

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

REPORT TO THE COURT

Introduction

- 1 This report to the Court (the “**Report**”) describes the status of the administration of Lehman Brothers International (Europe) (“**LBIE**”) and sets out those issues and applications that are likely to come before the Court. The Report sets out:
 - 1.1 In Part A, some background to the collapse of Lehman Brothers and to the entering into administration of the Lehman Brothers companies that are now in administration in England, including LBIE (this material appears in various witness statements filed previously in the administration proceedings, so is simply summarised in this Report for convenience and to give context);
 - 1.2 In Part B, a summary of the main events that have taken place since the commencement of LBIE’s administration, focussing in particular on issues that have concerned the Court and an indication of those matters that the Administrators consider are likely to come before the Court in the coming months. Part B includes details of:
 - 1.2.1 The administration in general;
 - 1.2.2 Trust Property (including Client Money); and
 - 1.2.3 Other Court-based issues and applications.
- 2 It is intended that this document will be made public and that Counsel for the Administrators will attend Court to present the Report and respond to any questions the

Court might have. Accordingly, for obvious reasons, the Report does not include information that is confidential or sensitive or that the Administrators consider should, in the best interests of LBIE and its creditors, not be made public. A hearing before Mr Justice Briggs for the purposes of presenting this Report is expected to take place on 11 December 2009.

A. BACKGROUND

- 3** At the core of the business of the Lehman Brothers group (the “**Group**”) was global investment banking. Until its well publicised collapse some 14 months ago, it was one of the four biggest investment banks in the United States. It provided financial services to corporations, governments and municipalities, institutional clients and high net worth individuals.
- 4** The Group was headquartered in New York, with regional headquarters in London and Tokyo, and many offices in North America, Europe, the Middle East, Latin America and the Asia-Pacific region. The ultimate parent company of the Group was Lehman Brothers Holdings Inc, a corporation incorporated in the US (“**LBHI**”).
- 5** The principal trading company of the Group within Europe was LBIE (which is an unlimited company). LBIE was (and remains post-administration) authorised and regulated by the FSA and was a member of the London Stock Exchange and many other international stock and derivatives exchanges. As noted below, in addition to being appointed in respect of LBIE, the Administrators are also appointed in respect of a number of other U.K. companies within the Group.
- 6** The real estate crisis relating to sub-prime mortgage lending in the US has been well documented. The Group had a large exposure to that sector. As a result, it was forced to make a number of provisions and write-downs in its accounts. Those write-downs caused significant losses in the Group’s second and third quarter results in 2008.
- 7** The Group operated in a market that depends heavily on investor and market confidence. In part as a result of those announced losses, there was an escalating loss of market confidence in the Group. This culminated in a significant deterioration in LBHI’s share price on the New York Stock Exchange of almost 80 per cent during the week from Friday 5 September 2008 to Friday 12 September 2008. On Tuesday 9 September, the share price fell 45 per cent following reports that negotiations with the

Korean Development Bank, regarding a potential major investment in the Group, had been put on hold.

- 8 The following day, the Group announced a third quarter loss of US\$3.9 billion. At the same time, the Group announced plans to sell a majority stake in its investment management business and to spin-off the majority of its commercial real estate assets into a new, separate public company. These measures failed to restore investor confidence and the share price fell a further seven per cent on Wednesday 10 September 2008. Following the close of business that day, Moody's Investors Service, one of the main credit rating agencies, announced that, in the absence of a purchaser for the Group or its business being identified by Monday 15 September 2008, it intended to downgrade the Group's credit rating.
- 9 Various steps were taken in an attempt to resolve the Lehman Group's increasingly precarious situation. It has been reported that discussions took place with the US Treasury and Federal Reserve and with potential investors and purchasers of the Group's business (or part of it). Those discussions did not, however, result in a purchaser or any other solution to resolve the Group's financial difficulties.
- 10 As part of its global treasury management, the Lehman Group operated a centralised treasury function. During each trading day, if required, LBHI transferred cash to enable the Lehman Group companies, including LBIE, to meet their cash requirements during that day. The companies within the Lehman Group were therefore reliant upon receipt of that cash from LBHI to enable them to meet their obligations.
- 11 Right up until the weekend of 13 and 14 September 2008, it remained the hope and expectation of the Group management that the business could be saved. It was not until Sunday 14 September 2008 that it became apparent that a rescue would not take place. During the afternoon of 14 September 2008, the directors met for the first time with the prospective administrators of the London-based business (that is, partners in PricewaterhouseCoopers LLP ("PwC")). As noted in the evidence filed in support of the administration application, the directors of the relevant Group companies were informed that, as from 15 September 2008, LBHI would no longer be in a position to, and would not, provide any further cash to any of the Group companies and was preparing to file for Chapter 11 bankruptcy protection in the US. The Lehman Brothers companies in the

