

Party: Applicant (LBH12)  
Witness: Derek Anthony Howell  
Statement No: 1  
Exhibit: "DAH1"  
Date: 1 June 2013

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

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT

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

IN THE MATTER OF LEHMAN BROTHERS LIMITED  
(IN ADMINISTRATION)

IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED  
(IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

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

(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN  
ADMINISTRATION)

(3) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED  
(IN ADMINISTRATION)

Applicants

-and-

(1) LEHMAN BROTHERS HOLDINGS, INC

(2) LYDIAN OVERSEAS PARTNERS MASTER FUND LIMITED

Respondents

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FIRST WITNESS STATEMENT OF

DEREK ANTHONY HOWELL

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I, **Derek Anthony Howell** of PricewaterhouseCoopers LLP ("PwC") of One Kingsway,  
Cardiff, CF10 3PW say as follows:

1. I am a Consultant in the firm of PwC of the above address and I am one of the

Joint Administrators of LB Holdings Intermediate 2 Limited (in administration) ("LBHI2"). I am also a former joint administrator of each of Lehman Brothers International (Europe) (in administration) ("LBIE") and Lehman Brothers Limited (in administration) ("LBL"). In anticipation of my retirement as a partner in PWC, I was removed from office as one of the joint administrators of both LBIE and LBL on 22 March 2013 by Order of Mr Registrar Jones dated 27 March 2013.

2. I make this statement in relation to the Joint Application, in support of LBHI2's case.
3. Information relevant to the corporate history of LBHI2 and the creation of the subordinated loans is held within the database which is maintained by the administrators of LBIE. Prior to the directions hearing on 27 March 2013, arrangements were agreed between the parties for disclosure of potentially relevant material and for collaboration in interviewing potentially relevant witnesses. Given that all three applications are made by administrators of the same group of companies for directions, the parties have agreed to adopt a collaborative approach with regard to information gathering. Unfortunately, the disclosure exercise has yet to be completed. That being so, my own factual knowledge is limited. Accordingly, I make this witness statement whilst reserving my rights to supplement it as and when disclosure is completed and the witnesses interviewed.
4. The LBIE administrators have yet to say definitively whether putting LBIE into liquidation is likely. Accordingly, the purpose of this witness statement is to make sure that information from LBIE's administrators' various progress reports are before the court as they throw some light on the point.
5. There is now produced and shown to me marked "DAH1" a paginated bundle of documents, to which I shall refer. Save where otherwise stated, page references in this witness statement are to the contents of this exhibit.
6. Save where otherwise stated, this witness statement is made from facts and matters that are within my own knowledge.

#### Summary

7. Whilst LBIE's administrators have not yet indicated whether liquidation is likely, their various progress reports and evidence submitted to the court are illuminating. In short, the documents exhibited to this witness statement show:
  - (a) LBIE's administrators have envisaged that the realisation of assets and distribution to creditors should be undertaken in the administration.

- (b) There are powerful arguments as to tax efficiency which support LBIE's realisation and distribution process being undertaken in administration.
- (c) There is some evidence to suggest that LBIE's administrators have contemplated, as an exit strategy, either the approval of a scheme of arrangement or immediate dissolution of the company, the realisation process having been completed in the administration. In contrast, there is no evidence to support the proposition that LBIE's administrators have a settled intention to proceed to liquidation.
- (d) If creditors are to be paid by way of distributions out of the administration, there are no obvious arguments supporting the proposition that LBIE's administrators would wish to convert the administration into liquidation.

#### The Proposals

- 8. LBIE's administrators' Statement of Proposals, dated 28 October 2008, appears at pages 1 to 48 (the "**Proposals**").
- 9. In paragraph (d) of Section 5 of the Proposals (page 42), LBIE's administrators contemplate that, should there be surplus funds available to LBIE's unsecured non-preferential creditors, and that LBIE's administrators may apply to Court to distribute such surplus funds out of LBIE's administration (as indeed they have done). In such circumstances, LBIE's administrators may bring the administration to an end via filing a notice with the Registrar of Companies under paragraph 84 of Schedule B1 to the Insolvency Act 1986 (the "**Act**"), following registration of which LBIE would be dissolved three months later.

#### The Progress Reports

- 10. LBIE's administrators' first to ninth progress reports appear at pages 49 to 656. None of them advance any positive indication that LBIE's administrators are considering putting LBIE into liquidation. However, section 4.5 of the LBIE administrators second progress report dated 14 October 2009 does canvass the possibility of making distributions by way of a scheme of arrangement (page 165).
- 11. Section 2 of the LBIE administrators' ninth progress report (pages 618 to 619) confirms LBIE's administrators intention to make a second interim dividend to LBIE's unsecured creditors and that LBIE's administrators' immediate focus going forward is to facilitate "*the earliest and largest possible further interim distributions to unsecured creditors*".

