

Applicants
D P Ereira
First Statement
"DPE1"
12 March 2009

IN THE HIGH COURT OF JUSTICE

Claim 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

**WITNESS STATEMENT OF
DAVID PHILIP EREIRA**

I, DAVID PHILIP EREIRA, of Linklaters LLP, One Silk Street, London EC2Y 8HQ, state as follows.

A. INTRODUCTION

- 1 I am a solicitor and a partner in Linklaters LLP ("**Linklaters**"), a law firm at the above address. Linklaters act for the joint administrators of Lehman Brothers International (Europe) ("**LBIE**") (in administration) (the "**Administrators**"). I have been working with the Administrators since the commencement of LBIE's administration on 15 September 2008. I am duly authorised to make this witness statement on behalf of LBIE and the Administrators.
- 2 Where I give no indication of the source of my information or belief, the contents of this witness statement are derived from facts and matters which are within my own knowledge and belief.
- 3 There is now shown to me a paginated bundle of copy documents, marked "**DPE1**", to which I refer in this witness statement.
- 4 Nothing in this witness statement is intended to waive privilege in respect of any matter referred to and privilege is not being waived.

B. PROGRESS IN RELATION TO THE POSSIBLE PROMOTION OF A SCHEME OF ARRANGEMENT

- 5 At paragraph 130 of his witness statement dated 25 February 2009 (and filed in support of this application on the same date) ("**Pearson 2**"), Mr Steven Anthony Pearson explained that the Administrators had, with the agreement of the creditors' committee, established a working group (the "**Working Group**") (currently consisting of representatives of the Administrators, their advisors (including myself), and the creditors' committee members) tasked with providing the Administrators with a "sounding board" with whom matters relating to the possible promotion of a scheme of arrangement under Part 26 of the Companies Act 2006 (a "**Scheme**") could be discussed. Mr Pearson went on to explain that a meeting of the Working Group had already taken place and that progress had been made in identifying the areas of concern and likely disagreement, as well as the issues which would likely require determination before a possible Scheme could be formulated and presented to the Court. Since the filing of Pearson 2, the Working Group has met further and has discussed the potential scope and structure of any such Scheme.
- 6 At paragraph 131 of Pearson 2, Mr Pearson indicated that the Administrators proposed to hold open meetings with industry bodies to obtain the views of the industry as a whole on the possibility of pursuing a Scheme and to present to them some of the options being considered. Since the filing of Pearson 2, the Administrators have held meetings for these purposes with both the Alternative Investment Management Association and the Managed Funds Association (the latter of which meetings I participated in).
- 7 In addition, also since the filing of Pearson 2, a further meeting of the creditors' committee has been held, which I attended and at which the possible promotion of a Scheme (including the structure and conditions of any such Scheme) was discussed in some detail.
- 8 At paragraph 127 of Pearson 2, Mr Pearson indicated that, as at the date of that statement, the Administrators' preferred approach to the operation of a proposed Scheme was that the clients' entitlement to Trust Property (as defined at paragraph 9 of Pearson 2) would be based on their rights under their contracts and applicable law (i.e. that any Scheme ultimately promoted would be essentially procedural, as opposed to substantive). As a result of the meetings referred to above, the Administrators' thinking has moved on somewhat in this regard. In the interests of effecting the prompt return of Trust

Property (as well as efficiently progressing the administration of LBIE as a whole), the Administrators are now giving thought to the manner in which any proposed Scheme might resolve certain issues relating to clients' substantive entitlements to Trust Property. This development in the Administrators' thinking has come about because they have been strongly urged, by the Working Group, to consider a Scheme that deals as comprehensively as possible with all issues necessary to be dealt with in order to enable the Administrators to make a rapid distribution of Trust Property. Where it has been provided, the feedback from members of the above mentioned industry bodies has also been supportive of this approach. A number of benefits of such an approach have been identified during the referenced discussions, including:

- 8.1** the opportunity that it will afford for the reaching of compromises, which should speed up the process of returning Trust Property whilst also offering benefits (in terms of reducing claims) to the LBIE estate;
 - 8.2** the reduction in the overall costs that it should achieve; and
 - 8.3** the provision of certainty that it will provide in relation to a large proportion of LBIE's liabilities, which should enable LBIE to realise the benefits of collateral it holds in respect of obligations owed to it by relevant clients.
- 9** In addition to the advantages identified above, it is hoped that the process of consultation with creditors (in order to obtain approval for any Scheme) will offer significant opportunities to achieve broader compromises of matters not directly within the Scheme itself. As regards the specific advantage identified at paragraph 8.3, the Administrators recognise that a material degree of compromise between LBIE and the relevant clients will be involved. The Administrators are seeking to identify terms of a possible Scheme that would have broad support amongst the potential Scheme creditor community.
- 10** The Administrators intend to continue to consult with the Working Group, the creditors' committee and industry bodies in relation to these issues.
- 11** The Administrators continue to be mindful of the need to promote a Scheme that has a good prospect of success. They will therefore continue to seek solutions through a possible Scheme that are agreeable (as far as the Administrators can tell) to the broad constituency of creditors and that do not

create undue class or fairness issues that would materially undermine the likelihood of the Scheme being approved.

C. PUBLICITY OF THE APPLICATION

- 12** The present application was issued on 25 February 2009. Later that day, the Financial Services Authority was provided with the following:
- 12.1** a full copy of the sealed Application Notice;
 - 12.2** a full copy of Pearson 2; and
 - 12.3** a full copy of the exhibit to Pearson 2.
- 13** As envisaged by paragraph 131 of Pearson 2, on 26 February 2009, the Administrators issued an update notice (the “**Update Notice**”) on the section of the PricewaterhouseCoopers LLP website dedicated to the administration of LBIE, which is generally accessible (see **pages 1 to 2 of exhibit “DPE1”**). The Update Notice, which has remained on the website ever since, publicises the application and makes available for download each of the three copy documents referred to above at paragraph 12.
- 14** The Update Notice outlines the purposes of the application (including the relief sought) and states that “*[a]ny person with an interest in the subject matter may attend or, if they so wish, appear*”. It goes on to request that anyone intending to make representations provide the Administrators with notice of such intention, by contacting Ms Susan Roscoe of Linklaters (contact details for whom are provided).
- 15** On 11 March 2009, Linklaters received an e-mailed communication, sent on behalf of the London Investment Banking Association (“**LIBA**”), indicating an intention to be represented at the hearing of this application.
- 16** Ms Roscoe informs me (and I believe) that, as at the time of my making this statement (being approximately 3:35 p.m. on 12 March 2009), she has not been contacted by any other party indicating an intention to make representations in relation to the application. It is, of course, possible that Ms Roscoe may be contacted by such a party prior to the hearing, of the application, in which case the Administrators will make the Court aware of this in due course.
- 17** A small number of further communications apparently prompted by the issuance of the Update Notice, but not indicating an intention to make

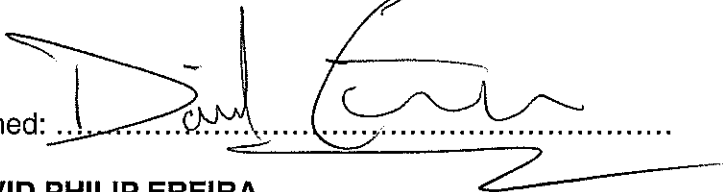
representations in relation to the application (or, indeed, expressing any view that the application should be determined one way or the other), have been received by the Administrators' advisors. These communications have consisted of requests for information regarding the potential Scheme (or as to the outcome of the present application). The Administrators' advisors have responded to these requests by either providing the information sought (to the extent possible given the level of detail provided in the enquiry) or, where the requested information will appear on the PricewaterhouseCoopers LLP website in due course, referring the enquirer to that website.

