

IN THE HIGH COURT OF JUSTICENo. 7942 of 2008CHANCERY DIVISIONCOMPANIES COURT

Before the Honourable Mr Justice Blackburne
Thursday the 16th day of July 2009

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986



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 (the “Administrators”), the Administrators of Lehman Brothers International (Europe) (in administration) (“LBIE”) by Ordinary Application dated 1 May 2009 (the “Application”) made pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986

AND UPON HEARING Counsel for the Administrators and Counsel for GLG, Paragon, CRC, Claren Road and Chilton, LBI, LBHI and LBF and the FSA

AND UPON each of GLG, Paragon, CRC, Claren Road and Chilton confirming their willingness to serve as Representative Respondents in respect of the Issues identified in paragraph 5 below

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

IT IS HEREBY ORDERED AND DIRECTED that:

1. For the purposes of this Order, the following defined terms shall bear the following defined meanings.

Affiliates	Members (other than LBIE) of the Lehman Group
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	immediately prior to the Time of Appointment
Chilton	Chilton New Era Partners LP
Claren Road	Claren Road Credit Master Fund Ltd
Client	For the avoidance of doubt, the term "client" as used herein includes Affiliates
CMP	The notional pool of client money constituted, by CASS 7.9.6R, on the occurrence of a primary pooling event
COB on 11.09.08	The time at which the figures used in the last reconciliation and segregation exercise in respect of client money carried out by LBIE prior to the appointment of the Administrators (which was performed on the morning of 12.09.08) were taken.
CRC	CRC Credit Fund, Limited (formerly known as CRC Global Structured Fund, Ltd)
FSA	Financial Services Authority
GLG	GLG Global Utilities Fund
LBF	Lehman Brothers Finance AG
LBHI	Lehman Brothers Holdings Inc
LBI	Lehman Brothers Inc
LBIE	Lehman Brothers International (Europe) (in administration)
Paragon	Paragon Capital Management Fund Limited
Point of Last Segregation	The time, during the morning of 12 September 2008, at which LBIE conducted the last reconciliation and segregation exercise prior to the appointment of the Administrators, by reference to figures as at COB on 11.09.08
Representative Respondent	A respondent appointed in respect of the Issues identified below or as may be otherwise ordered
Segregated Clients	Clients (other than LBI, LBHI and LBF) of LBIE for whom some client money was segregated at the Time of Appointment
The "General Estate"	Clients and creditors for whom no client money was segregated at the Time of Appointment and for whom LBIE was not required and had not agreed to segregate client money
The "Lehman Group"	The global investment banking group of which the ultimate

	parent company was LBHI
The Issues	The preliminary issues set out in Schedule A hereto
Time of Appointment	7.56am on 15.09.08
Unsegregated Clients	Clients (other than LBI, LBHI and LBF) of LBIE for whom money arguably should have been segregated as client money at the Time of Appointment but was not

The Hearing

2. A hearing (the "**Hearing**") be fixed on an expedited basis to start on 9 November 2009 with a time estimate of 15 to 20 days before the Honourable Mr Justice Briggs at which the Court will give directions on the Issues.
3. The Administrators and the respondents appointed and added to the Application below do have liberty:-
 - a. to vary (including by adding to or deleting) the Issues by agreement; and
 - b. in default of agreement to apply to the Court for a variation of the Issues (including by the addition or deletion of Issues).

Respondents

4. Each of LBI, LBHI and LBF be added as a respondent to the Application in its own name, and be permitted to make submissions on such Issues as may be advised.
5. Pursuant to CPR 19.6(1) or 19.7(2) as appropriate:-
 - a. For the purposes of Issues 1 to 5:-
 - i. GLG be appointed as Representative Respondent for Segregated Clients in respect of whom no client money is identifiable in a non-client money account; and

- ii. CRC be appointed as Representative Respondent for:-
 - clients (other than LBI, LBHI and LBF) for whom money was or should have been segregated at the Time of Appointment and in respect of whom client money is identifiable in a non-client money account; and
 - other Unsegregated Clients.

