

**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**

**AND UNDER THE INHERENT JURISDICTION OF THE COURT**



**ORDINARY APPLICATION**

**TAKE NOTICE** that Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmann and Derek Anthony Howell of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, the joint administrators of Lehman Brothers International (Europe) (in administration) intend to apply to the Judge on:

Date: <sup>15</sup> 22/7/11

Time: <sup>nb</sup> 1030

Place: Court <sup>59</sup> 50, Royal Courts of Justice, Strand

For directions and for orders as set out below.

**(I) The Background to the Application**

- A. Capitalised terms used in this Application Notice bear the meanings ascribed to them in Schedule 1 hereto and, unless the context otherwise requires, the singular includes the plural and vice versa.

- B. The Application concerns potential Security Interest Claims by Affiliates (Security Interest Claimants) over Assets which may be beneficially owned by other Affiliates (Ownership Affiliates), and whose entitlements may in turn be held for underlying clients.
- C. The need for the Application arises because the Administrators wish to Distribute to Ownership Affiliates and/or appropriate certain Assets held for them by LBIE.
- D. Some of the agreements between LBIE and Ownership Affiliates confer upon LBIE Security Interests over Assets held by it for Ownership Affiliates in relation to debts owed by the Ownership Affiliates to other Affiliates. The Administrators seek the directions and orders set out in paragraphs 4 and 5 below in order to determine what, if any, enforceable rights such Affiliates may have in relation to the exercise of such Security Interests.
- E. In other relationships between LBIE and Ownership Affiliates the enquiries and investigations undertaken by the Administrators' staff indicate that there are no agreements which confer Security Interests over Assets in relation to debts owed by the Ownership Affiliates to other Affiliates. The Administrators seek the directions and orders set out in paragraphs 2 and 3 below in order to determine whether and on what basis Assets held by LBIE for such Ownership Affiliates may be Distributed and/or Appropriated.

## **(II) The Directions and Orders Sought**

The Administrators seek directions and orders pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 and/or under the Court's inherent jurisdiction, that:

### **Disclosure**

1. The Administrators are at liberty (whether or not any affected Affiliate consents to such disclosure) to disclose to any Affiliate that claims to be a creditor of any Ownership Affiliate copies of all agreements in the possession of the Administrators at the date of the request which contain an Extended Lien Provision.

### **No Relevant Agreement Ownership Affiliates**

2. If the Administrators procure that LBIE does, and LBIE does:
  - a. Distribute No Relevant Agreement Assets to Ownership Affiliates who, on the basis of the information available to the Administrators at the time of such Distribution, are entitled to them, having first obtained confirmation from the

Ownership Affiliate that it has performed a reasonable search for agreements to which it is a party that could give rise to a Security Interest Claim in relation to the Assets to be Distributed and that it has found no such agreements; and/or

- b. Appropriate such No Relevant Agreement Assets as LBIE is, on the information available to the Administrators at the time of such Appropriation, entitled to Appropriate, having first sought confirmation from the Ownership Affiliate that it has performed a reasonable search for agreements to which it is a party that could give rise to a Security Interest Claim in relation to the Assets to be Appropriated and that it has found no such agreements,

then neither LBIE nor the Administrators will be liable to any Affiliate subsequently making a Security Interest Claim for any breach of trust (whether as trustee or accessory) in respect of any claims resulting from such Distributions and/or Appropriations of such No Relevant Agreement Assets.

3. Further or alternatively directions are given for the determination of such issues as the court considers to be material to the proposed Distribution or Appropriation of No Relevant Agreement Assets.

**Issues for determination**

4. Directions are given in relation to Client Assets and House Assets governed by agreements which are materially identical (in so far as relevant to the effect of Extended Lien Provisions) to each of:
  - a. clause 13 of the Master Custody Agreement dated 22 August 2003 between LBIE and Lehman Brothers Finance S.A. ("LBF");
  - b. clause 3(D)(c) of LBIE's standard form Terms and Conditions of Business, to which LBF became party on 1 November 2007;
  - c. clause 10 of the International Prime Brokerage Agreement dated 7 September 2007 between LBIE and LBF; and
  - d. clause 5 of the Master International Futures Customer Agreement dated 17 April 2008 between LBIE and CMAP Fund No.1 Limited,

for the determination of the following matters material to the Distribution or Appropriation of Assets (such determination to be without prejudice to the effect of any other agreement which affects the applicability, validity or enforceability of the Extended Lien Provision):



- aa. whether LBIE is entitled and/or obliged to give effect to any Security Interests in relation to debts owed to Affiliates by any one or more of the clauses under consideration;
  - bb. if the answer to (aa) above is in the affirmative, in what manner LBIE is entitled and/or obliged to give effect to the Security Interests in relation to debts owed to Affiliates, including what priorities apply as between and amongst LBIE's own Security Interest and the Security Interests of Affiliates;
  - cc. how, if at all, the answers to (aa) and (bb) above differ as between Client Assets and House Assets; and
  - dd. whether any Security Interests in relation to debts owed to Affiliates by the clause under consideration are themselves the subject of such Security Interests pursuant to any one or more of the clauses under consideration, including what priorities apply.
5. Such further bar date or other consequential orders as the Court considers appropriate in the light of its rulings under paragraph 4 above.