D. MISCELLANEOUS

- 18** For ease of reference, I also exhibit to this statement a copy of the Order of Mr Justice Blackburne made on 7 October 2008, as well as the Schedule to that Order (see **pages 3 to 9 of exhibit "DPE1"**).

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: 

DAVID PHILIP EREIRA

12 March 2009

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No. 7942 of 2008

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

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**IN THE MATTER OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE) (in administration)**

**AND IN THE MATTER OF THE INSOLVENCY ACT
1986**

**WITNESS STATEMENT OF
DAVID PHILIP EREIRA**

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EXHIBIT "DPE1"

This is the paginated bundle of copy documents marked "DPE1" referred to in the witness statement of DAVID PHILIP EREIRA dated the 12th day of March 2009.

Signed: 

DAVID PHILIP EREIRA 

12 March 2009

DPE1 Table of Contents

No.	Description of Document	Date of Document	Pages
1.	Update notice issued on the PricewaterhouseCoopers LLP website regarding the present application	26 February 2009	1 - 2
2.	Order of Mr Justice Blackburne (plus Schedule)	7 October 2008	3 - 9



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Country/Territory Search

Industries **ISSUES** Services

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Lehman Brothers International (Europe) (in administration) – client money and assets update 26/02/09

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Court application in respect of Trust Property

The Joint Administrators (the "Administrators") of Lehman Brothers International (Europe) (in administration) ("LBIE") continue to address the return of Trust Property as a matter of priority. They continue to review, and seek to adopt, the most appropriate mechanisms available to them to assist in returning Trust Property to those to whom it belongs. In this context the Joint Administrators have filed with the Court an application in relation to Trust Property.

Lehman Brothers Administrations contact details ▶

Recently Visited Pages

- ▶ Lehman - Client Money and Assets
- ▶ Lehman Brother's administration - Frequently Asked Questions
- ▶ Lehman administration update 230908
- ▶ Lehman Brothers International (Europe) (in administration) – client money and assets update
- ▶ Lehman administration update 230908

The Court application (which is to be heard at 10:30am on 16 March 2009 in Court 56 at the Royal Courts of Justice) gives an opportunity for the Administrators to provide an update as regards the progress that has been made in relation to Trust Property and to explain some of the difficulties which they continue to face as regards returning Trust Property to clients. The Administrators will also explain their intention to explore the possibility of proposing a scheme of arrangement in respect of Trust Property. The application seeks an Order that:

- ▶ the Administrators be at liberty to propose a scheme of arrangement under Part 26 of the Companies Act 2006 between LBIE and persons who are its creditors in relation to Trust Property; and
- ▶ to the extent that the Administrators are ultimately unable to recover out of the Trust Property their reasonable remuneration, costs and expenses incurred in dealing with Trust Property, whether pursuant to the proposed scheme of arrangement or otherwise, they shall be so paid and indemnified out of the assets of LBIE.

A copy of the Application Notice can be accessed by clicking [here](#).

The Administrators have filed a detailed witness statement in support of the application, a copy of which can be accessed by clicking [here](#). The exhibit to the witness statement can be accessed by clicking [here](#). As explained in the witness statement, the Administrators have, with the approval of the Creditors' Committee, established a working group with whom they are discussing the feasibility and scope of any scheme of arrangement. These deliberations are at an early stage and further updates will be provided in due course.

In addition to explaining why the Administrators consider it appropriate to explore the possibility of a scheme of arrangement, the witness statement provides a detailed update as regards the progress that has been made in respect of both Trust Assets and Client Money since the Court Order made on 7 October 2008 (click [here](#) for details) in relation to Trust Property.

A further update will follow once the Administrators' application has been determined by the Court. The hearing of the application will be public. Any person with an interest in the subject matter may attend or, if they so wish, appear. No respondents have been served the application. If you do intend to make any representations the Administrators would appreciate it if you could provide them with advance notice of your intention to do so by contacting susan.roscoe@linklaters.com.

