WATERFALL APPLICATION

Nos 7942 and 7945 of 2008 and No. 429 of 2009

IN THE HGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMININSTRATION)
AND IN THE MATTER OF LEHMAN BROTHERS LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

STATEMENT OF CONCLUSIONS

1. Conclusions on issues which are not connected with the status of Lehman Brothers International Europe (LBIE) as an unlimited company:

    (i) The claims of LB Holdings Intermediate 2 Limited (LBHI2) under its subordinated loan agreements with LBIE are subordinated not only to provable debts but also to statutory interest and un-provable liabilities.

    (ii) Creditors of LBIE whose contractual or other claims are denominated in a foreign currency are entitled to claim against LBIE for any currency losses suffered by them as a result of a decline in the value of sterling as against the currency of the claim

between the date of the commencement of the administration of LBIE and the date or dates of payment or payments of distributions to them in respect of their claims. Such currency conversion claims rank as un-provable liabilities, payable only after the payment in full of all proved debts and statutory interest on those debts.

(iii) If the administration of LBIE is immediately followed by a liquidation, any interest in respect of the period of the administration which has not been paid before the commencement of the liquidation will not be provable as a debt in the liquidation nor will it be payable as statutory interest under either rule 2.88 of the Insolvency Rules 1986 or section 189 of the Insolvency Act 1986.

(iv) Those creditors of LBIE with debts which carry interest by reason of contract, judgment or other reasons unconnected with the administration or liquidation of LBIE will be entitled to claim in a liquidation of LBIE, which immediately follows the administration, for interest which accrued due during the period of the administration, as an un-provable claim against LBIE, payable after the payment in full of all proved debts and statutory interest on such debts.

2. Conclusions on those issues which arise from the status of LBIE as an unlimited company:

(i) The obligation of members to contribute under section 74(1) of the Insolvency Act 1986 extends not only to provide for proved debts but also for statutory interest on those debts and un-provable liabilities.

(ii) The contributory rule (that is, the rule that a contributory of a company in liquidation cannot recover anything in respect of any claims he may have as a creditor until he has fully discharged his obligations as a contributory) applies only in a liquidation. It does not apply in an administration, including the administration of LBIE. The equitable rule in *Cherry v Boultbee* also does not apply.

(iii) LBIE, acting by its administrators, will be entitled to lodge a proof in a distributing administration or a liquidation of either Lehman Brothers Limited (LBL) or LBHI2 in respect of those companies' contingent liabilities under section 74(1) of the Insolvency Act 1986 which may arise if LBIE were to go into liquidation. The valuation of such claims would be a matter of estimation under the provisions of the Insolvency Rules.

(iv) In a distributing administration or liquidation of LBL or LBHI2, the claims of those companies respectively as creditors of LBIE would be the subject of mandatory set-off against the claims of LBIE in respect of those companies' contingent liabilities as contributories. I have reached the conclusion that the decision in *In*

re Auriferous Properties Limited (No 1) 1898 1 Ch 691 was wrong and should not be followed.

(v) In the administration of LBIE the contingent liabilities of LBL and LBHI2 as contributories will be the subject of mandatory set-off against the admitted proofs of debt of those companies as creditors of LBIE.