UK, which were reliant upon guarantees and ongoing funding from the Group companies in the US, could therefore not continue to trade.

- 12 During the night of 14 September 2008, preparations were carried out for a number of the Group companies in the UK to apply for administration. In the early hours of the morning of Monday, 15 September 2008, the directors of LBIE, (and three other Group companies in the UK) resolved to place those companies into administration. At 7.56 a.m., administration orders were made in respect of those companies by Mr Justice Henderson. Since 15 September 2008, 15 further Group companies in the UK have entered administration, pursuant to out-of-Court appointments made by their directors, with the Administrators, or other partners at PwC, being appointed over them. Partners in PwC have also been appointed as liquidators of various other Group companies in the UK.
- 13 LBHI filed for bankruptcy protection on 15 September 2008 under Chapter 11 of the US Bankruptcy Code. Further Group entities overseas, entered into insolvency processes during the days and weeks that followed. One of LBIE's fellow Group companies, Lehman Brothers Inc ("LBI"), based in the United States, filed under the US Securities Investor Protection Act ("SIPA") five days later. Immediately following that filing, a significant part of its prime brokerage business was sold to Barclays Capital Inc ("BarCap").

B. SUMMARY OF EVENTS SINCE COMMENCEMENT OF ADMINISTRATION

- 14 The Progress Reports for the first two six month periods of the administration (to 14 March 2009 and 14 September 2009) were distributed to creditors on 14 April 2009 and 14 October 2009 respectively. The Progress Reports were also posted on the dedicated PwC/Lehman website, at the following website addresses:

14.1 http://www.pwc.co.uk/pdf/LBIE_progress_report_140409.pdf; and

14.2 http://www.pwc.co.uk/pdf/lehmans_2nd_progress_report_141009.pdf.

That website also contains numerous updates in relation to client assets, client money and general creditor issues and is regularly updated by the Administrators to keep creditors and others informed about developments in the administration.

- 15 Detailed descriptions of the steps taken in the administration of LBIE are set out in the Progress Reports. It is not intended to repeat in full in this Report the detail of what appears in the Progress Reports (copies of which have been provided to the Court) or in the witness statements filed in support of the various applications. Rather, a summary of the principal events and the main issues that have arisen is set out below.

General Overview and Administration Issues

- 16 Following the Administrators' appointment (particularly in light of the very short period - less than 24 hours - between first meeting with LBIE's directors and being appointed), the challenges faced were unprecedented. Steps were taken to understand and stabilise the affairs of LBIE, in what were extremely chaotic market conditions. This included, in the opening weeks, securing funding for the administration, dealing with the workforce, liaising with regulators and exchanges, setting up new banking arrangements, dealing with landlords of the premises, negotiating for the disposal of parts of LBIE's business and managing communications with the market.
- 17 The Administrators have, in the 14 or so months since their appointment, been concerned with numerous aspects of the estate, many of which have not directly concerned the Court. Examples include:
- 17.1 The Administrators negotiated and completed the sale of LBIE's equities business to Nomura Holdings Inc in the opening weeks of the administration. This resulted in the preservation, by transfer to Nomura, of over 2,400 jobs (as well as mitigating employee related claims against the LBIE estate).
- 17.2 Alongside that sale, transitional services arrangements were agreed between LBIE and Nomura to facilitate and govern the various functions, in particular in respect of IT, being transferred and/or in respect of which LBIE required continued service, or would provide ongoing support to Nomura (including the recharging by LBIE of associated costs). Similarly, transitional services arrangements have been agreed with BarCap in relation to the provision of technology services through its US platform (as noted above, BarCap having acquired a significant part of the prime brokerage business of LBI in the United States, including its IT infrastructure).