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IN THE HIGH COURT OF JUSTICE

No. 7942 of 2008

CHANCERY DIVISION

COMPANIES COURT



Before The Honourable Mr Justice Blackburne

Tuesday the 7th day of October 2008

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL
(EUROPE) (in administration)**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

DRAFT ORDER

UPON THE APPLICATION of Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis and Dan Yoram Schwarzmann of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT ("Joint Administrators"), the Joint Administrators of Lehman Brothers International (Europe) ("LBIE"), made pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the "Act")

AND UPON HEARING Leading Counsel for the Joint Administrators and for the Financial Services Authority ("FSA")

AND UPON READING the evidence recorded on the Court File as having been read

AND UPON the Joint Administrators undertaking, through Leading Counsel, as soon as is practicable, that they will:

1. issue the Application; and
2. put before the Court, and provide to the FSA, a version of the witness statement of Steven Anthony Pearson which has redacted those parts of the evidence which contain information which is confidential and/or commercially sensitive and the publication of which, in either case, might hinder the achievement of the purpose of administration

IT IS HEREBY ORDERED AND DIRECTED that:

- 1 pending the approval of proposals by the creditors of LBIE under paragraph 53(1) of Schedule B1 to the Act or further order, the Joint Administrators be authorised to continue their management of the affairs, business and property of LBIE, as such management relates to proprietary claims by third parties, by implementing and/or giving effect to the processes set out in the Schedule to this order;
- 2 the Joint Administrators be at liberty to make disclosure of this order and/or its terms (including the Schedule to this order) both to such third parties as they see fit and generally to the market whether by advertising the same or otherwise;
- 3 pursuant to rule 7.31(5) of the Insolvency Rules 1986, the un-redacted version of the witness statement of Steven Anthony Pearson, which was before the Court on the hearing of the Application, be not open to inspection by any person without the leave of the court; and
- 4 the Joint Administrators' costs of the Application be paid as an expense of the administration of LBIE.

No. 7942 of 2008

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Before The Honourable Mr Justice Blackburne

Tuesday the 7th day of October 2008

IN THE MATTER OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE) (in administration)

AND IN THE MATTER OF THE INSOLVENCY ACT
1986

DRAFT ORDER

Linklaters LLP (Tony Bugg / Euan Clarke)
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Solicitors for the Applicants

Schedule

General approach

- 1 The Administrators will:
 - 1.1 identify and take appropriate steps to gain control of all property of or held in the name of or otherwise to the order of Lehman Brothers International (Europe) ("LBIE") (in administration), whether money, securities or other contractual rights, that may be subject to trust or proprietary claims (the "Trust Property");
 - 1.2 identify the entire population of counterparties that purport to have claims, rights or other interests in the Trust Property (the "Trust Claims");
 - 1.3 seek to reconcile all of the data and information available to LBIE and the Administrators from the pre-administration records in relation to the Trust Property with the information supplied by counterparties, custodians and any other appropriate sources;
 - 1.4 whether by agreement, directions from the Court or otherwise, reach a clear determination of the various legal issues that impact upon the validity of the Trust Claims and the rights of LBIE over the Trust Property;
 - 1.5 subject to directions from the Court, agree a procedure for making interim distributions of Trust Property to counterparties with valid Trust Claims;
 - 1.6 determine the basis upon which the costs and expenses of the Administrators in dealing with and determining all issues in relation to the Trust Property can be discharged from the proceeds of the Trust Property and apply for directions on such matters, as necessary; and
 - 1.7 determine the most expedient method of communicating with counterparties in relation to the procedure being adopted by the Administrators, the progress made towards the achievement of the defined objectives and the directions that may be given from time to time by the Court.

