Applicant
A P Clark
Fifth Statement
"APC5"
28 September 2009

IN THE HIGH COURT OF JUSTICE **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

FIFTH WITNESS STATEMENT OF ANDREW PETER CLARK

I, ANDREW PETER CLARK, of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, state as follows:

1 I am a partner in PricewaterhouseCoopers LLP ("**PwC**"), a firm of accountants at the above address. I am one of the partners assisting the joint administrators of Lehman Brothers International (Europe) ("**LBIE**") (in administration).

2 My partners, Steven Anthony Pearson, Anthony Victor Lomas, Michael John Andrew Jervis and Dan Yoram Schwarzmann are the joint administrators of LBIE (together the "**Administrators**") who were appointed as such by order of Mr Justice Henderson on 15 September 2008. I am duly authorised to make this witness statement on behalf of LBIE and the Administrators.

3 There is now shown to me a paginated bundle of copy documents, marked "**APC5**", to which I refer in this witness statement. Where no cross reference to the

paginated bundle is provided and where there is no other 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. These facts and matters have been learned either as a result of the work undertaken by me in assisting the Administrators, or they have been provided to me either by my partners and colleagues at PwC involved with the administration of LBIE, or by the employees of LBIE who are still available to the Administrators, or by the Administrators' legal advisers, Linklaters LLP ("**Linklaters**").

4 This is my second witness statement in support of the Administrators' application, which was issued on 16 July 2009 (the "**Application**"), for directions to clarify the status of certain cash received and held by LBIE after the date of administration, and my fifth witness statement altogether in LBIE's administration proceedings.

5 The purpose of this witness statement is to update the court on certain matters which have arisen since issuing the Application and to expand and clarify some of the factual information addressed in my third witness statement ("**Clark 3**"). This witness statement also comments, to a limited extent, on the witness statement of Christopher Michael Braithwaite ("**Braithwaite 1**"), filed by the First Respondent in these proceedings. Except where expressly stated, defined terms in this witness statement have the same meaning as in Clark 3.

6 This witness statement is divided into 5 sections:

A. Identification of respondents

B. The first respondent

C. The second respondent

D. Process for dealing with cash proceeds pre-administration

E. Process for dealing with cash proceeds post-administration

A. IDENTIFICATION OF RESPONDENTS

7 As explained at paragraphs 35 and 70 of Clark 3, prior to issuing the Application, the Administrators had been working to identify suitable respondents to be parties to the Application. At the time of issue, the Administrators were in discussions with various potential respondents (in particular the First Respondent, as to which see

below) but had not obtained firm confirmation as regards participation in the Application.

8 Since issuing the Application, the Administrators have continued discussions with potential respondents. The participation of two parties as respondents to the Application, namely RAB Market Cycles (Master) Fund Limited (the "**First Respondent**") and Hong Leong Bank Berhad (the "**Second Respondent**", together the "**Respondents**") has now been confirmed.

9 In addition to progressing discussions with potential respondents known to the Administrators at the time of issuing the Application, the day after issuing the Application (i.e. 17 July 2009) the Administrators posted on the PwC/Lehman website details of the Application, together with "frequently asked questions", and invited interested parties to notify the Administrators of any interest in taking part in the Application. **Tab 1 of APC5** contains a copy of that website update. On 12 August 2009, the Administrators posted a further website update to remind interested parties of the Application and to encourage them to notify the Administrators by 4p.m. on 21 August 2009 if they wished to appear as respondents. **Tab 2 of APC5** contains a copy of that website update. The PwC/Lehman website has been used since LBIE entered into administration as the customary means of communicating with interested parties.

10 The PwC/Lehman website updates resulted in a number of notifications being made to the Administrators and Linklaters from parties interested in the Application. Many interested parties simply wanted to discuss the scope of the Application with the Administrators or their legal advisers (in particular, whether the relevant clause of the Margin Lending Agreement, referred to in paragraph 69 of Clark 3, was being considered as part of this Application) and, having had that discussion, indicated that they did not want to be a respondent to the Application. Certain other parties, once they discovered that a respondent had already been identified, who would be raising arguments as to why the cash in question should be held on trust or otherwise payable in full to the client on whose behalf the underlying securities were held, indicated that, on that basis, they did not want to participate. Accordingly, the First and Second Respondents are the only parties of whom the Administrators are currently aware who wish to be respondents to and participate in this Application.

