

Applicants
D P Ereira
Fourth Statement
"DPE4"
10 December 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

**FOURTH 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**") (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 "**DPE4**", 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.
- 5 An application (the "**Application**") was made on 26 November 2009 by the Administrators and LBIE for an order in connection with the distribution and appropriation of assets held on trust by LBIE, pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 and/or under the Court's inherent jurisdiction.
- 6 In particular, the Administrators and LBIE seek an Order that, having given not less than six weeks' notice of the bar date referred to below in various specified ways, after 26 February 2010 (the "**Bar Date**") has passed, to the extent that there exist no valid and enforceable "Security Interests" (as defined in the Ordinary Application by which this Application is made) in respect of the relevant "Trust Assets" (as defined in the Ordinary Application), the Administrators be at liberty to procure that LBIE do, and LBIE be at liberty to:
 - 6.1 "Distribute" (as defined in the Ordinary Application) Trust Assets to those persons who, on the basis of the information available to LBIE and the Administrators at the time of such distribution, are entitled to them; and
 - 6.2 "Appropriate" (as defined in the Ordinary Application) such Trust Assets as LBIE is, on the basis of the information available to LBIE and the Administrators at the time of such appropriation, entitled to Appropriate.

B. PUBLICITY OF THE APPLICATION

- 7 The Application was issued on 26 November 2009. Later that day, the Financial Services Authority ("**FSA**") was provided with the following:
 - 7.1 a copy of the sealed Ordinary Application; and
 - 7.2 a copy of the sixth witness statement of Steven Pearson made in support of the Application ("**Pearson 6**").
- 8 The Administrators offered to provide a copy of the exhibit to Pearson 6 to the FSA on request. The FSA has been asked whether it intends to appear

on the application. As at the date of this witness statement, the FSA has not responded to that enquiry and the Administrators assume that the FSA does not intend to appear.

- 9 As envisaged by paragraph 32 of Pearson 6, on 27 November 2009, the Administrators issued an update notice (the "**Update Notice**") on the Administration Website (as defined in Pearson 6), which is accessible by the general public. A copy of the Update Notice can be found at pages 1 to 3 of exhibit "**DPE4**". The Update Notice, which has remained on the website ever since, publicises the Application and makes available for download both the Ordinary Application and Pearson 6. 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 and, if they so wish make representations*". It goes on to request that anyone intending to make representations provide the Administrators with notice of such intention, by contacting Linklaters (contact details are provided).
- 10 As at the time of my making this statement (being approximately 7pm on 10 December 2009), Linklaters has not been contacted by any party indicating an intention to make representations in relation to the application. It is, of course, possible that Linklaters may be contacted by such a party prior to the hearing of the application, in which case the Administrators will ensure that the Court is made aware of this in due course.
- 11 As explained at paragraph 31 of Pearson 6, the Administrators have recently proposed a contract with consenting Trust Asset claimants (which is known as the Claim Resolution Agreement ("**CRA**")), in a bid to expedite the return of Trust Assets. Following the launch of the CRA and the issuing of the Application, the Administrators organised two meetings, one of which took place in New York on 7 December 2009 and the other of which has been arranged to take place in London on 11 December 2009, with the purpose of further explaining to Trust Asset claimants the effect of the CRA and the proposed Bar Date. The Administrators invited to these meetings all those appearing from LBIE's books and records to be Trust Assets claimants who are eligible to accede to the CRA.

C. REVISED DRAFT NOTICE

12 The Ordinary Application includes at Schedule 1 a draft of the "Notice" by which Administrators propose to advertise the Bar Date if the Court makes the Order sought. Since the date on which the Application was issued, the Administrators have slightly revised (primarily for administrative reasons) the terms in which it is proposed to advertise the Bar Date. A revised draft "Notice" appears at pages 4 to 6 of DPE4 (and a tracked changes version of the "Notice", showing the changes that have been to the version of the "Notice" appearing at Schedule 1 to the Ordinary Application, appears at pages 7 to 9.

STATEMENT OF TRUTH

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

Signed: 

DAVID PHILIP EREIRA

10 December 2009

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