Method

- 2 The Administrators will:
 - 2.1 deploy dedicated resource comprising partners and employees from PricewaterhouseCoopers LLP and Linklaters LLP (the "Trust Property Team"), to take responsibility for the further development and

implementation of a plan designed to achieve the objectives set out in paragraph 1 above; and

- 2.2 set up a discrete sub-committee to monitor the construction and implementation of this scheme and the efficiency and fairness of the methodology. This sub-committee will also review the principles applicable to prioritising the determination of the claims of the particular counterparties by identifying, where appropriate, high profile problems or hardship issues, to ensure that the overriding objective of treating all counterparties fairly is not prejudicial to the interests of a minority or that there is not otherwise a problem that requires specific and accelerated attention. This sub-committee will meet periodically (initially daily) to review the prioritisation and refine the process as events develop.

Key steps

- 3 The Trust Property Team will undertake *inter alia* the following functions:
 - 3.1 design and install a new IT system onto which it will upload all of the data available from the internal systems of LBIE relating to client deposits and securities that may be Trust Property;
 - 3.2 implement a process to reverse or amend the LBIE records for failed or broken trades as a consequence of the Administration, to enable the Trust Property to be more fully identified;
 - 3.3 identify the impact of termination notices that have been served post-administration, validate these events and other activities of third parties and either review the clients' valuation of the impact of the termination or undertake a valuation of the impact of termination on the rights of LBIE under various contracts; and
 - 3.4 agree a protocol in relation to the implementation of corporate actions that may need to be undertaken in relation to Trust Property, for example, the exercise of voting rights, receipt of dividends, rights issues and other pre-emptive offers, that will have an impact on the ultimate value of the Trust Property.
- 4 The Trust Property Team will contact all of the third party custodians, agents, counterparties, exchanges and clearing houses ("Depots") where Trust Property

may be located to obtain confirmation of the securities that are being held and to agree a procedure whereby the Administrators can have online access in relation to data regarding the securities and seek to obtain formal written confirmation of the position by security and by Depot. The Administrators will also seek to establish that they have complete or adequate control over the securities for the ultimate benefit of the counterparties with Trust Claims or LBIE and that any liens asserted by the Depots are assessed and valued. Once the data is available, the Trust Property Team will reconcile the books of LBIE to those of the Depots, by security and by Depot, with a view to identifying and resolving discrepancies. Where appropriate, this process will take account of the interests of LBIE in its "house accounts".

- 5 The Administrators will write to all of the counterparties who may have Trust Claims to obtain from them full details of the rights and claims they believe they have in relation to all forms of Trust Property. The Trust Property Team will seek to reconcile all of the data that is obtained in relation to Trust Property as a consequence of the exercise outlined in paragraph 4 with the information obtained from counterparties.
- 6 Whilst the data reconciliation process is being undertaken, the Administrators have instructed Linklaters to devise a programme to determine by reference *inter alia* to the various contracts utilised by LBIE in its dealings with all counterparties, the various categories of legal issues that will need to be determined before a proposal for the distribution of the Trust Property can be prepared. The Administrators will consider whether it is possible for this process to take place in parallel to the data collection exercises noted in paragraphs 4 and 5 above, or whether it is more appropriate (in some cases) to wait until it is clear that all the legal issues identified need resolution in practice.

Prioritisation

- 7 The Administrators will, having taken due account of any views of the FSA, identify a set of principles that can be applied when considering prioritising claims, taking into account, where appropriate and consistent with their duties as administrators, the following factors, amongst others:

7.1 the quality and timing of data being available to the Administrators;

- 7.2 the speed of response of counterparties in dealing with the Administrators' questions, coupled with the quality and accuracy of the data supplied, the complexity of the data and the legal issues relevant to the determination of a particular claim;
- 7.3 the number of claims that may be made to a particular class or category of Trust Property;
- 7.4 the risk of a shortfall of Trust Property;
- 7.5 the cost efficiency and expediency of the relevant process; and
- 7.6 market stability and confidence.