- b. For the purposes of Issues 6, 7 and 10A:-
 - i. GLG be appointed as Representative Respondent for Segregated Clients; and
 - ii. Claren Road be appointed as Representative Respondent for Unsegregated Clients.

- c. For the purposes of Issues 8-9:-
 - i. GLG be appointed as Representative Respondent for clients (other than LBI, LBHI and LBF) in respect of whom LBIE was not (even absent administration) required to increase the amount of client money held on a segregated basis in consequence of events occurring between COB on 11.09.08 and the Time of Appointment; and
 - ii. Claren Road be appointed as Representative Respondent for clients (other than LBI, LBHI and LBF) in respect of whom LBIE would (absent administration) have been required to increase the amount of client money held on a segregated basis in consequence of events occurring between COB on 11.09.08 and the Time of Appointment).

- d. For the purposes of Issue 10:-
 - i. GLG be appointed as Representative Respondent for Segregated Clients for whom LBIE held the correct amount of client money or more than the correct

amount of client money on a segregated basis at the Point of Last Segregation;
and

- ii. Claren Road be appointed as Representative Respondent for Unsegregated Clients and Segregated Clients for whom LBIE held an insufficient amount of client money on a segregated basis as at the Point of Last Segregation.

e. For the purposes of Issues 15 and 16:-

- i. GLG be appointed as Representative Respondent for Segregated Clients for each of whose positions LBIE had segregated some money as at the Time of the Administration;
- ii. Chilton be appointed as Representative Respondent for Segregated Clients for only some of whose positions LBIE had segregated money as at the Time of the Administration;
- iii. CRC be appointed as Representative Respondent for Unsegregated Clients.

f. For the purposes of Issue 20:-

- i. GLG be appointed as Representative Respondent for Segregated Clients for each of whose positions LBIE had segregated some money as at the Time of the Administration;
- ii. Chilton be appointed as Representative Respondent for Segregated Clients who traded exclusively on their own account for only some of whose positions LBIE had segregated money as at the Time of the Administration;
- iii. CRC be appointed as Representative Respondent for Unsegregated Clients.

g. For the purposes of Issues 23-23C:-

- i. GLG be appointed as Representative Respondent for Segregated Clients who are not Affiliates; and
 - ii. CRC be appointed as Representative Respondent for Unsegregated Clients who are not Affiliates.
6. The Administrators do have permission to apply to join or appoint a Representative Respondent:-
 - a. for the General Estate in respect of Issues 1 to 26; and
 - b. if necessary, further respondents in relation to Issues 3, 8-9, 11-14, 15(c), 20, 21-22, 23D-F, and 24-25.

Preparation for the Hearing

7. There be a directions hearing on 27 July 2009 with a time estimate of 1 day at which the Court will give further procedural directions including as to:-
 - a. the appointment of a Representative Respondent making representations in relation to the General Estate and, if necessary, further respondents in relation to Issues 3, 8-9, 11-14, 15(c), 20, 21-22, 23D-F, and 24-25; and
 - b. the form of the Synopsis referred to in paragraph 9 below.
8. The FSA do, by 5pm on 1 September 2009, file and serve on the Administrators and on each of the respondents its submissions in respect of the Issues.
9. The Administrators do, by 5pm on 1 September 2009, serve on each Representative Respondent a synopsis (the "**Synopsis**") outlining the relevant factual position of that Representative Respondent in the form attached hereto as Schedule B.