11 On 18 September 2009, the Administrators posted a further website update indicating that two respondents would put forward arguments relating to the issues which are the subject of the Application. The update identifies the Respondents and their legal advisers. It identifies the First Respondent as a "prime brokerage client" and states that it is expected that the First Respondent will make submissions in support of the relevant cash proceeds being payable to the client in full. It identifies the Second Respondent as a "general estate creditor" and states that it is expected that this Respondent will make submissions to the contrary. The website update also states that if any other prime brokerage client or general estate creditor wishes to raise any points for consideration at the hearing of the Application, they are requested to make contact with the individuals named in the update by 25 September 2009. A copy of this website update is exhibited at **Tab 3 of APC5**.

B. THE FIRST RESPONDENT

12 The First Respondent is an investment fund and a prime services client of LBIE. It entered into a Charge IPBA with LBIE on 10 March 2008. Also on 10 March 2008, the First Respondent entered into a Deed of Amendment to its Charge IPBA. The Charge IPBA between LBIE and the First Respondent, as amended by the Deed of Amendment, is referred to in this witness statement as the "**RAB Charge IPBA**". I understand that the First Respondent entered into a number of other agreements with LBIE, including an Overseas Securities Lender's Agreement dated 27 July 2007, a Master Institutional Futures Customer Agreement dated 24 July 2007, and an ISDA Master Agreement and Credit Support Annex dated 31 July 2007.

Assets held by LBIE for the First Respondent

13 As at 12 September 2008 (the last working day prior to the Time of Administration), LBIE's books and records indicate that the First Respondent has four accounts with LBIE, with account numbers 05606660, 071707RABM, 79890127 and 27922404. My understanding is that only account number 05606660 is a prime brokerage (or "charge") account. The other accounts are a derivatives account, foreign exchange trading account and futures account, respectively. This appears to accord with the description of the accounts provided by the First Respondent in Braithwaite 1.

14 LBIE's records, as at 12 September 2008, indicate that LBIE was holding in the First Respondent's prime brokerage account (number 05606660) two U.S. government treasury bills, the first for USD45 million (the "**First T-Bill**") and the

second for USD5 million (the "**Second T-Bill**") (together the "**T-Bills**"). The First T-Bill had a maturity date of 18 September 2008, and the Second T-Bill had a maturity date of 11 December 2008. A print-out from LBIE's ITS system of LBIE's books and records for the prime brokerage account as at 12 September 2008 is at **Tab 4 of APC5**.

15 Account number 05606660 is the account in which, pursuant to the Deed of Amendment referred to at paragraph 15 of Braithwaite 1, LBIE agreed to hold positions ineligible for Collateral Use (as defined in the RAB Charge IPBA). It is important to appreciate that account number 0560660 is simply an internal book entry within LBIE's system. In agreeing to hold the T-Bills in this account, LBIE was agreeing that it would record (in its own books and records) the assets as being held in this account. The agreement to hold the T-Bills in this way and not to use them did not, however, impact on LBIE's entitlement to hold them via sub-custodians or in omnibus accounts, or to deliver equivalent securities back to the First Respondent, pursuant to Schedule 2 to the RAB Charge IPBA (and, more generally, the Charge IPBA).

16 I am advised that treasury bills are dematerialised securities issued by the U.S. Department of Treasury through the Federal Reserve Banks. As treasury bills are dematerialised, they are held in book entry form and are issued by the U.S. Treasury through what is known as the Commercial Book Entry System. The Federal Reserve Bank's role is to transfer Treasury Securities from the U.S. Treasury to depositary institutions, the latter being the registered owners of the securities. A small number of institutions are eligible to act as a depositary institution in this regard and I am advised that JPMorgan Chase ("**JPMC**") is one such institution. The relevant depositary institution would havea relationship with an intermediary who holds a book entry securities account with it whereby the depositary institution credits the treasury bills to that account in its books and records for the benefit of the intermediary. The intermediary holds in turn a book entry securities account for the benefit of the investor and it credits the treasury bills to that account in its books and records. As explained in further detail below, it is my understanding that LBI often acted as LBIE's intermediary (or sub-custodian) in relation to U.S. securities. Accordingly, consistent with this, it is my expectation that the T-Bills (prior to their maturity) were located, and that the redemption proceeds are or should be located, in accounts at JPMC held in the name of LBI as intermediary (or sub-custodian) for LBIE.

17 As the accounts at JPMC are in the name of LBI, LBIE has been able to obtain only limited information from JPMC in relation to the T-Bills and their cash proceeds. Neither LBIE nor the Administrators have direct access to the JPMC accounts. LBI itself went into an insolvency process on 19 September 2009 and thus obtaining information from it can also be challenging.

18 Despite the efforts taken by the Administrators to date to ascertain the whereabouts of the T-Bills and their cash proceeds, they do not yet have a completely clear picture of the present position. Given that both the T-Bills have now matured, the assets (if any) held by JPMC (or LBI) must be in the form of cash. My current understanding, based on information provided by the legal advisers to the trustee appointed in respect of LBI, Hughes Hubbard & Reed LLP ("**Hughes Hubbard**"), is that the First T-Bill matured on 18 September 2008 and that the redemption proceeds were credited to a JPMC account (no. 97-0031-0). This account was described by Hughes Hubbard as an "unsegregated" account. As regards the Second T-Bill, it is my current understanding, based on information provided by Hughes Hubbard that JPMC held the Second T-Bill in a segregated account before it matured, i.e. in an account designated as being for LBI's clients. However, the Administrators do not know whether JPMC is currently holding the cash proceeds for the Second T-Bill in a segregated account. The Administrators have filed an omnibus claim in the LBI insolvency in respect of LBIE's and/or the First Respondent's interest in the T-Bills (including any proceeds). As explained in further detail below, the recovery of any assets held with JPMC on behalf of LBI will be governed by the liquidation process under the Securities Investor Protection Act of 1970, as amended ("**SIPA**") in the U.S.

19 As detailed in section F of Braithwaite 1, in the course of seeking to close out its financial contracts with LBIE, the First Respondent has provided LBIE with its calculations of the value of its claims against LBIE under the applicable contracts. The Administrators are not currently in the process of agreeing the valuations of clients' claims generally. However, based on the initial review undertaken by the valuations team at LBIE, it appears that the parties are in agreement as to the fact that the transactions entered into under the ISDA are "in the money" to LBIE, i.e. LBIE would be owed an amount of money by the First Respondent on a net basis under the ISDA as a result of the early termination and close out of these trades. The exact amount of the liability to LBIE is, however, not agreed, nor is the overall value of the First Respondent's claim (if any) against LBIE.

Background to the First Respondent's involvement in this Application

20 The Administrators have been in correspondence and dialogue with Simmons & Simmons ("**Simmons**"), the legal advisers to the First Respondent and its investment manager, RAB Capital plc ("**RAB**"), since the very early days of LBIE's administration. As explained in detail in Braithwaite 1, the First Respondent and RAB made a series of requests in the days immediately following administration for the delivery up or transfer of the T-Bills. For the reasons explained in Clark 3, the Administrators were unable to comply with these requests and, on 22 September 2008, the First Respondent commenced proceedings against the Administrators. As explained in paragraph 146 of Braithwaite 1, the substantive proceedings are now stayed pursuant to a consent order dated 30 January 2009, following Mr Justice Morgan's refusal to grant an order to deal with such proceedings on an expedited basis and ongoing negotiation and dialogue between the parties regarding adjournments of RAB's and the First Respondent's substantive application.

21 In the weeks following LBIE's administration and leading up to the stay of proceedings, the Administrators and Linklaters explained to the First Respondent and RAB in a series of letters to Simmons that the Administrators were taking legal advice on a range of issues arising out of the prime brokerage documentation between LBIE and its counterparties and it therefore would not be embarking upon a determination of any individual claim at that time.

22 The terms of the letter recording the consent of the parties to vacate the hearing of the First Respondent and RAB's substantive application made it clear that the Administrators intended to make this Application to the Court and that before doing so the Administrators intended to share the form of relief with Simmons. In the months that followed, the Administrators and their legal advisers continued to liaise with Simmons in relation to the proposed Application and, on 2 July 2009, provided them with a draft form of relief. The First Respondent's involvement, therefore, in this Application has been the subject of discussion between the Administrators, their legal advisers and the First Respondent's legal advisers for some time.

C. THE SECOND RESPONDENT

23 The Second Respondent, Hong Leong Bank Berhad ("**HLBB**"), is a derivatives counterparty of LBIE. It believes it is a general creditor of LBIE. The claim asserted by HLBB relates to two trades undertaken under an ISDA Master Agreement which

HLBB entered into on 28 January 2008 and the related ISDA Credit Support Annex (the "**CSA**"). Those two trades remained open at the Time of Administration, at which time LBIE held substantial collateral on full title transfer terms pursuant to the CSA.

24 The Second Respondent sent a termination letter to LBIE (on the basis that the entry, by Lehman Brothers Holdings Inc, into Chapter 11 proceedings in the U.S., constituted an "Event of Default" under the terms of the ISDA Master Agreement and designated 9 October 2008 as an "Early Termination Date".

25 By letter dated 23 January 2009, HLBB demanded payment from LBIE of the sum of USD791,481.09, which it calculated to be comprised as follows:-

25.1 "Unpaid Amounts" owing from LBIE to HLBB equal to US$1,231,754.82 consisting of US$1,230,000, being the credit support balance of collateral posted by HLBB to LBIE, plus accrued and unpaid interest on such balance; less

25.2 termination sums owing from HLBB to LBIE pursuant to the terms of the ISDA Master Agreement as a result of the early termination of that contract, in the sum of US$440,273.73.

26 On the basis of the market quotes obtained by HLBB, it asserts that it is a creditor. However, as indicated above, the Administrators are not currently in the process of formally agreeing claims.

D. PROCESS FOR DEALING WITH CASH PROCEEDS PRE-ADMINISTRATION

27 In sections D and E of this witness statement I expand and update certain factual information contained in Clark 3.

Crediting accounts and books and records

28 Prior to LBIE's administration, where LBIE held securities for a prime brokerage client in a prime brokerage charge account, I am advised that LBIE was obliged under the Charge IPBA to credit the client's cash account with LBIE with an amount equal to the amount (if any) paid by the issuer as income on those securities and this amount was payable by LBIE to the client.

29 From a practical perspective, although details of Corporate Events would usually have been processed by LBIE prior to the "pay date" (as to which, see further below), in the sense that data would have been inputted and verified in LBIE's internal systems, LBIE would not generally have credited specific client cash accounts until the pay date itself. I understand that LBIE would generally have credited the client's cash account regardless of whether or not it had yet received monies from the issuer. LBIE did this to facilitate its clients' trading activities, but in any event reserved the right to reverse the credit if it did not ultimately receive the income from the issuer (via its sub-custodians).

Process for notification

30 In Clark 3 I explained that, prior to LBIE's administration, LBIE would have been notified either by a third party provider (whose services LBIE subscribed for) or by one of LBIE's sub-custodians that a Corporate Event in relation to a particular security was going to occur. The notification from the sub-custodian (also known as the "agent bank") would have been in the form of a SWIFT message or similar report. In addition to containing details about the type of corporate event or action (e.g. a dividend, partial redemption, share split etc.) and the identity of the issuer in respect of which the corporate event or action was going to occur, the notification would also provide details of the "ex" date (being the first date upon which any trade would be without entitlements), the "record" date (being the date upon which the issuer (and each relevant depositary, sub-custodian and custodian, including therefore LBIE) would have determined from its books and records which of its clients as at the close of business on that day was entitled to the rights conferred by the relevant Corporate Event) and the "pay" date (being the date upon which the issuer's paying agent would release funds in respect of that Corporate Event). The ex date, record date and pay date would have been set by the issuer in respect of which the Corporate Event was going to occur.

31 Once LBIE had been notified of a Corporate Event, it would input the information into its own systems and, once it had verified the information, this would be passed through to the ITS system. LBIE would then use the information in the ITS system to allocate amounts to its clients. Once the agent bank had issued a final confirmation (on the pay date), LBIE's sub-custodian or depositary would have allocated and credited LBIE's accounts (both house and client) with the amounts

that it calculated LBIE was entitled to receive. LBIE would then reconcile these allocations against its own records.

Depositaries/custodians

32 I explained in Clark 3 that LBIE held its own and its clients' assets either directly with clearing systems/depositaries or indirectly through sub-custodians. I understand that the latter arrangement was more common. In either case, LBIE would, as a general rule, open at least three securities accounts. One account (the "house account") would be used to hold LBIE's own securities (which would include securities in respect of which LBIE's right of use under the Charge IPBA had been exercised and securities which had been transferred to LBIE under a title transfer arrangement, e.g. the Title IPBA). Transactions for clients were also sometimes settled through the house account and so the house account would also be used to hold client securities that were in the process of being bought or sold (i.e. for the period between the transaction date and the settlement date).