- 17.3** Significant resources have been devoted to dealing with the Trust Property (as defined and described in more detail below) over which LBIE has control and in respect of which its clients and counterparties have claims.
- 17.4** Progress has been made in bringing assets within LBIE's control. As at 14 September 2009, the Administrators had gained control of something in the region of US\$40 billion of securities and cash, including approximately:
- 17.4.1** US\$13.7 billion of cash realisations, comprising US\$10.2 billion for the benefit of LBIE's unsecured creditors, US\$900 million pre-administration cash receipts held under the FSA's Client Money Rules and around US\$2.6 billion in potential post-administration client related receipts;
 - 17.4.2** US\$11.3 billion in securities which are currently being held by LBIE, comprising US\$8.9 billion of potential client securities and up to US\$2.4 billion that are potentially held for the benefit of LBIE's unsecured creditors;
 - 17.4.3** US\$13.3 billion in cash and securities that belong to clients and have already been returned to those clients; and
 - 17.4.4** US\$1 billion of collateral held by third parties for LBIE's clients, which has been released directly to those clients at the instigation of the Administrators.
- 17.5** Much progress has been made in reconciling and settling the positions of some 1,400 of the approximately 6,000 counterparties of LBIE and robust processes have been implemented to reconcile, value and agree close-out amounts on a counterparty by counterparty basis.
- 17.6** The Administrators have set up systems to reconcile and deal with the 841,981 pending and failed trades that existed as at 15 September 2008. At the date of the most recent Progress Report, 840,819 of those trades had been fully reconciled to information received from external parties. Work is underway to apply those failed trades to counterparties, to recover receivables and in liaising with exchanges in relation to determinations under default rules.

- 17.7 The majority of LBIE's circa 158,700 over-the-counter derivative trades have been revalued and reconciled.
- 17.8 The Administrators have filed (or are in the process of filing) claims on LBIE's behalf against more than 20 of LBIE's affiliates, totalling around (as at 19 November 2009) US\$217.3 billion. This includes:
- 17.8.1 Claims filed against LBHI-controlled entities totalling some US\$38.4bn, plus some \$90bn of claims relating to guarantees; and
- 17.8.2 Some US\$80bn of gross claims have been filed against other entities, including LBI (in the United States), Lehman Brothers Finance SA (in Switzerland) ("**LBF**") and Lehman Brothers Japan.
- 17.9 Pre-administration, Client Money in the sum of approximately US\$1bn was deposited with a Group affiliate in Germany, Lehman Brothers Bankhaus A.G ("**Bankhaus**"). Bankhaus is in an insolvency process in Germany. Extensive work has been undertaken to ensure claims against Bankhaus in respect of those funds are pursued and recoveries maximised.
- 17.10 Extensive work has been carried out to value intercompany financing and derivatives balances, as well as developing a detailed framework for the agreement of intercompany balances. This framework has been shared with all major affiliates in the Group, with a view to attempting to agree a consistent approach to determining intercompany balances.
- 17.11 The Administrators have secured membership of creditors' committees for entities with major intercompany relationships with LBIE, including LBF and Lehman Brothers Commercial Corporation Asia Limited.
- 18 The Administrators have, of course, also carried out their statutory functions vis-à-vis meetings and reporting:
- 18.1 The first meeting of LBIE's creditors took place on 14 November 2008. At that meeting, the Administrators' Proposals were approved (see link to Proposals on the dedicated website established by the Administrators for matters relating to LBIE's administration: [http://www.pwc.co.uk/pdf/LBIE - Agreed proposals.pdf](http://www.pwc.co.uk/pdf/LBIE_-_Agreed_proposals.pdf)).

- 18.2 A creditors' committee was also established at the first creditors' meeting, consisting of:
- 18.2.1 LBHI;
 - 18.2.2 Ramius Credit Opportunities Master Fund Limited;
 - 18.2.3 GLG European Long/Short Fund
 - 18.2.4 Legal and General Pensions Limited; and
 - 18.2.5 Oceanwood Global Opportunities Master Fund.
- 18.3 Following the filing of LBIE's claims in LBHI's Chapter 11 proceedings, LBHI has resigned from the committee (albeit not at this stage accepting LBIE's claims). It has been replaced by Lehman Commercial Paper, Inc.
- 18.4 The Administrators liaise with the committee regularly, whether in formal meetings, by conference call or in writing. As well as carrying out their functions as members of this committee, certain of these entities have formed part of the working group that has contributed to the formulation to the Administrators' approach to dealing with Trust Assets, including the proposed scheme of arrangement and its alternatives.
- 18.5 As noted above, the Administrators have prepared and distributed Progress Reports for each of the two six months periods since their appointment.