10. Each Representative Respondent do, by 5pm on 15 September 2009, notify the Administrators of the respects (if any) in which it disagrees with the relevant Synopsis and provide suggested amendments to the same.
11. Each relevant Synopsis, marked to show any disagreements between the Administrators and the relevant Representative Respondent, shall be contained in the bundles referred to in paragraph 12 below.
12. The Administrators do by 10am on 17 September 2009 lodge and serve on each of the respondents and on the FSA bundles for the Hearing the content of which is to be agreed so far as possible.
13. Any further witness statement to be filed for use at the Hearing should be filed and served by 5pm on 17 September 2009.
14. No-one other than:-
 - a. a respondent who has been appointed as a Representative Respondent, and then only in respect of the Issues in respect of which it has been appointed as such;
 - b. LBI, LBHI, LBF and the FSA; and
 - c. the Administrators;may address the Court on any of the Issues without the permission of the Court. Any client or creditor wishing to have an argument advanced on their behalf should notify the appropriate Representative Respondent's solicitors.
15. Each of the respondents do, by 10am on 21 September 2009, file and serve on the Administrators and on each of the respondents and on the FSA a short position paper setting out:-

- a. in the case of each of the Representative Respondents, the direction which the respondent will be inviting the Court to make on each Issue in relation to which the Representative Respondent has been appointed as such, briefly summarising (so far as they are able) the arguments they intend to make in support of the direction sought; and
 - b. in the case of each of LBI, LBHI and LBF, the direction which the respondent will be inviting the Court to make on each Issue on which it (or its duly appointed trustee or representative) will be making submissions, briefly summarising (so far as they are able) the arguments they intend to make in support of the direction sought.
16. There be a case management conference on 24 September 2009 with a time estimate of two days before the Honourable Mr Justice Briggs. At the case management conference, the Court will consider, among other things:-
- a. the precise extent to which on any Issue each of LBI, LBHI and LBF should participate at the Hearing; and
 - b. whether any revisions to paragraphs 17-19 below are required.
17. The Administrators do file and serve on each of the respondents and on the FSA a skeleton argument by 10am on 19 October 2009.
18. Each of the respondents do deliver to the Court and serve on the Administrators and on each of the other respondents and on the FSA a skeleton argument by 10am on 26 October 2009.
19. The Administrators and each of the respondents be at liberty to deliver to the Court and serve on the Administrators and on each of the other respondents and on the FSA a skeleton argument in reply by 10am on 2 November 2009.
20. There be permission to apply for further directions, including as to the scope of the skeleton arguments and the time at which they are to be filed and served.

Costs

21. The costs of each of the Representative Respondents (subject to detailed assessment on the indemnity basis if not agreed) of and incidental to the Issues in respect of which it has been appointed as such, to the date of the conclusion of the Hearing (including the date of hand-down of any judgment and arguments on costs at such hand-down) including the costs of and incidental to the procedural directions hearing held on 15 and 16 July 2009, shall be paid:-
- a. as an expense of the administration; or
 - b. from the CMP; or
 - c. in part as an expense of the administration and in part from the CMP;
- in such proportions as shall be ordered by the Court at the Hearing.
22. The Administrators' costs of and incidental to the hearing on 15 and 16 July 2009 are costs of the Application.
23. The costs of LBI, LBHI and LBF of and incidental to the hearing on 15 and 16 July 2009 are reserved.

Schedule AConstitution of the CMP*Which accounts?*

1. Does the term 'client bank account' include:
 - (a) the core bank accounts in relation to which LBIE operated its client segregation system;

- (b) those bank accounts and money market deposits which were identified by LBIE's designation of the account as a client cash segregated account or alternatively were designated in LBIE's books and records as such and:
 - (i) in relation to which LBIE complied with CASS 7.8.1R;
 - (ii) in relation to which LBIE did not comply with CASS 7.8.1R;
 - (c) a bank account other than an account falling within the description in (a) or (b) above which included only client money (whether or not LBIE appreciated this);
 - (d) a bank account other than an account falling within the description in (a), (b) or (c) above which contains identifiable client money, and if so, to the extent of that identifiable client money, or to some other extent;
 - (e) any other bank account, and if so, which account(s), and to what extent?
2. Do the answers to question 1 above change where the accounts in question are held not in LBIE's name but in the name of a nominee of LBIE?
3. Does the term 'client transaction account' include:
- (a) those accounts maintained by LBIE with an exchange, clearing house or intermediate broker, as the case may be, in respect of transactions in contingent liability investments undertaken by LBIE solely with or for its clients;
 - (aa) transaction accounts of clients maintained in LBIE's books, not being accounts maintained by LBIE with an exchange, clearing house or intermediate broker;
 - (b) any other account, and if so, which account(s)?
4. Does the reference to 'client money accounts' in CASS 7.9.6R(1)¹ include:
- (a) the client bank accounts that LBIE maintained as at the Time of Appointment;
 - (b) the client transaction accounts that LBIE maintained at the Time of Appointment;
 - (c) any other account, and, if so, which account or accounts, and to what extent?

