

ALC 198/16

Form 7.1A

Rule 7.3

IN THE MATTER OF THE INSOLVENCY ACT 1986

Form 7.1A

Application Notice

*Delete as applicable

Name of company:
Lehman Brothers International
(Europe) (in administration)

Company number
02538254

In the High Court of Justice
Chancery Division
Companies Court

For court use only
Court case number:

*Delete as applicable

*Type of insolvency proceeding:

Administration

Between
Applicant

(1) ANTHONY VICTOR LOMAS
(2) STEVEN ANTHONY PEARSON
(3) RUSSELL DOWNS
(4) JULIAN GUY PARR
(in their capacity as the joint administrators
of the above-named company)



and
Respondent

BARCLAYS CAPITAL INC.

Is this application in insolvency proceedings which are already before the court?:

YES

If YES, please provide-

Court reference number for the pending proceedings to which this application relates

No. 7942 of 2008

We

(a) Insert name and address of applicant

Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr, in our capacity as the joint administrators of Lehman Brothers International (Europe) (in administration), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT

For Office use

Intend to apply to the Judge on:-

Date Take notice that an appointment to fix a date
for the Application has been made:
Time Date: 19/09/2016 hours
Time: 11:00 AM
Place In Interview Room 2 Ground Floor Rolls Building
London EC4A 1NL

(b) State clearly what order you are seeking. Briefly set out why you are seeking the order and what evidence you rely on in support of this application

For an order that (b)

THE APPLICANTS BE GIVEN DIRECTIONS ON THE NINETEEN ISSUES SET OUT IN THE ATTACHED APPLICATION.

(c) State the names and addresses of the persons intended to be served

The names and addresses of the persons upon whom it is intended to serve this application are:-

(c)

BARCLAYS CAPITAL INC.
C/O BOIES, SCHILLER & FLEXNER (UK) LLP
25 OLD BROAD STREET
LONDON
EC2N 1HQ

Date: 5 September 2016

Signed:



(SOLICITOR FOR THE) APPLICANT

If you do not attend, the court may make such order as it thinks just.

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN
ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN:

- (1) ANTHONY VICTOR LOMAS
- (2) STEVEN ANTHONY PEARSON
- (3) RUSSELL DOWNS
- (4) JULIAN GUY PARR



(in their capacity as the joint administrators of the above-named company)

Applicants

-and-

BARCLAYS CAPITAL INC.

Respondent

APPLICATION

TAKE NOTICE that Anthony Victor Lomas, Steven Anthony Pearson, Russell Downs and Julian Guy Parr, in their capacity as the joint administrators of Lehman Brothers International (Europe) (in administration), all of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, intend to apply to the Judge on:

Date:2016

Time:

Place: Court , 7 Rolls Buildings, Fetter Lane, London EC4A 1NL

for directions pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 in relation to the issues set out below (the “**Issues**”). Defined terms used in this application should be construed in accordance with the schedule of definitions annexed hereto.

(A) Client Money Entitlements

1. Does Barclays have a Client Money Entitlement in respect of (i) the Client ETD Trades; (ii) the Non-Client ETD Trades; and/or (iii) the Korean ETD Trades?
2. If the answer to Issue 1 is “yes”, is Barclays estopped or otherwise precluded from asserting this Client Money Entitlement (or any part thereof) in respect of such ETD Trades?
3. If Barclays has a Client Money Entitlement and a Parallel Unsecured Claim, and the Parallel Unsecured Claim is reduced by any set-off (whether under Rule 2.85 or otherwise), does the Client Money Entitlement fall to be reduced by the same (or any other) amount?

(B) Unsecured Claims

4. To the extent that Barclays (i) does not have a Client Money Entitlement in respect of some or all of the ETD Trades; or (ii) has a Client Money Entitlement but is estopped or otherwise precluded from asserting such Client Money Entitlement in respect of some or all of the ETD trades, does Barclays have an Unsecured Claim in respect of such ETD Trades?
5. To the extent that Barclays has a Client Money Entitlement in respect of some or all of the ETD Trades (and is not estopped or otherwise precluded from asserting such Client Money Entitlement), does Barclays also have a Parallel Unsecured Claim?
6. To the extent that the answer to Issue 5 is “yes”, on what basis is the Parallel Unsecured Claim to be valued?
7. If Barclays has both a Client Money Entitlement and a Parallel Unsecured Claim, is Barclays entitled and/or should the Administrators be directed to treat Barclays as

being entitled to elect to pursue the Parallel Unsecured Claim to the exclusion of the Client Money Entitlement? If the answer is “yes”:

- (1) (a) Is Barclays required to disclaim, surrender, abandon, assign or take any other step in relation to the Client Money Claim before the Parallel Unsecured Claim can be admitted by the Administrators; (b) If so, is Barclays entitled to disclaim, surrender, abandon, assign or take such other step in relation to the Client Money Claim?
 - (2) If the value of the Parallel Unsecured Claim is impacted by the Client Money Entitlement, prior to the Client Money Pool being distributed are the Administrators entitled and/or obliged (a) to admit the Parallel Unsecured Claim; and/or (b) to pay a dividend in respect of the Parallel Unsecured Claim? If so, in each case, to what extent should the Client Money Entitlement be taken into account when admitting or paying a dividend in respect of the Parallel Unsecured Claim?
 - (3) If the Parallel Unsecured Claim should not be admitted until a particular time or event, what interim steps (if any) are the Administrators entitled and/or obliged to take to make a provision for the Parallel Unsecured Claim?
 - (4) If the Parallel Unsecured Claim may be admitted but no dividend(s) may be paid in relation thereto until a particular time or event, what interim steps (if any) are the Administrators entitled and/or obliged to take to make a provision for the Parallel Unsecured Claim?
 - (5) If the Administrators pay dividends in respect of the Parallel Unsecured Claim, does the corresponding Client Money Entitlement fall to be reduced by the amount of such dividends (or by any other amount)?
8. If Barclays is not entitled to elect to pursue the Parallel Unsecured Claim to the exclusion of the Client Money Entitlement:
- (1) Are the Administrators entitled and/or obliged to admit any Unsecured Claim prior to the Client Money Pool being distributed? If so, to what extent should the Client Money Entitlement be taken into account when admitting the Unsecured Claim?

- (2) If any Unsecured Claim should not be admitted until a particular time or event, what interim steps (if any) are the Administrators entitled and/or obliged to take to provide for the Unsecured Claim?
9. If Barclays has an Unsecured Claim (whether a Parallel Unsecured Claim, a Shortfall Unsecured Claim or any other Unsecured Claim):
 - (1) Is such Unsecured Claim subject to a mandatory set-off under Rule 2.85 against any sums owing by LBI to LBIE?
 - (2) Is such Unsecured Claim subject to a mandatory set-off under Rule 2.85 against any sums owing by Barclays to LBIE?
 - (3) Does LBIE have an equitable right to set off such Unsecured Claim against any sums owing by Barclays and/or LBI to LBIE?
 - (4) Does LBIE have a common law right to set off such Unsecured Claim against any sums owing by Barclays and/or LBI to LBIE?

(C) The LBI Payment

10. In what manner, and from what date, does the LBI Payment fall to be applied towards the discharge or reduction of:
 - (1) Barclays' Client Money Entitlement (if any);
 - (2) Barclays' Unsecured Claim(s) in respect of the ETD Trades (if any); and/or
 - (3) Barclays' other claims (if any)?
11. Rule 2.72(3)(b)(ii) provides that a proof of debt must state "*the total amount of [the creditor's] claim as at the date on which the company entered administration, less any payments that have been made to [the creditor] after that date in respect of [the creditor's] claim...*". On the true construction of the latter provision, does the LBI Payment, or any part thereof, constitute a payment in respect of Barclays' claim within the scope of Rule 2.72(3)(b)(ii)?

12. Are the Administrators entitled and/or obliged to admit the Barclays Proof for a reduced amount deducting an amount in respect of the LBI Payment (or any part thereof)?
13. Does (i) creation of the Dedicated Reserve; and/or (ii) the LBI Payment; and/or (iii) the Administrators' consent thereto; and/or (iv) any other action relating to the creation of the Dedicated Reserve and payment therefrom, itself constitute (a) an admission to proof; and/or (b) payment of a dividend by the Administrators of part of the Barclays Proof in an amount equal to such payment?
14. If the Barclays Proof should be admitted without deducting an amount in respect of the LBI Payment (or any part thereof), are the Administrators entitled and/or obliged to give credit for the Sterling Equivalent of the LBI Payment (or any part thereof) when paying dividends in respect of the Barclays Proof?
15. In relation to Issues 10 to 14 and Issue 19, how is the amount in respect of the LBI Payment to be calculated? In particular, if it is the Sterling Equivalent that is to be taken into account, should the Sterling Equivalent of the LBI Payment be calculated based on the exchange rate prevailing at:
 - (1) The Time of Administration;
 - (2) The time when Barclays received the LBI Payment; or
 - (3) Some other time?

(D) LBIE Surplus Entitlements

16. If Barclays has an Unsecured Claim in respect of the ETD Trades, in what currency (or currencies) is such Unsecured Claim denominated (prior to any conversion under Rule 2.86)?
17. On the true construction of Rule 2.88(7), if the Barclays Proof should be admitted for a reduced amount by deducting an amount in respect of the LBI Payment (or any part thereof), is the debt on which Statutory Interest is payable: (i) the amount

admitted to proof; or (ii) the amount that would have been admitted to proof but for such deduction?