Trust Property

- 19 As set out in the evidence filed by the Administrators in relation to various applications made in the administration, the Administrators have from an early stage in the administration sought to adopt a system for dealing with property held in the name of, or otherwise to the order of, LBIE which is subject to trust or proprietary claims ("**Trust Property**"), whether comprising money held under the rules set out in the FSA's Client Assets sourcebook ("**CASS**") (such money being "**Client Money**"), or securities, in an orderly and efficient manner. Further, the Administrators have sought to adopt a system which balances the importance of dealing with the potential proprietary claims and the achievement of the statutory purpose for which the Administrators have been appointed.

- 20 The Administrators have, since their appointment, been anxious to return Trust Property to LBIE's clients and affiliates as expeditiously as possible, but have faced numerous challenges in doing so. During the course of the administration so far, the Administrators have made various applications to Court in order to seek guidance as to the appropriateness of their general strategy for returning Trust Property to beneficiaries.
- 21 Before the Administrators' first application, a client of LBIE, on an application for disclosure of information concerning assets it claimed, sought expedition of the application. The application for expedition was refused (see *RAB Capital Plc v. Lehman Brothers International (Europe)* [2008] EWHC 2335 (Ch), 22 September 2008).
- 22 The first of the Administrators' applications was made within the first few weeks of the administration and sought the Court's directions as to the processes the Administrators should put in place and follow for dealing with Trust Property. The Court made an order on 7 October 2008 (the "**Trust Property Order**") authorising the Administrators to continue to give effect to the processes they had proposed, pending approval of their Proposals by LBIE's creditors. At the first creditors' meeting on 14 November 2008, LBIE's creditors approved, as part of the Proposals, the Administrators carrying on dealing with Trust Property in accordance with the Trust Property Order.
- 23 In October 2008, a group of hedge fund clients of LBIE applied for an order requiring the Administrators to provide detailed information in respect of those funds' securities. The application was refused. In brief, the Judge found that the clients were not entitled to require the provision of information by the Administrators. He also held that the Court would not, in circumstances where it found that the Administrators were seeking in good faith to carry out their functions in the interests of LBIE's creditors and asset claimants as a whole, provide relief to the clients under paragraphs 68 or 74 of Schedule B1 to the Insolvency Act 1986 or, more generally, by giving directions to the Administrators in the day-to-day management of the administration (see *Four Private Investment Funds v. Lomas et al*, [2008] EWHC 2869 (Ch), 24 November 2008).
- 24 A further client of LBIE has made an application under paragraphs 68 and 74 of Schedule B1 to Insolvency Act 1986 for delivery up of assets. The hearing is floating in a 3 day window from 14 to 17 December 2009, with a time estimate of one day.
- 25 The approach adopted by the Administrators pursuant to the Trust Property Order is based on the bilateral agreement of returns of Trust Property to clients who can make

out a special case for prioritisation and who are able and willing to accept those returns on necessarily stringent conditions (including provision by the recipient clients of indemnities and credit support). The Administrators have, while attempting to return Trust Property to clients where possible in accordance with this approach, and with a view to identifying a quicker and more cost effective process, spent considerable time devising alternative strategies for the return of Trust Property in a more efficient and timely manner. At the same time, the Administrators were also conscious of their obligations to the unsecured creditors of LBIE and did not wish to effect distributions of Trust Property in a manner which could potentially expose those creditors to further loss.