Treatment of identifiable client money

5. If the answer to question 1(b), 1(c) and/or 1(d) and/or 1(e) above is “no” or the answer to question 4(c) is “yes”, is LBIE obliged to transfer any identifiable client money held by it at the Time of Appointment in an account other than a client money account to the client for whom it was held pursuant to CASS 7.7.2R(2) (subject to an appropriate deduction for costs in accordance with CASS 7.7.2R(4))?

Adjustment of the CMP*Adjustments in respect of events occurring prior to the Time of Appointment*

6. Is money which was due to LBIE at the Time of Appointment and which would, in the ordinary course, have been swept into LBIE’s house accounts during a daily reconciliation in due course, had the administration not intervened, notionally pooled pursuant to CASS 7.9.6R² or should it be excluded from the notional pooling?
8. Is LBIE required to adjust the CMP (whether by way of segregating funds standing to the credit of LBIE’s general accounts or by transferring sums from the CMP to LBIE’s general accounts) to take account of:-
- (a) movements in the notional value of margined transactions between the close of business on 11 September 2008 (by reference to which LBIE conducted its final daily reconciliation exercise prior to the Time of Appointment) and the Time of Appointment; and/or
- (b) a client’s equity balance as at the Time of Appointment, in circumstances where LBIE had previously wrongly not segregated any client money for the client?
9. Save as required by the answer to question 8 above, is LBIE not now required to adjust the CMP (whether by way of segregating funds standing to the credit of LBIE’s general accounts or by transferring sums from the CMP to LBIE’s general accounts) to take account of events between the close of business on 11 September 2008 (by reference to which LBIE conducted its final daily reconciliation exercise prior to the Time of Appointment) and the Time of Appointment which, in the ordinary course absent administration, would have led to an adjustment by LBIE of the amount of money segregated by it as client money?

¹ 7A.2.4R(1)
² 7A.2.4R

10. Save as required by the answers to questions 8 and/or 9 above, is LBIE not now required to adjust the CMP to take account of any money which, prior to administration, LBIE should already have segregated as client money but had not?
- 10A. In relation to any payments which LBIE is required to make into the CMP pursuant to the answers to questions 8 and/or 9 and/or 10 above:
- (a) is the payment payable as an expense of LBIE's administration within the meaning of Rule 2.67(1)(a) or Rule 2.67(1)(f) of the Insolvency Rules 1986 and, if so, which Rule;
 - (b) is LBIE obliged to make any payment:
 - (i) into a client bank account opened by LBIE prior to the Time of Appointment and, if so, whether such money then becomes subject to CASS 7.9.6R(1)³;
 - (ii) to the client for whom the money should have been held pursuant to CASS (subject to an appropriate deduction for costs in accordance with CASS 7.7.2R(4))?
7. If the answer to question 6 or 8 or 9 above is that such money should be excluded from the notional pooling or removed from the CMP:-
- (a) is the amount which may be withdrawn from the client money accounts on account of such sums:
 - (i) the full amount of the money;
 - (ii) the traceable amount (if any) of such money; or
 - (iii) a pro-rata proportion (taking into account any shortfall in the CMP), and, if so, of the entire amount, of the traceable amount, or of some other amount; or
 - (iv) some other amount and, if so, what amount; and
 - (b) is LBIE obliged or permitted to transfer the sum or sums established by the answers to question 7(a) above from the client money account in which it is at present held to a general account of LBIE (such that such sums become available to the general estate)?

³ 7A.2.4R(1)

Adjustments in respect of events occurring since the Time of Appointment

11. Is LBIE not now required to adjust the CMP or to segregate further funds to take account of any events (including fluctuations in rates of exchange between the currency in which client money is held and the currency of receipt (or LBIE's liability, if different)) occurring since the Time of Appointment which, absent administration, would otherwise have led to an adjustment by LBIE of the client money segregated by it?
12. In relation to any payments which LBIE is required to make into the CMP pursuant to the answers to question 11 above:
- (a) is the payment payable as an expense of LBIE's administration within the meaning of Rule 2.67(1)(a) or Rule 2.67(1)(f) of the Insolvency Rules 1986 and, if so, which Rule;
 - (b) is LBIE obliged to make any payment:
 - (i) into a client bank account opened by LBIE prior to the Time of Appointment and, if so, whether such money then becomes subject to CASS 7.9.6R(1)⁴;
 - (ii) to the client for whom the money should have been held pursuant to CASS (subject to an appropriate deduction for costs in accordance with CASS 7.7.2R(4))?
- 12A. If the answer to question 11 above is that money should be transferred from the CMP:
- (a) is the amount which may be withdrawn from the client money accounts on account of such sums:
 - (i) the full amount of the money;
 - (ii) the traceable amount (if any) of such money; or
 - (iii) a pro-rata proportion (taking into account any shortfall in the CMP), and, if so, of the entire amount, of the traceable amount, or of some other amount; or
 - (iv) some other amount and, if so, what amount; and

⁴ 7A.2.4R(1)

- (b) is LBIE obliged or permitted to transfer the sum or sums established by the answers to question 11(a) above from the client money account in which it is at present held to a general account of LBIE (such that such sums become available to the general estate)?

Existence and scope of client money entitlements

15. Does a client for whom LBIE should have held client money on a segregated basis have a client money entitlement in relation to:-
- (a) a position or instrument in respect of which there is client money in the CMP as constituted according to the directions given by the Court on this Application;
 - (b) a position or instrument in respect of which there is no client money in the CMP as constituted according to the directions given by the Court on this Application and in relation to which LBIE has at no time held client money on a segregated basis;
 - (c) a position or instrument in respect of which there is no client money in the CMP as constituted according to the directions given in relation to Issues 1 to 4 above but in relation to which LBIE at one time held client money on a segregated basis.
16. Does a client for whom LBIE was neither required nor had agreed to hold client money on a segregated basis but for whom LBIE held client money on a segregated basis at the Time of Appointment have a client money entitlement in relation to:-
- (a) a position or instrument in respect of which there is client money in the CMP as constituted according to the directions given by the Court on this Application;
 - (b) a position or instrument in respect of which there is no client money in the CMP as constituted according to the directions given by the Court on this Application and in relation to which LBIE has at no time held client money on a segregated basis;
 - (c) a position or instrument in respect of which there is no client money in the CMP as constituted according to the directions given in relation to Issues 1 to 4 above but in relation to which LBIE at one time held client money on a segregated basis.

20. Does a client for whom LBIE should have held client money on a segregated basis but did not in respect of that client's proprietary positions, but for whose underlying clients LBIE did hold client money on a segregated basis, have a client money entitlement in respect of its proprietary positions?

