

Applicants
S A Pearson
Second Statement
"SAP2"
25 February 2009

IN THE HIGH COURT OF JUSTICE

Claim No. 7942 of 2008

CHANCERY DIVISION

COMPANIES COURT

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

**WITNESS STATEMENT OF
STEVEN ANTHONY PEARSON**

I, STEVEN ANTHONY PEARSON, of PricewaterhouseCoopers LLP, Plumtree Court, London EC4A 4HT, state as follows.

A. INTRODUCTION

1 I am a licensed insolvency practitioner and a partner in PricewaterhouseCoopers LLP ("**PwC**"), a firm of accountants at the above address. My partners, Anthony Victor Lomas, Michael John Andrew Jervis, Dan Yoram Schwarzmann and I are the joint administrators of Lehman Brothers International (Europe) ("**LBIE**") (in administration) (together the "**Administrators**" and each an "**Administrator**"). We 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 other Administrators.

2 One or more of the Administrators, together with other partners in PwC, are also the joint administrators appointed in respect of a further eighteen

Lehman companies in the UK, a list of which appears at Schedule 1 to this statement (together with LBIE, the "**Lehman Administration Companies**").

- 3 There is now shown to me a paginated bundle of copy documents, marked "**SAP2**", 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 as one of the Administrators of the Lehman Administration Companies, or they have been provided to me either by my partners and colleagues at PwC involved with the administration of the Lehman Administration Companies, or by the employees of the Lehman Administration Companies who are still available to the Administrators, or by the Administrators' legal advisers, Linklaters LLP ("**Linklaters**").
- 4 Nothing in this witness statement is intended to waive privilege in respect of any matter referred to and privilege is not being waived.

B. THIS APPLICATION

- 5 The Administrators wish to update the Court on the progress made in the administration since 6 October 2008 (the date of my first witness statement (the "**First Statement**")), particularly as regards Trust Property (as defined in paragraph 9 below). A summary of the work undertaken by the Administrators with respect to Trust Property is set out in Section C, and more detailed descriptions are set out in Sections D (Trust Assets) and E (Client Money).
- 6 The Administrators wish to apply for directions, that:
- 6.1 the Administrators be at liberty to propose a scheme of arrangement under Part 26 of the Companies Act 2006 between LBIE and persons who are its creditors in relation to Trust Property for the purposes described herein; and
- 6.2 to the extent that the Administrators are unable to recover out of the Trust Property their reasonable remuneration, costs and expenses,

incurred in performing the tasks set out in the Schedule to the Order of Mr Justice Blackburne made on 7 October 2008 (the "**Schedule**"), whether pursuant to the proposed scheme of arrangement or otherwise, they shall be so paid and indemnified out of the assets of LBIE.

