateral Agent (except to the extent the Collateral Agent notifies the relevant Charging Company to the contrary):
- (a) all certificates and other documents of title or evidencing title in respect of each of the Scheduled Investments listed against its name in Part 5 and each of the other Charged Investments belonging to it;
  - (b) all stock transfer forms and other documents which the Collateral Agent may reasonably request to vest title in the Charged Investments in the Collateral Agent or its nominees and in the case of such transfer form shall be undated and shall have the name of the transferee in blank; and
  - (c) such declarations of trust in relation to any Investments in which the Charging Company has an interest but which are not held in its sole name as the Collateral Agent may reasonably require.

All documents required by Clause 4.2(a) (*Deposit of Documents*) of the Debenture, shall be in such form as the Collateral Agent shall reasonably require.

4. Pursuant to Clause 4.3(a) (*Book Debts*) of the Debenture, to the extent that it is prohibited from doing so by the Loan Documents, the Charging Company shall not release, sell, transfer, assign, factor or discount or otherwise deal in any way with any of the Book Debts.
5. Pursuant to Clause 4.4(b) (*Bank Balances and Charged Account(s)*) of the Debenture, the Charging Company shall not, save as provided in Clause 4.4 (*Bank Balances and Charged Accounts*) of the Debenture release, sell, transfer, assign, factor, discount or otherwise deal in any way with any of the Bank Balances in a manner which is prohibited by the Credit Agreement.
6. Pursuant to Clause 10 (*Further Assurance*) of the Debenture, the Charging Company shall, at its own expense, promptly do all such acts and things as the Collateral Agent may require for:
- (a) creating, registering, perfecting, maintaining or protecting the Charges or any of the Charged Assets;
  - (b) creating a fixed charge over Book Debts or, at any time after the Charges have become enforceable under Clause 5.2(b) (*Enforceability of Security*) of the Debenture, a legal assignment of Book Debts; or
  - (c) facilitating the realisation of any Charged Asset or the exercise of any right, power or discretion vested in the Collateral Agent, any Receiver or any Delegate,

including, without limitation, the execution (including by sealing) of any transfer, assignment, mortgage, charge or Lien or any document required to enable the Collateral Agent or its nominee to obtain legal title to any Charged Assets in circumstances in which it is entitled to obtain such legal title under the Debenture or the giving of any notice, order or direction.

7. Pursuant to Clause 11.1 (*Appointment*) of the Debenture, the Charging Company by way of security irrevocably appointed the Collateral Agent, every Receiver and every Delegate severally its attorney:
- (a) to do all acts and things which the Charging Company is obliged to do under the Debenture, including, without limitation, to fill in the name of the transferee and to date and complete any instrument of transfer in respect of any Investments which has been executed in blank by the

Charging Company and, in the case of registered Investments, to procure the registration of the transferee as the holder of the relevant Investments;

- (b) to transfer any interest in any Charged Assets in the circumstances in which such transfer may be required under the Debenture including on an enforcement of the Charges over such Charged Assets;
  - (c) in its name and on its behalf to exercise any right conferred on the Collateral Agent, any Receiver or any Delegate in relation to the Charged Assets or under the Debenture or by law after such right has become exercisable; and
  - (d) to register or renew registration of the existence of the Charges or the restrictions on dealing with the Charged Assets in any register in which the Charging Company is obliged (but has failed) to effect or maintain registration under the terms of the Debenture.
8. Pursuant to Clause 11.2 (*Ratification*) of the Debenture, the Charging Company ratified and confirmed and agreed to ratify and confirm whatever any such attorney shall do or purport to do in the exercise or purported exercise of the power of attorney in Clause 11.1 (*Appointment*) of the Debenture. All moneys expended by any such attorney shall be deemed to be expenses incurred by the Collateral Agent under the Debenture.
9. Pursuant to Clause 18.1 (*Set-Off*) of the Debenture, after an Event of Default has occurred and for so long as it is continuing the Collateral Agent and each other Secured Party may (without notice to the Charging Company) set off or otherwise apply any deposits at any time held and any other indebtedness, matured or unmatured, owing by it to or for the account of the Charging Company against any indebtedness matured or unmatured owing to the Collateral Agent or such other Secured Party by that Charging Company, regardless of the place of payment, booking branch or currency of either obligation or the terms of any deposit held by any Secured Party.
10. Pursuant to Clause 18.2 (*Currency Conversion*) of the Debenture, a Secured Party may exercise such rights notwithstanding that the obligations concerned may be expressed in different currencies and each Secured Party is authorised to convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

PART 5

**Details of the Scheduled Investments**

Charging Company	Shares held in	Charging Company's Shareholding (Percentage)
Oatshare Limited	Sotheby's (Company number: 00874867)	100.00
Sotheby's	Suitlast Limited (Company number: 02508976)	100.00
Sotheby's	Catalogue Distribution Company Limited (Company number: 05299034)	100.00
Sotheby's	Sotheby's London Limited (Company number: 01222607)	100.00
Sotheby's	Sotheby's Financial Services Limited (Company number: 005979290)	100.00
Sotheby's	Sotheby's Distribution Limited (Company number: 03853916)	100.00

FILE COPY



## CERTIFICATE OF THE REGISTRATION OF A MORTGAGE OR CHARGE

Pursuant to section 401(2) of the Companies Act 1985

COMPANY No. 00597920

THE REGISTRAR OF COMPANIES FOR ENGLAND AND WALES HEREBY CERTIFIES THAT A DEBENTURE DATED THE 5th OCTOBER 2005 AND CREATED BY SOTHEBY'S FINANCIAL SERVICES LIMITED FOR SECURING ALL MONIES DUE OR TO BECOME DUE FROM THE CHARGING COMPANY TO THE COLLATERAL AGENT AND/OR THE SECURED PARTIES AND/OR ANY RECEIVER ON ANY ACCOUNT WHATSOEVER UNDER THE TERMS OF THE AFOREMENTIONED INSTRUMENT CREATING OR EVIDENCING THE CHARGE WAS REGISTERED PURSUANT TO CHAPTER 1 PART XII OF THE COMPANIES ACT 1985 ON THE 18th OCTOBER 2005.

GIVEN AT COMPANIES HOUSE, CARDIFF THE 24th OCTOBER 2005.

*P. A.*



*Companies House*

— for the record —



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES