

IN THE HIGH COURT OF JUSTICE

No. 7942 of 2008

CHANCERY DIVISION

COMPANIES COURT

Before the Honourable Mr Justice Briggs
Friday the 25th day of September 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 GLGGUF, GLG, Paragon, GSIP, CRC, Claren Road, Chilton, HLBB, LBI, LBHI and LBF and the FSA

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

AND UPON GSIP and GLG each confirming its willingness to serve as a Representative Respondent and Paragon, CRC, Claren Road and HLBB each confirming its willingness to serve in relation to the further Issues identified below

AND UPON HLBB applying for permission to adduce expert evidence

AND UPON Paragon applying by Ordinary Application dated 17 September 2009 and CRC, Claren Road, Chilton, GLGGUF, GLG, GSIP, Paragon and HLBB applying in the course of the hearing for an amount to be paid immediately on account of costs previously ordered to be paid

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 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
GLGGUF	GLG Global Utilities Fund
GLG	GLG Investments plc: sub-fund GLG European Equity Fund
GSIP	Goldman Sachs GSIP Master Company (Ireland) Ltd
HLBB	Hong Leong Bank Berhad
LBF	Lehman Brothers Finance AG
LBHI	Lehman Brothers Holdings Inc
LBI	Lehman Brothers Inc

LBIE	Lehman Brothers International (Europe) (in administration)
The Order of 16 July 2009	The order made by the Honourable Mr Justice Blackburne on the Application on 16 July 2009
The Order of 27 July 2009	The order made by the Honourable Mr Justice Blackburne on the Application on 27 July 2009
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 Issues

2. The Issues to be considered at the Hearing are as set out in Schedule A to this Order.
3. Paragraph 3 of the Order of 16 July 2009 shall continue.

Representative Respondents

4. GLG be appointed as Representative Respondent in place of GLGGUF so that, from the date of this Order:-
 - a. GLG will serve as Representative Respondent for the purposes of the Issues in respect of which and for the clients for whom GLGGUF was appointed in paragraph 5 of the Order of 16 July 2009;
 - b. the pre-emptive costs order made in paragraph 21 of the Order of 16 July 2009 shall enure in favour of GLG and cease to apply to GLGGUF save in respect of the costs incurred by GLGGUF to date.
5. For the purposes of Issues 13 and 14, Claren Road be appointed as Representative Respondent in place of CRC so that, from the date of this Order Claren Road will serve as Representative Respondent for the purposes of Issues 13 and 14.
6. Pursuant to CPR 19.6(1) or 19.7(2) as appropriate:-
 - a. For the purposes of Issues 3, 11, 12, 13 and 23A, GSIP be appointed as Representative Respondent for clients whose margined transactions increased in value after the Time of Appointment. (For the avoidance of doubt, clients who fall into this class will also be represented, in relation to each of the above Issues, by one of the Representative Respondents appointed in paragraphs 5(a), (g), (h) and (i) of the Order of 16 July 2009).
 - b. For the purposes of Issue 21:-
 - i. Paragon be appointed as Representative Respondent for clients in respect of whom there were no events occurring between COB on 11.09.08 and the Time of Appointment which might result in a decrease in the client's client money entitlement;

- ii. GLG be appointed as Representative Respondent for clients in respect of whom there were events occurring between COB on 11.09.08 and the Time of Appointment which might result in a decrease in the client's client money entitlement;
 - iii. GSIP be appointed as Representative Respondent for clients to whom LBIE's contractual obligations were owed in a currency other than US Dollars (who will also be represented by either Paragon or GLG).
 - c. For the purposes of Issue 22:-
 - i. GSIP be appointed as Representative Respondent for clients to whom LBIE's contractual obligations were owed in a currency other than US Dollars which strengthened against the Dollar since COB on 11.09.08;
 - ii. GLG be appointed as Representative Respondent for clients to whom LBIE's contractual obligations were owed in US Dollars or a currency other than US Dollars which weakened against the Dollar since COB on 11.09.08.
 - d. For the purposes of Issues 23D-F:-
 - i. Paragon be appointed as Representative Respondent for clients for whom some money was segregated as at the Time of Appointment and who were not at the Time of Appointment and have not since become a debtor of LBIE;
 - ii. GLG be appointed as Representative Respondent for clients for whom some money was segregated as at the Time of Appointment and who were, at the Time of Appointment, and remain a debtor of LBIE; and
 - iii. CRC be appointed as Representative Respondent for Unsegregated Clients.
 - e. For the purposes of Issues 24 and 25:-

- i. GSIP be appointed as Representative Respondent for clients to whom LBIE's contractual obligations were owed in a currency other than US Dollars which strengthened against the Dollar since COB on 11.09.08;
 - ii. GLG be appointed as Representative Respondent for clients to whom LBIE's contractual obligations were owed in US Dollars or a currency other than US Dollars which weakened against the Dollar since COB on 11.09.08.
 - f. For the purposes of Issue 25A:-
 - i. GLG be appointed as Representative Respondent for Segregated Clients;
 - ii. Claren Road be appointed as Representative Respondent for Unsegregated Clients;
 - iii. HLBB be appointed as Representative Respondent for the General Estate.
 - g. For the purposes of Issue 26A:-
 - i. GLG be appointed as Representative Respondent for Segregated Clients; and
 - ii. CRC be appointed as Representative Respondent for Unsegregated Clients;
 - iii. HLBB be appointed as Representative Respondent for the General Estate.
- 7. For the avoidance of doubt, the costs orders made in paragraph 21 of the Order of 16 July 2009 and (in relation to HLBB) in paragraph 4 of the Order of 27 July 2009 apply to the costs of and incidental to the Issues in respect of which appointments are made above.
- 8. The costs of GSIP (subject to detailed assessment on the indemnity basis if not agreed) of and incidental to the Application, 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 CMC held on 24-25 September 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.

9. Chilton do cease to be a Representative Respondent in respect of Issues 15, 16 and 20. For the avoidance of doubt, Chilton's costs are to be paid in accordance with paragraph 21 of the Order of 16 July 2009.
10. The Administrators do have permission to apply to join or appoint a Representative Respondent in place of Chilton. In default of the appointment of a Representative Respondent in place of Chilton, the Administrators shall, for the purposes of Issues 15 and 16, represent Segregated Clients for only some of whose positions LBIE had segregated money as at the Time of Appointment.
11. In default of the appointment of a Representative Respondent for clients with a position or instrument in respect of which LBIE should have held client money on a segregated basis and did at one time hold client money on a segregated basis but in respect of which there was no money in the CMP at the Time of Appointment for the purposes of Issue 15(c), the Administrators be appointed to represent those clients (other than LBI).

Evidence

12. HLBB's application for permission to adduce expert evidence is hereby dismissed.

Case Management directions in relation to the Hearing

13. Any respondent wishing to amend their Position Paper do by 4.30pm on 2 October 2009 file and serve on the Administrators, the FSA and each other an amended Position Paper.
14. Each respondent do by 4.30pm on 2 October 2009 serve on the solicitors for the Administrators a draft statement of assumed facts briefly summarising what facts they propose should be assumed by the Court in relation to that respondent's dealings with LBIE for the purposes of the Application.
15. The Administrators do by 4.30pm on 9 October 2009 serve on each respondent a draft composite statement of assumed facts.
16. Each respondent do by 4.30pm on 14 October 2009 serve on the solicitors for the Administrators comments on the draft composite statement of assumed facts.
17. The Administrators do by 10.00am on 19 October 2009 file and serve on the FSA and on each respondent the agreed composite statement of assumed facts.
18. In the skeleton argument which the Administrators are required, by paragraph 17 of the Order of 16 July 2009, to file and serve by 10am on 19 October 2009, the Administrators shall seek to identify those Issues in respect of which there appears to be a consensus amongst the parties as to the answer, and the direction which the Court is invited to make in respect of the same.
19. A pre-trial review with a time estimate of half a day be fixed in the window 28 to 30 October 2009. Any party wishing to make an application to be determined at the pre-trial review shall give notice to the Administrators, to the FSA and to each respondent to the Application in writing by 4.30pm on 26 October 2009. If no formal application has been made by this time, the PTR will not proceed.

20. Counsel for the Administrators, the FSA and the respondents do endeavour to agree an indicative timetable for the Hearing, which is to be filed by 4.30pm on 30 October 2009.
21. A combined bundle of authorities shall be filed with the Court by 4.30pm on 30 October 2009.
22. A supplemental bundle of authorities containing the further authorities referred to in the skeletons in reply for which provision is made in paragraph 19 of the Order of 16 July 2009 shall be filed by 4.30pm on 2 November 2009.
23. The Administrators, the FSA and the respondents agree that the required period for pre-reading shall be one week.
24. The order in which submissions will be made at the Hearing shall be as follows:-
 - a. the Administrators;
 - b. the FSA;
 - c. CRC/Claren Road;
 - d. LBI and/or LBF;
 - e. GLG;
 - f. GSIP;
 - g. Paragon;
 - h. HLBB;
 - i. LBHI.
25. All parties shall have the right to reply, such submissions to be made in reverse order from the main submissions, and the Administrators shall have the final right of reply.
26. As to paragraph 24(d) above, LBI and LBF do, by 4.30pm on 13 October 2009, notify the Administrators which of the two in respect of each Issue intends to take the lead in making submissions at the Hearing, to the extent that their proposed arguments are aligned in each such case.
27. The Administrators, the FSA and the respondents and each of them do have permission to apply.

Costs

28. The Administrators do make payments on account of the costs incurred by the Representative Respondents as ordered (i) under paragraph 21 of the Order of 16 July 2009; and (ii) in relation to HLBB under paragraph 4 of the Order of 27 July 2009; and (iii) in relation to GSIP by paragraph 8 above as follows:-
- a. of 65% of the costs incurred in the period up to and including 23 September 2009 and stated in and verified by a schedule signed by a solicitor to be served on the solicitors to the Administrators, such payment to be made within 14 days of receipt of that schedule by the Administrators' solicitors (save in relation to Paragon, to whom payment will be made by 14 October 2009);
 - b. of 65% of the costs incurred in the period between 24 September 2009 and 25 October 2009 inclusive and stated in and verified by a schedule signed by a solicitor to be served on the solicitors to the Administrators, such payment to be made within 14 days of receipt of that schedule by the Administrators' solicitors;
 - c. of 65% of the costs incurred between 26 October 2009 and the conclusion of argument at the Hearing (or the end of the Michaelmas term, if the Hearing is adjourned part-heard) and stated in and verified by a schedule signed by a solicitor to be served on the solicitors to the Administrators by the earlier of (i) 4.30pm of the day falling three business days after the conclusion of argument at the Hearing and (ii) 4.30pm on 22 December 2009, such payment to be made within 14 days of receipt of that schedule by the Administrators' solicitors.
29. The Administrators' costs of and incidental to the hearing on 24 and 25 September 2009 are costs of the Application.
30. The costs of LBI, LBHI and LBF of and incidental to the hearing on 24 and 25 September 2009 are reserved.

Schedule A

Constitution 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))?
6. Is money which was due to LBIE or which LBIE would have been entitled to withdraw from the CMP 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?

Adjustment of the CMP

Adjustments in respect of events occurring prior to the Time of Appointment

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

¹ 7A.2.4R(1)
² 7A.2.4R

- (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?
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 any payment LBIE is obliged to make:
- (i) subject to CASS 7.9.6R(1)³;
- (ii) to be paid 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)?

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 any payment LBIE is obliged to make:
 - (i) subject to CASS 7.9.6R(1)⁴;
 - (ii) to be paid 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:

³ 7A.2.4R(1)
⁴ 7A.2.4R(1)

- (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 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 had segregated money in its client money accounts at the Time of Appointment have a client money entitlement in relation to:-

- (a) a position or instrument in respect of which there is 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 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 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 Appointment, in each 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 on behalf of that client had taken place as at the Time of Appointment; 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 Appointment 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 Appointment; 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

⁵ 7A.2.4R

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.
- 25A. Where a client money entitlement is referable to an underlying obligation of LBIE (for example where, at the Time of Appointment, LBIE owed money to the client (“the Debt”) but had segregated a sum equal to the amount of the Debt, does the client’s distribution from the CMP discharge the Debt:
 - (a) to the full extent of the client entitlement referable to the Debt;
 - (b) to the extent of the distribution made in respect of such entitlement;
 - (c) not at all; or
 - (d) to some other and, if so, what extent?

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?
- 26A. Does it make any, and if so what, difference if the affiliated company has a contractual entitlement that money held for it will be held as client monies?

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ORDER

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