Calculation of client money entitlements

21. Is LBIE obliged to calculate client money entitlements as at the Time of Appointment, and, if not, at what time should client money entitlements be calculated?
22. Is LBIE permitted to calculate client money entitlements (and consequently the rateable share to which each client entitled to a distribution from the CMP is entitled) in a common currency of its choice, by applying a spot exchange rate as at close of business on the date of administration or alternatively at the Time of Appointment?
23. Is the client money entitlement of a client entitled to a distribution from the CMP calculated by reference to or affected by the amount in fact contained in the notional CMP in respect of him at the Time of Appointment and/or subsequently transferred to the CMP as required by the answers to the questions above? If so, what is the client money entitlement of a client in respect of whom there is no client money contained in the notional CMP at the Time of Appointment or subsequently transferred to the CMP as required by the answers to the questions above?
- 23A. How is each client's client money entitlement (as referred to in CASS 7.9.6R⁵) to be calculated? [In particular, is it to be calculated, for each client, as:-
- (a) the aggregate of (i) in the case of the core bank accounts, the amount which represented the funds in fact segregated for or on behalf of that client immediately following the Point of Last Segregation; and (ii) in the case of any other client money account (as determined in accordance with Q1-4 above), the amount which represented the funds standing to the credit, or paid into, the account on behalf of that client as at the Time of Administration, in each

⁵ 7A.2.4R

case including any adjustment to the CMP as required by the answer to the questions above; or

- (b) the amount which would have been segregated (or otherwise held in a client bank account determined in accordance with Q1-4 above) for or on behalf of that client if a calculation of the amount which LBIE was required to hold as client money for or on behalf of that client had taken place as at the Time of Administration; or
- (c) the amount which would or ought to have been segregated for that client if a calculation of the amount which LBIE was required to hold as client money for that client had taken place as at the Time of Administration as though all such client's open positions at that time had been liquidated and closed at the closing or settlement prices published by the relevant exchange or other appropriate pricing source at the time of the Administration; or
- (d) on some other, and if so what, basis?]

23B. How, if at all, do the provisions of CASS 7.9.7R affect the calculation of client money entitlement in accordance with CASS 7.9.6R?

23C. Is a client's "*individual client balance*" as referred to in CASS 7.9.7R to be calculated in accordance with paragraphs 7 & 8 of Annex 1 to CASS 7 or on some other, and if so what, basis? If and to the extent that particular client money does not fall within paragraphs 7 & 8 of Annex 1, how is it to be taken into account in calculating client money entitlement?

23D. To what extent, and at whose behest, can a debt owed by a client with a client money entitlement to LBIE be set-off against that client's claim against the CMP?

23E. Does the set-off operate between the debt and:-

- (a) the client's total claim against LBIE;

- (b) the client's client money entitlement;
- (c) the amount of the client's distribution from the CMP;
- (d) some other sum, and, if so, what?

23F. Should the sum so set-off:-

- (a) be distributed amongst those clients with a client money entitlement, or
- (b) accrue to the benefit of the General Estate?

13. Should LBIE recalculate a client's client money entitlement by reference to, or take into account in calculating the amount to be distributed to a particular client, events occurring since the Time of Appointment which, absent administration, would otherwise have led to an adjustment by LBIE of the client money segregated by it?

14. If the answer to question 13 above is "no":

- (a) Is a client money entitlement defeasible by reason of events occurring since the Time of Appointment?
- (b) Can delivery of a security discharge the obligation on LBIE to pay (in whole or in part) a distribution from the CMP?

Distribution of client money

24. Is LBIE obliged or permitted to make a distribution from the CMP to those clients entitled to receive one in the currency of its choice and, if not, in what currency or currencies should distribution be made?

25. If LBIE is obliged or permitted to make a distribution from the CMP to those clients entitled to receive one in the currency of its choice, is LBIE obliged or permitted to calculate the amount to be paid to each such client as follows:

- (a) by applying his rateable share of the CMP as established in accordance with the procedure proposed in question 22 above to the value of the CMP as at the date of distribution;
- (b) by establishing the value of the CMP as at the date of distribution by reference to a spot exchange rate on that day.

Affiliates

26. Is LBIE obliged under CASS 7 to treat money held for an affiliated company as money held in the course of or in connection with its MIFID business?

Schedule B

IN THE HIGH COURT OF JUSTICE

No. 7942 of 2008

CHANCERY DIVISION

COMPANIES COURT

**Before the Honourable Mr Justice Blackburne
Thursday the 16th day of July 2009**

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

ORDER

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