33 There would generally be two securities accounts which would be used to hold client securities. One would hold securities held for clients under custody agreements and the other account would hold securities held under the Charge IPBA.

34 Both the custody and charge accounts were usually "omnibus accounts", i.e., all securities held for clients of the relevant type were credited to the account. I am advised that this was permitted under the Charge IPBA (see Clause 9.1 of Schedule 2, which authorises LBIE "*to hold securities in fungible accounts holding securities of other customers of [LBIE] (but not securities of [LBIE]*"). Clause 9.1 also makes clear that LBIE is not obliged to return the same securities to the client upon demand, but can deliver securities of the "same class and denomination as those deposited with LBIE". However, provided there was a separate LBIE house account, LBIE's own securities should not, as a general rule, have been mingled with securities belonging to LBIE's clients.

35 In addition to the securities accounts maintained by LBIE, LBIE also maintained a number of cash accounts. As a general rule, it was usual for LBIE to maintain two LBIE "house" cash accounts in respect of its "house" securities account. One cash account would generally be used to hold settlement sums and the other would generally be used to hold income from Corporate Events. As a general rule LBIE

would also have maintained one or more custody cash accounts at each sub-custodian to hold income and other forms of cash relating to securities held in the custody securities account. However, for reasons of operational efficiency, where possible LBIE did not maintain separate cash accounts relating to the "charge" securities accounts. Instead, cash relating to the charge securities accounts (including therefore cash derived from Corporate Events) would be held in the central LBIE house cash accounts. I understand that this structure was used in the majority of the European and UK markets. Where, for operational reasons, it was not possible to maintain this type of account, LBIE would open separate "income" accounts for each of the securities accounts held with the relevant sub-custodians.

36 As indicated above, LBIE did not usually hold assets directly with depositaries. As a general rule, it held assets through a sub-custodian or through a chain of sub-custodians, which might include an affiliate. I am advised that this was permitted under the Charge IPBA (see Clause 7.1 of Schedule 2). Where sub-custodians were used, LBIE would have a contractual relationship with the sub-custodian, but not as a general rule with any sub-custodians further down the chain or with the ultimate depositary. Where LBIE operated an omnibus client securities account, the ultimate depositary would not, as a general rule, have knowledge of the fact that it was holding assets for LBIE (or indeed LBIE's clients), although, it would, in the normal course, know whether an asset was held for the sub-custodian with whom it had a direct relationship or for that sub-custodian's clients (albeit that it would not know the identity of the clients). Similarly, although LBIE's direct sub-custodian would, in this situation, generally differentiate in its books and records between assets held for LBIE on a proprietary basis and assets held for LBIE's clients, it would not as a general rule know the identity of LBIE's underlying clients or be able to break down the client holding by reference to LBIE's underlying clients. Where separate accounts were opened by LBIE with the sub-custodian (as described above), and in certain jurisdictions, it appears that the ultimate depositary may have known that it was holding assets for LBIE.

37 The position in relation to affiliates was slightly more complicated as a result of the fact that Lehman Brothers operated global IT systems pre-administration. By way of example, LBI would, I understand, have been able to access information about LBIE's clients contained in the ITS system.

Cash flows

38 Lehman Brothers Holding Inc. ("**LBHI**") acted as the funding entity for LBIE. Accordingly, once cash proceeds had been credited by LBIE's sub-custodian or depositary to one of LBIE's accounts, excess balances on those accounts would be "swept" at the end of each day and, depending on the currency of the funds, transferred to one of the bank accounts maintained by the UK branch of LBHI on behalf of LBIE. This process is explained in more detail in my fourth witness statement dated 17 September 2009 in support of the Client Money Application.