18. If the Administrators admit the Barclays Proof for a reduced amount by deducting an amount in respect of the LBI Payment (or any part thereof):

(1) Should the Administrators be directed under the rule in *Re Condon; ex p. James (1873-74) LR 9 Ch App 609*; and/or

(2) Should the Administrators be directed under paragraph 74 of Schedule B1; and/or

(3) Are the Administrators estopped from refusing

to pay Statutory Interest on some amount other than the sum admitted to proof? If so, how should such amount be calculated, and from what date should Statutory Interest be paid thereon?

19. If the Barclays Proof should be admitted without deducting an amount in respect of the LBI Payment (or any part thereof), on the true construction of Rule 2.88(7), in calculating the principal sum on which Statutory Interest is payable in respect of the Barclays Proof, should such principal sum be reduced by the Sterling Equivalent of the LBI Payment from the date when Barclays received the LBI Payment (or any other date)?

Dated this 5th day of September 2016

Signed: 

Administrators' solicitors: Linklaters LLP

Position held: Partner

The Administrators' address for service is:

Linklaters LLP, One Silk Street, London EC2Y 8HQ

Reference: Nick Porter / Jared Oyston

Schedule of definitions

Term	Definition
Administrators	The joint administrators of LBIE
Barclays	Barclays Capital Inc.
Barclays Proof	The proof of debt filed by Barclays in the administration of LBIE on 26 July 2012
Client ETD Trades	All ETD Trades recorded in accounts 066-022-07000, 066-022-08001 and 066-022-08002, being ETD Trades entered into by LBI on behalf of its clients, and those ETD Trades entered into by LBI on behalf of its clients which were recorded in account 066-022-08000
Client Money Claim	A beneficial interest in the Client Money Pool arising under the statutory trust created by CASS7
Client Money Entitlement	The quantum of a Client Money Claim, calculated in accordance with CASS7
Client Money Pool	The notional pool of client money constituted at the date of LBIE's primary pooling event (as defined in CASS7)
Dedicated Reserve	The USD 777m dedicated reserve established and maintained pursuant to Article 10.01 of the settlement agreement between LBI, LBIE and the Administrators dated 21 February 2013
ETD	Exchange-traded derivative
ETD Accounts	Accounts which held ETD positions and balances and were maintained by LBIE for LBI with account numbers: i) 066-022-07000 ii) 066-022-08001 iii) 066-022-08002 iv) 066-022-08000 v) 066-022-07015 vi) 066-022-07003 vii) 066-022-08004 viii) 071-022-07101 ix) 071-022-07107 x) 071-022-07102 xi) 071-022-07100

ETD Trades	All ETD positions recorded in the ETD Accounts and in respect of which Barclays is entitled to claim against LBIE
Korean ETD Trades	All ETD Trades recorded in accounts 071-022-07101, 071-022-07107, 071-022-07102 and 071-022-07100, being ETD Trades entered into by LBI through LBIE's branch in Seoul, South Korea
LBI	Lehman Brothers Inc
LBI Payment	The sum of USD 777m received by Barclays from LBI
LBIE	Lehman Brothers International (Europe) (in administration)
LBIE Surplus	Assets remaining after the payment in full of the proved debts of all general unsecured creditors and before payment of post-administration interest, non-provable claims, subordinated debt and shareholder claims
Non-Client ETD Trades	All ETD Trades recorded in accounts 066-022-07015, 066-022-07003 and 066-022-08004, being proprietary ETD Trades entered into by LBI on its own account, and those ETD Trades entered into by LBI on its own account which were recorded in account 066-022-08000
Parallel Unsecured Claim	An Unsecured Claim by a client against LBIE which exists concurrently with a Client Money Entitlement arising out of the same underlying contractual obligation, and which is not a Shortfall Unsecured Claim
Rule	The Insolvency Rules 1986 (in the form applicable as at the Time of Administration)
Schedule B1	Schedule B1 to the Insolvency Act 1986 (in the form applicable as at the Time of Administration)
Shortfall	Where the total distributions received by a client from the Client Money Pool (X) are less than his Client Money Entitlement (Y), the difference between X and Y
Shortfall Unsecured Claim	An Unsecured Claim against LBIE to recover the Shortfall in respect of a Client Money Claim
Statutory Interest	Interest accruing on " <i>debts proved</i> " pursuant to Rule 2.88(7)
Sterling Equivalent	The equivalent in GBP of a sum expressed in USD (or any other relevant currency), to be quantified in accordance with the Court's directions (see Issue 15)

Time of Administration	7.56am BST on 15 September 2008
Unsecured Claim	An unsecured claim against LBIE's general estate

Notice of this Application has been given to the Financial Conduct Authority.

It is intended to serve this Application on Barclays Capital Inc., c/o Boies, Schiller & Flexner (UK) LLP.

If you do not attend, the court may make such order as it thinks fit.

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

**IN THE MATTER OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY
ACT 1986**

APPLICATION

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Solicitors for the Administrators