

IN THE HIGH COURT OF JUSTICE

No. 7942 of 2008

CHANCERY DIVISION

COMPANIES COURT

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

- (1) ANTHONY VICTOR LOMAS**
- (2) STEVEN ANTHONY PEARSON**
- (3) PAUL DAVID COPLEY**
- (4) RUSSELL DOWNS**
- (5) JULIAN GUY PARR**

**(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE) (IN ADMINISTRATION))**



Applicants

-and-

- (1) BURLINGTON LOAN MANAGEMENT LIMITED**
- (2) CVI GVF (LUX) MASTER S.À.R.L**
- (3) HUTCHINSON INVESTORS, LLC**
- (4) WENTWORTH SONS SUB-DEBT S.À.R.L**
- (5) YORK GLOBAL FINANCE BDH, LLC**

Respondents

**JOINT ADMINISTRATORS' SUPPLEMENTAL POSITION PAPER ON
ISSUE 36A**

This position paper is filed on behalf of the Joint Administrators of Lehman Brothers International (Europe) (the “**Administrators**”) (“**LBIE**”) by way of supplement to the Administrators’ position paper dated 10 October 2014. It is filed pursuant to paragraph 6 of the Order of David Richards J dated 9 March 2015.

Issue 36A: If (as a matter of construction) a CDD or the CRA has the effect of releasing a Currency Conversion Claim, Statutory Interest claim or other non-provable claim, whether by reason of, or by analogy with the rule in Ex Parte James (1874) LR 9 Ch App 609 and/or because to enforce such release(s) would unfairly harm creditors who have entered into a CDD or the CRA within the meaning of paragraph 74 of Schedule B1 to the Insolvency Act 1986, in all the circumstances, the Administrators should be directed not to enforce, or to cause LBIE to enforce, such release(s).

1. In light of the supplemental position papers on Issue 36A served by the First to Third Respondents (the “**Senior Creditor Group**”) and the Fourth Respondent (“**Wentworth**”), on 6 April 2015 and 15 April 2015 respectively, the Administrators do not at present take a position on Issue 36A.
2. Consistent with their role in the Waterfall II Application generally, the Administrators wish to ensure that Issue 36A is fully argued and that all relevant arguments are made.
3. To this end it is presently the Administrators’ intention, in advance of the trial of Issue 36A, to identify arguments that appear not to have been identified by the Senior Creditor Group and Wentworth in support of their respective positions on Issue 36A and to bring these arguments to the attention of the parties (to enable the relevant party to adopt the argument should it see fit to do so).
4. On Issue 36A, the Administrators reserve their right to take a position (or to run particular arguments) in the course of their written or oral submissions at the trial of Issue 36A, if they consider it to be appropriate in light of any material

change of circumstance or the way in which one of the other parties is running its case.

5. It is the intention of the Administrators, in their written and oral submissions, to assist the Court better to understand the factual background to Issues 34-36A, in particular, as regards the development and genesis of the CRA and the CDDs, which background explains the steps taken by them in progressing LBIE's administration towards a successful conclusion. It is noted that neither the Senior Creditor Group nor Wentworth, in their supplemental position papers on Issue 36A, seek to impugn the Administrators' conduct in any way. The Administrators consider that there is no basis on which their conduct could be impugned.

William Trower QC

Daniel Bayfield

Alexander Riddiford

24 April 2015