**Miscellaneous**

- 6. Further or other relief.
- 7. The Administrators' costs of this Application be paid as an expense of the administration in the first instance, subject to any subsequent Order of the Court.
- 8. All documents filed with the Court in connection with this Application shall bear the words "Affiliate Asset Security Interest Claims" in the top right-hand corner of each page.

Signed: .....



Administrators' Solicitors: Linklaters LLP

Position held: Partner

Address for service:

Linklaters LLP  
One Silk Street  
London  
EC2Y 8HQ  
Ref: Nick Porter / James Gardner

Notice of this Application has been given to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS

It is not intended to serve any person with this Application.

**If you do not attend, the Court will make such order as it thinks fit**

### Schedule 1 - Definitions

<p><b>“Administrators”</b></p>	<p>Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis, Dan Yoram Schwarzmann and Derek Anthony Howell of PricewaterhouseCoopers LLP, 7 More London Riverside London SE1 2RT, the joint administrators of Lehman Brothers International (Europe) (in administration)</p>
<p><b>“Affiliates”</b></p>	<p>the members of the Group other than LBIE</p>
<p><b>“Appropriate”</b></p>	<p>with respect to an Asset in the possession or custody of LBIE, appropriate that Asset to LBIE in accordance with such Security Interests or other rights as LBIE has as a matter of contract or applicable law</p> <p>“Appropriation” shall be interpreted accordingly</p>
<p><b>“Asset”</b></p>	<p>any Securities or money (including money held by LBIE under the client money rules set out in the FSA's Client Assets Sourcebook) held by or to the order of LBIE in which:</p> <ul style="list-style-type: none"> <li>(i) an Affiliate may have asserted a beneficial interest;</li> <li>or</li> <li>(ii) in which the Administrators, based on the information available to them, have concluded that an Affiliate may have a beneficial interest</li> </ul> <p>(in each case, either for itself or on behalf of an underlying client of that Affiliate)</p> <p>or which were so held at the Time of Appointment, and any Derived Asset</p>
<p><b>“Client Assets”</b></p>	<p>Assets (which are not No Relevant Agreement Assets) where the interest of the relevant Affiliate is held on trust for a client of the relevant Affiliate</p>

<p><b>“Derived Asset”</b></p>	<p>any Asset received or receivable by LBIE after the Time of Appointment arising out of or derived from any Securities or money which was itself an Asset at or immediately before the time at which that other Asset was received</p>
<p><b>“Distribute”</b></p>	<p>with respect to an Asset in the possession or custody of LBIE or the Administrators, deliver or transfer the Asset to a third party recipient; or</p> <p>with respect to an Asset in the possession or custody of a person other than LBIE or the Administrators (the “holder”) where the holder holds to the order of LBIE or the Administrators, give an instruction to the holder for the delivery or transfer of the Asset to a third party recipient or to LBIE or the Administrators for onward distribution.</p> <p>“Distribution” shall be interpreted accordingly</p>
<p><b>“Extended Lien Provision”</b></p>	<p>a term in an agreement between LBIE and an Ownership Affiliate purporting to confer a Security Interest in respect of an Asset in relation to debts owed not only to LBIE but also to other Affiliates</p>
<p><b>“Group”</b></p>	<p>the global investment banking group of which the ultimate parent company was Lehman Brothers Holdings Inc.</p>
<p><b>“House Assets”</b></p>	<p>Assets which are neither No Relevant Agreement Assets nor Client Assets</p>
<p><b>“LBIE”</b></p>	<p>Lehman Brothers International (Europe) (in administration)</p>
<p><b>“No Relevant Agreement Asset”</b></p>	<p>any Asset that is not the subject of an Extended Lien Provision, or any other provision giving rise to a Security Interest Claim, in any agreement of which the Administrators have notice at the point of Distribution or Appropriation</p>

<b>“Ownership Affiliate”</b>	an Affiliate which asserts, and/or may have, a beneficial interest (other than an interest which arises as a result of a Security Interest) in Securities held by or to the order of LBIE at the Time of Appointment
<b>“Securities”</b>	any financial instruments or any rights in respect of any financial instruments against a custodian, clearing system, depository, nominee or other person who holds assets (including, for the avoidance of doubt, rights in respect of assets) on behalf of or to the order of a person who holds such financial instruments
<b>“Security Interest”</b>	any legal, equitable, contractual or possessory interest (or equivalent under a legal system outside England) of a person in an Asset that is in the nature of a lien, pledge, charge or other right that encumbers the entitlement of the owner or holder of that Asset until one or more obligations owed to that person are discharged in full
<b>“Security Interest Claim”</b>	a claim by an Affiliate to a Security Interest
<b>“Security Interest Claimant”</b>	Affiliate making a Security Interest Claim
<b>“Time of Appointment”</b>	7:56 a.m. (London time) on 15 September 2008



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Reference: Nick Porter / James Gardner

**Solicitors for the Administrators**