

IN THE HIGH COURT OF JUSTICE

No. 7942 of 2008

CHANCERY DIVISION

COMPANIES COURT

Before the Honourable Mr Justice Briggs

Wednesday the 21<sup>st</sup> day of October 2009



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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN:

Applicants

(1) ANTHONY VICTOR LOMAS  
(2) STEVEN ANTHONY PEARSON  
(3) MICHAEL JOHN ANDREW JERVIS  
(4) DAN YORAM SCHWARZMANN  
(the joint administrators of Lehman Brothers International (Europe))

Respondents

and

(1) RAB MARKET CYCLES (MASTER) FUND LIMITED  
(2) HONG LEONG BANK BERHAD



~~Draft~~ ORDER

UPON THE APPLICATION of the joint administrators (the "Administrators") of Lehman Brothers International (Europe) ("LBIE") by Ordinary Application dated 16 July 2009

AND UPON HEARING Leading Counsel for the Administrators, Leading Counsel for RAB Market Cycles (Master) Fund Limited ("MCF") and Leading Counsel for Hong Leong Bank Berhad ("HLBB")

**AND UPON READING** the written evidence filed

**IT IS DECLARED** that, on the true construction of Clause 5.2 of LBIE's standard form International Prime Brokerage Agreement: Charge Version (the "**Charge IPBA**") (exhibited to the third witness statement of Andrew Peter Clark ("**Clark 3**") at pages 86 to 135 of exhibit "APC3"), cash: (a) received by LBIE in respect of a Corporate Event (as that term is defined in the Schedule hereto) which occurred or occurs after 07.56 on 15 September 2008; and (b) paid or distributed in respect of securities which were, at the time (or, in the case of redemptions, just prior to the time) of that Corporate Event, held by LBIE as custodian pursuant to clause 17.1 of the Charge IPBA, is, or will when received by LBIE be, held on trust for the client on whose behalf the securities are (or, in the case of redemptions, were just prior to the Corporate Event) held, both pursuant to the terms of the Charge IPBA and pursuant to the FSA's CASS rules, and falls to be dealt with in accordance with CASS 7.9.9R and its replacement CASS 7A.2.7R

**AND IT IS ORDERED** that:

- 1 The Administrators be granted permission to amend the Ordinary Application issued on 16 July 2009 in the form of the Amended Ordinary Application annexed hereto
- 2 HLBB be appointed as a representative respondent for the general estate pursuant to rule 19.7(2)(d) of the Civil Procedure Rules
- 3 The Administrators' costs of and incidental to the Application be paid as an expense of LBIE's administration
- 4 MCF's costs, limited to:
  - (a) its costs, incurred during the period 2 July 2009 to 15 July 2009, of and incidental to dealing with the formulation of the relief to be sought by the Administrators on the Application; and
  - (b) its costs, incurred on or after 16 July 2009, of and incidental to the Application,be paid as an expense of LBIE's administration (and be assessed on an indemnity basis if not agreed)
- 5 HLBB's costs of and incidental to the Application, limited to those costs incurred by HLBB from 11 September 2009, be paid as an expense of LBIE's administration (and be assessed on an indemnity basis if not agreed)

6 Pending payment of the costs directed to be paid by paragraphs 4 and 5 of this Order:

- (a) the Administrators do retain such proportion of the monies referred to in the declaration set out above as may be required to discharge in full such costs; and
- (b) the Respondents be at liberty to apply for such costs to be paid out of the monies so retained

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## SCHEDULE

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A **Corporate Event** is an event giving rise to the payment or distribution of cash:

- 1.1 in respect of securities which are redeemed or mature;
- 1.2 in respect of securities tendered under a tender offer;
- 1.3 as a result of a rights issue in respect of securities; or
- 1.4 as income on securities (for example, by way of dividends or coupons).

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**AMENDED ORDINARY  
APPLICATION**

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**TAKE NOTICE** that Anthony Victor Lomas, Steven Anthony Pearson, Michael John Andrew Jervis and Dan Yoram Schwarzmann of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT ("**Administrators**"), the Joint Administrators of Lehman Brothers International (Europe) ("**LBIE**") intend to apply to the Judge on:

Date: .....

Time: .....

Place: Court ....., Royal Courts of Justice, Strand, London

**For directions** pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 as to whether, and if so in what circumstances:

1. on the true construction of clause 5.2 ("**Clause 5.2**") of LBIE's standard form International Prime Brokerage Agreement: Charge Version (the "**Charge IPBA**") (exhibited to the third witness statement of Andrew Peter Clark ("**Clark 3**") at pages 86 to 135 of exhibit "APC3"), the client of LBIE (the "**Client**") ranks as an unsecured creditor of LBIE in respect of cash : (a)

- received by LBIE in respect of a Corporate Event (as that term is defined at paragraph 6 of Clark 3) which occurred after 07.56 on 15 September 2008; and (b) paid or distributed in respect of securities which were, at the time (or, in the case of redemptions, just prior to the time) of that Corporate Event, held by LBIE as custodian pursuant to clause 17.1 of the Charge IPBA (such cash being "**Post-Administration Cash**"); or
2. on the true construction of Clause 5.2, Post-Administration Cash is held on trust for the Client, whether (a) pursuant to the terms of the Charge IPBA and/or (b) pursuant to the FSA's rules relating to client money and/or (c) under a constructive trust and/or (d) on some other basis (subject in each case to any deductions which LBIE is entitled to make pursuant to the terms of the Charge IPBA or otherwise); or
  3. the Administrators are permitted to procure LBIE to pay Post-Administration Cash to the client (subject to any deductions which LBIE is entitled to make pursuant to the terms of the Charge IPBA or otherwise) as an expense of the administration or on any other basis;

**And for:**

4. an Order that Hong Leong Bank Berhad, the Second Respondent identified below, be appointed a representative respondent for the general estate pursuant to CPR 19.6 or CPR 19.7(2) as appropriate;
5. such further or other relief as the Court thinks fit; and
6. an Order that the costs of the Application will be provided for.

Signed: .....

Administrators' Solicitors: Linklaters LLP

Position held: Partner

Address for service:  
Linklaters LLP  
One Silk Street  
London  
EC2Y 8HQ  
Ref: Euan Clarke/Susan Roscoe/Lois Ambrose

It is intended to serve this amended Application on the following Respondents:

1. RAB Market Cycles (Master) Fund Limited (the "**First Respondent**"), c/o Simmons & Simmons, Citypoint, One Ropemaker Street, London, EC2Y 9SS;  
and

2. Hong Leong Bank Berhad (the "**Second Respondent**"), c/o Baker & McKenzie LLP, 100 New Bridge Street, London, EC4V 6JA

Notice of this amended Application has been given to the Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS;

**If you do not attend, the Court will make such order as it thinks fit**

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Ambrose

**Solicitors for the Administrators**



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Draft ORDER

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This Order was sealed by *AS* 7061 ) to whom all enquiries  
Chancery Associate (Tel: 020 7947 7061) to whom all enquiries  
should be made between the hours 9.00 to 5.00  
on business days at the Court office.  
Chancery Clerk, Royal Courts of Justice,  
Strand, London WC2A 2LL (DX 44450 Strand) and quote the case name.

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Solicitors for the Administrators