39 As explained in my witness statement dated 14 May 2009, also in support of the Client Money Application, LBIE operated the "alternative" method in relation to client money (see paragraphs 12 to 16 of that statement). Accordingly, LBIE did not necessarily segregate client money as soon as it was received. Client money could have been received or swept into house accounts. Having swept the cash proceeds relating to income on securities into its omnibus accounts maintained by LBHI, LBIE would then calculate the amount that needed to be segregated and placed in client money accounts. This calculation was done every working day, using the "Client Segregation System" (or "CSS") by reference to the information in the "Claims Tracking System" (or "CTS") and the ITS system regarding categorisation of accounts and the applicability of client money protection. Unless a bespoke arrangement had been entered into, the accounts of clients with the standard form Charge IPBA would not have been flagged as being subject to client money protection. In Clark 3, I stated that *"the ITS system recorded whether an account was afforded client money protection"*. I now understand this to be inaccurate. My current understanding is that it would have been the "Global Document Tracking System" (or "GDTS") that would have recorded whether an account had client money protection. In calculating sums to be segregated as "client money", no account would be taken of sums received in respect of Charge IPBA clients with the Clause 5.2 wording. Cash relating to these clients would be held in a non-segregated LBIE "house" account.

E. PROCESS FOR DEALING WITH CASH PROCEEDS RECEIVED POST-ADMINISTRATION

Accounts

40 In Clark 3, I provided a brief overview of the process that has been set up by the Administrators for dealing with cash proceeds post-administration. The new process differs from the process in operation prior to the Time of Administration in certain respects. As indicated in Clark 3, the cash proceeds are now held in cash accounts maintained with the New Custodian which are linked to the securities accounts in which the securities generating the proceeds are held (i.e. there is a charge cash account, a custody cash account and a house cash account etc). However, although the accounts set up post-administration generally mirror those formerly held with the legacy depots, unlike the position pre-administration, there is no central cash account for cash proceeds relating to securities in the charge account - such sums are held in a separate account from cash relating to securities held in LBIE's house accounts. The New Custodian acts as a global custodian for LBIE.

Cash flows

41 As explained above, cash proceeds relating to Corporate Events are currently being received into accounts maintained with LBIE's New Custodian. The funds within these accounts are periodically transferred into separate bank accounts maintained by LBIE, which have been set up post-administration. Pending resolution of this application and any other issues relating to entitlements, the cash in accounts linked to client securities accounts is moved to separate client accounts..

Update on figures

42 In Clark 3, I explained that, since the Time of Administration, LBIE has received a significant amount of cash paid or distributed as a result of Corporate Events and that this amount will continue to increase during the course of the Administration. As at the time of making Clark 3, the total sum of such cash received by LBIE was approximately USD2.6billion. As at 15 September 2009, the total sum is USD3.3billion. As with the figures provided in Clark 3, not all of the USD3.3billion relates to securities held under the Charge IPBA, and not all of the Charge IPBA clients have agreed to the Clause 5.2 Collateral Exemption. I understand that, of

this amount, approximately USD1.8billon is identified as arising out of client securities (both those in custody accounts and those in charge accounts). I also explained in Clark 3 that a significant proportion of the USD2.6billion received relates to 240 redemptions. As at 15 September 2009, a further 30 or so redemptions have occurred. The total value of the redemptions is approximately USD2.2billion, with USD1.4bn relating to redemption proceeds arising on client securities (again those in custody and those in charge accounts). The volume of Corporate Events and the amounts received continue to rise.

43 I also explained in Clark 3, that the figure of USD2.6 billion did not include cash proceeds relating to securities that are not currently in the control of LBIE, most notably, Cash Proceeds relating to securities that were (and still are) held through an affiliate of LBIE such as LBI (which, as indicated above, is in an insolvency process in the U.S.). Although the Administrators have not received specific confirmation from the LBI Trustee that this is the case, it is our expectation that cash proceeds generated in respect of "customer property" (as that term is defined in SIPA) after the date that LBIE went into an insolvency process will not fall to be treated as part of the assets of LBI available for general distribution. I understand that there is, however, some uncertainty regarding whether such proceeds will form part of the customer property pool or whether such proceeds might be specifically attributable to customers. It is expected that court directions may be sought on this point in the U.S. courts, to obtain clarity on the appropriate distribution of such proceeds.

CONCLUSION

44 In all of the circumstances, the Administrators respectfully invite the Court to give directions pursuant to paragraph 63 of Schedule B1 of the Insolvency Act 1986 in relation to the matters set out in the Application.

STATEMENT OF TRUTH

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

Signed:.....

ANDREW PETER CLARK

28 September 2009

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