- 26 Having considered with their advisers the options available to them in this regard, the Administrators decided to explore a framework to deal with the resolution of the various uncertainties surrounding the extent and validity of claims to Trust Property through a scheme of arrangement under Section 895 of the Companies Act 2006.
- 27 Following a preliminary hearing in March 2009, at which the Administrators were given liberty to take steps to progress the drafting of, and promulgate, a scheme of arrangement (as well being given certain directions in relation to the costs of dealing with Trust Property), the Administrators made an application to seek clarification from the Court as to whether the Court has jurisdiction to sanction a scheme of arrangement that sought to deal with clients' rights in respect of Trust Property comprising securities and assets (including monies) derived from such securities since LBIE's entry into administration ("**Trust Assets**").
- 28 A hearing of the Administrators' application took place on 29 and 30 July 2009. Mr Justice Blackburne handed down judgment on 21 August 2009. He concluded that there is no jurisdiction afforded by the Companies Act 2006 for the Courts to sanction a scheme of arrangement that is concerned with the distribution of property held on trust and seeks to vary or extinguish proprietary rights (see *Re. Lehman Brothers International (Europe) (In Administration) (No. 2)*, [2009] EWHC 2141 (Ch), 21 August 2009).
- 29 Mr Justice Blackburne granted permission to appeal against his decision and the Administrators filed such an appeal on 10 September 2009, simultaneously requesting that the appeal be heard on an expedited basis. The request for expedition was granted and a hearing of the appeal took place on 26 October 2009. In a judgment handed down

on 6 November 2009, the Court of Appeal upheld Mr Justice Blackburne's decision (see *Re. Lehman Brothers International (Europe) (In Administration) (No. 2)*, [2009] EWCA Civ 1161, 6 November 2009).

- 30** In planning for the possibility that the Court would be held to lack jurisdiction to sanction the proposed scheme of arrangement, the Administrators had given consideration to how they might approach the return of Trust Assets absent such a scheme. Accordingly, the Administrators have developed (in consultation with the creditors' committee and industry bodies) an alternative approach to the return of Trust Assets, whereby (if the approach is successful) LBIE will enter into a multilateral contract with consenting Trust Asset claimants (hopefully comprising the vast majority of all Trust Asset claimants) for the return of Trust Assets.
- 31** On 24 November 2009, LBIE sent a letter to each person that, according to its books and records, appears to have a claim to Trust Assets. Those trust claimants were invited to bind themselves voluntarily to a Claim Resolution Agreement (the "CRA"), the purpose of which is to allow LBIE and relevant counterparties to compromise and agree claims relating to Trust Assets and financial contracts. The provisions of the CRA are substantially the same as those that were contained in the proposed scheme of arrangement. In particular, the provisions in relation to the management of assets, the asset valuation methodology, the calculation of net contractual positions, the establishment of pools of assets and pro rata sharing of shortfalls between signatories, the resolution of disputes and the concepts of appropriation and retention amounts are substantially the same. The coming into operation of the CRA is expressed to be conditional upon a threshold condition relating to the proportion of known Trust Asset claimants who sign up to its terms. An update published on the PwC/Lehman website in relation to the CRA, including a copy of the circular relating to the CRA, can be found at: http://www.pwc.co.uk/eng/issues/lehman_client_assets_update_circular_241109.html.
- 32** Following the launch of the CRA to potential claimants of Trust Assets, the Administrators (on their own behalf and on behalf of LBIE) have issued an application, under the Insolvency Act 1986 and under the Court's jurisdiction to administer trusts, in recognition of the likelihood that, in the absence of a scheme of arrangement, they may need to return Trust Assets to beneficiaries in circumstances where they have incomplete information as regards the total potential claims to such trust property. This

application seeks protection from claims for breach of duty/trust if the Administrators impose a "bar date" in relation to the submission of Trust Assets claims and if, subsequently to such bar date, they make distributions of Trust Assets based on the claims asserted as at the date of such distributions. The date proposed as the bar date is 26 February 2010.

- 33 Specifically, the Administrators seek liberty, after the bar date and to the extent that the relevant Trust Assets are not subject to valid and enforceable security interests, to distribute Trust Assets to clients and counterparties of LBIE on the basis of the information available to the Administrators as at the date of such distribution. They also seek liberty, after the bar date (and absent valid and enforceable security interests), to make appropriations to LBIE of Trust Assets (in accordance with LBIE's rights), on the basis of the information available to the Administrators as at the date of such appropriations.
- 34 The Administrators' purpose in making this application is to establish a basis upon which they can proceed to distribute Trust Assets. Having taken extensive steps during the course of the administration so far to identify those entitled to such assets, the Administrators seek to obtain certainty as to the population of claimants to whom they are to be distributed and to ensure that LBIE (as well as the Administrators) has protection in making those distributions. It is anticipated that the application will be heard at some point between 14 and 16 December 2009.

Client Money

- 35 With regard to the distribution of certain cash received by LBIE post-administration, the Administrators recently sought directions clarifying the scope and effect of Clause 5.2 of the standard form International Prime Brokerage Agreement (Charge version) and the application of the collateral transfer exemption laid down in CASS 7.2.3R. Mr Justice Briggs handed down his judgment on 21 October 2009, which provides the Administrators with useful guidance as to the proper treatment of certain funds LBIE has received (see *Re. Lehman Brothers International (Europe) (In Administration)*, [2009] EWHC 2545 (Ch), 21 October 2009).
- 36 In respect of Client Money received by LBIE prior to its entry into administration, the Administrators applied to Court for directions in order to resolve various issues of

principle. Directions were sought in that application regarding a number of issues, which can be broadly categorised as questions relating to:

- 36.1 what money constitutes the Client Money pool (in particular whether LBIE is required to 'top-up' the pool);
- 36.2 which clients are entitled to claim against the Client Money pool and the extent of those claims; and
- 36.3 how distributions from the Client Money pool should be effected (in particular what set-off or retentions, if any, are permitted).

A hearing of that application took place from 9 November 2009 to 24 November 2009 before Mr Justice Briggs. The Judge indicated that he hoped that judgment would be handed down before the end of the current Court term. Depending upon the outcome of the application, it is possible that certain aspects may be the subject of an appeal. Further, there may remain other issues relating to Client Money that may require further directions from the Court.

Other Applications in the Administration

- 37 Aside from the applications described above, in relation to Trust Property and Client Money, the Administrators have made various other applications for directions from the Court, including:
 - 37.1 In October 2008, the Administrators made an application for the payment of a proportion of their costs on account, pending formation of the creditors' committee. The Court made an order on 22 October 2008, permitting them to take interim payments in respect of their fees that had accrued and would accrue until the committee was in place. Following appointment of the creditors' committee, that committee reviews and approves the Administrators' fees.
 - 37.2 Following comments made by the Judge in the US Bankruptcy Court supervising the LBHI Chapter 11 proceedings as to the differences in approach between those administering LBHI's insolvency on the one hand and the Administrators on the other in respect of international co-operation and protocols, the Administrators sought directions from the Court to send a letter to the US Bankruptcy Court

explaining their approach to these issues. The Court made an order on 13 May 2009 giving the Administrators liberty to send such a letter.

- 37.3** The Administrators made an application pursuant to Rule 2.30 of the Insolvency Rules 1986 for liberty to file a redacted version of LBIE's Statement of Affairs to exclude sensitive information relating to counterparties' identities and estimated liabilities. The Court made an order on 15 May 2009 in the terms sought.
- 37.4** The Administrators of LBIE (and the other Group companies in administration) concluded that extensions to the terms of their original appointments would be required. An application for extensions (of different periods for the various companies) was made in July 2008 pursuant to paragraph 76(2) of Schedule B1 to the Insolvency Act 1986. In relation to LBIE, an order was made on 28 July 2009, extending the administration order to 30 November 2011.
- 37.5** On 23 November 2009, the Administrators made an application to alter the list of the PwC partners appointed as administrators in respect of a number of the Group companies in administration. The application was made to address a potential issue relating to group tax relief. The Court made an order on 30 November 2009 in respect of the changes of administrators. In respect of LBIE, this resulted in the appointment of a further administrator (Derek Anthony Howell).
- 37.6** The Administrators have issued an application for directions pursuant to paragraph 63 of Schedule B1 of the Insolvency Act 1986 to determine the ownership of certain securities held in LBIE's house depots and the effects of a Lehman Brothers process known as the Regulation and Administration of Safe Custody and Global Settlement ("**RASCALS**") on the ownership of such securities. Currently the respondents to the application are LBI, LBF, Lehman Brothers Commercial Corporation Asia Limited, Lehman Brothers Asia Holdings Limited and Lehman Brothers Special Financing Inc. The application is set down for a hearing in March 2010.

Linklaters LLP

(Ref: Tony Bugg/Euan Clarke)

4 December 2009