The 7<sup>th</sup> Witness Statement of Anthony Victor Lomas, dated 28 October 2011

12. The statement was made in support of the joint application of the joint administrators of twenty Lehman UK group companies (including LBIE, LBL and LBHI2) (the "**Lehman Administration Companies**") to extend the term of each of the relevant company's administrations, and a copy appears at pages 657 to 741 (the "**AVL Statement**").
13. On 2 November 2011 the High Court agreed to extend LBIE's administration for a further 5 years to 30 November 2016 (see page 7 of the LBIE administrators' seventh progress report (page 508)).
14. At paragraph 17 of the AVL Statement (page 662) the joint administrators of the Lehman Administration Companies explain that, in respect of each Lehman Administration Company, *"if it later becomes apparent that the most cost effective exit route is dissolution, with any distributions to creditors having been made in the administrations, an exit may be made directly from administration to dissolution, without first moving into liquidation."*
15. At paragraphs 18 to 33 of the AVL Statement (pages 662 to 667), in summary, the joint administrators of the Lehman Administration Companies explain that preserving the relationship between the Lehman Administration Companies will ensure their tax losses (and those of their subsidiaries) can continue to be utilised to shelter any taxable profits, and thereby reduce the aggregate amount of UK corporation tax for which they are liable, which in turn will maximise the amounts available to each of the Lehman Administration Company's creditors. In liquidation the Lehman Administration Companies may cease to have the degree of connection required by statute for the group tax relief to be available. In a liquidation scenario there would be a risk that the Lehman Administration Companies would lose beneficial ownership of the shares in their respective subsidiaries so severing the relationship between the two. Even companies without subsidiaries (such as LBIE) will suffer UK corporation tax disadvantages in a liquidation scenario.
16. At paragraph 54 of the AVL Statement (page 672), the joint administrators of the Lehman Administration Companies note that they have long term strategies involving active management of the Lehman Administration Companies' businesses beyond the limited functions of liquidators to carry on the business of the company so far as may be necessary for its beneficial winding up. Further, they note, that an administration is a far more streamlined and cost effective framework for the businesses of each company to be continued.

17. Finally, at paragraph 94 of the AVL Statement (page 681), in summary, the joint administrators of the Lehman Administration Companies note, in respect of LBIE, that they contemplate making a final distribution to LBIE's unsecured creditors from within LBIE's administration.
18. Consistent with Mr Lomas' aim to make all distributions to creditors from within LBIE's administration, LBIE's administrators obtained an order from the court on 26 April 2013 permitting them to make further distributions out of LBIE's administration as they consider appropriate without the need, in each case, to return to the court for further approval. A copy of the order appears at pages 742 to 744).
19. Also consistent with that proposition is, of course, the fact that LBIE's administrators have sought an extension to 30 November 2016 (a copy of the administration extension order appears at pages 745 to 748) and are continuing to make distributions.
20. It may be that there is further evidence in the court file which throws further light on LBIE's administrators' intentions. However, the original statement in support of the application for permission to distribute heard by the court on 30 November 2009 has been sealed and is not open to inspection without the consent of the court. My solicitors intend to write to the solicitors for LBIE's administrators inviting them to consent to disclosure of this evidence (as well as other evidence in the court file which has not been sealed to inspection), subject to appropriate safeguards being put in place to ensure that commercially sensitive information which is not relevant to LBIE's administrators' intentions as to exit strategy is protected.
21. If it is the intention that all distributions to creditors will be made out of LBIE's administration and there will be sufficient monies to discharge all unsubordinated claims, it is difficult to see why LBIE's administrators would then put the company into liquidation. The driver cannot be to trigger a claim for statutory interest in the liquidation and a corresponding claim against the contributories. Section 189 of the Act provides that upon a company moving into liquidation, the date for calculating statutory interest is reset as the date on which the company entered liquidation and statutory interest is calculated on the claims proved in the liquidation. Ignoring the issue of the priority of the subordinated debt, if all creditors are paid in the administration, then, plainly, no liquidation statutory interest would accrue and, therefore, no corresponding claim against contributories would arise.

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

Dated [14 June 2013

Derek Anthony Howell

Derek Anthony Howell

Party: Applicant (LBHI2)  
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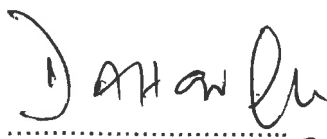
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EXHIBIT "DAH1" TO FIRST WITNESS  
STATEMENT OF DEREK ANTHONY HOWELL

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This is the exhibit marked "DAH1" referred to in the First Witness Statement of Derek  
Anthony Howell dated [14] June 2013.

Signed .....



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