7 The remainder of this witness statement has been divided into the following sections:

7.1 Section C - Summary of work undertaken by the Administrators in relation to Trust Property

7.2 Section D - Trust Assets

7.2.1 Securing Trust Assets

7.2.2 Reconciliation

7.2.3 Legal issues

7.2.4 Claims

7.2.5 Current approach to returning Trust Assets

7.2.6 Challenges with the current approach to returning Trust Assets

7.2.7 Corporate Actions

7.3 Section E - Client Money

7.3.1 Securing Client Money

7.3.2 Reconciliation

7.3.3 Legal issues

7.3.4 Claims

7.3.5 Returns

7.4 Section F - Scheme proposal

7.4.1 Potential options for dealing with Trust Property

7.4.2 Limits on scope of the proposed Scheme

7.4.3 Next steps and timetable

7.5 Section G - Costs of dealing with Trust Property

7.6 Section H - Other Court applications

7.7 Section I - Conclusion

- 8 On 7 October 2008, the Court made an order (the “**Trust Property Order**”) authorising the Administrators to continue their management of the affairs, business and property of LBIE, as such management relates to proprietary claims by third parties, by implementing and/or giving effect to the processes set out in the Schedule.
- 9 As set out in my First Statement, made in relation to the application for the Trust Property Order, a redacted version of which has been placed on the Court file and is available on the section of the PwC website dedicated to the administration of LBIE, the Administrators wished to adopt a system for dealing with all property of, or held in the name of, or otherwise to the order of, LBIE which is subject to trust or proprietary claims, whether comprising monies under the FSA’s Client Money Rules (“**Client Money**”) or other monies or assets (“**Trust Assets**”) (together “**Trust Property**”) in an orderly and efficient manner and one which balanced the importance of dealing with the potential proprietary claims and the achievement of the statutory purpose for which we have been appointed.
- 10 For reasons which I explained in more detail in my First Statement, the task of dealing with proprietary claims is substantial and complicated. Proprietary claims arise across a number of the areas of business conducted by LBIE, but the largest volume of these claims arises within LBIE’s Prime Brokerage business. Prime Brokerage was a bundled package of services offered by LBIE to professional investors seeking the ability to borrow, invest on a leveraged basis and achieve an absolute return. A detailed explanation of Prime Brokerage can be found in Appendix A to my First Statement.
- 11 I make reference in various places in this statement to my First Statement and refer the Court to Sections A to E of that statement for details of the Lehman Group (as defined therein), the background to the collapse of the Lehman Group and the administrations of the Lehman Administration Companies, a description of the actions taken by the Administrators by the

time of the application for the Trust Property Order, details of the issues arising in the administration of LBIE in respect of Client Money and Trust Assets and the work being undertaken to resolve these issues.

- 12** I set out in Sections C, D and E of this statement a summary and more detailed descriptions of the work that the Administrators have been undertaking with respect to Trust Property. The Administrators are anxious to return Trust Property to LBIE's clients as expeditiously as possible, but they face numerous challenges in this regard. At its most basic, in order to return Trust Property, the Administrators need to ascertain the Trust Property that is available to them to be returned and to deduct from such Trust Property the net amount of any liability owed by the client to LBIE which can properly be satisfied out of such Trust Property, either because it stands as collateral for that liability or because LBIE has some other entitlement to net or set-off from such Trust Property against its redelivery obligation. There may also be amounts owed to LBIE's affiliates which can properly be deducted from such Trust Property.
- 13** Considerable progress has been made in the administration, including as regards gaining control over Trust Property held with third party custodians (including affiliates of LBIE). It has also been possible to return some of the Trust Property to clients where certain criteria have been satisfied (see paragraph 77 below).
- 14** However, although easily stated, the basic objective described in paragraph 12 above gives rise to a series of complex issues which are more fully described below.
- 14.1** The Administrators currently face considerable uncertainty over whether a particular holding of Trust Property may be the subject of competing claims. The removal of such uncertainty depends, *inter alia*, upon having the necessary degree of assurance that the books and records of LBIE have been fully updated since the time that it went into administration. This requires a number of reconciliation exercises, described in further detail below, to be carried out. As described in Section D below, obtaining the necessary information to conduct this reconciliation exercise has been complex.

- 14.2** The Administrators also face uncertainty as to whether particular holdings of Trust Property are subject to security or set-off rights in respect of liabilities owed to LBIE and/or to any of its affiliates.
- 14.3** The position of LBIE's affiliates is relevant in this regard because (as explained further below), when the Lehman Group was operating on a solvent basis, various entities within the group acted as depositories for one another, both in respect of securities and of money. The existence and quantum of potential claims which LBIE's affiliates may have against LBIE's clients are not currently known by the Administrators and are not ascertainable from LBIE's books and records. Accordingly, such claims will have to be notified to LBIE by the affiliates, many of which are under the control of insolvency office holders in the United States, Japan, Hong Kong, Switzerland, Luxembourg and elsewhere.
- 14.4** There are a number of legal and operational difficulties involved in valuing the Trust Property and the other obligations that might exist between LBIE and any given client. It can accordingly be difficult to ascertain with certainty the extent to which a client is entitled to the return of Trust Property.
- 14.5** There are numerous other complexities surrounding the return of Trust Property that require resolution on a case by case basis. These are discussed in further detail below.
- 15** The Administrators, their advisers and the remaining Lehman employees have given considerable thought to the best means of dealing with claims to Trust Property. The Administrators have put in place arrangements to accommodate these issues, which I set out in paragraphs 76 to 86 below. However, for the reasons discussed in paragraphs 87 to 89 below, the current arrangements have their own (unavoidable) deficiencies.
- 16** Having considered the various options available as regards the return of Trust Property to LBIE's clients, the Administrators are minded to deal with certain of the multitude of issues that arise in respect of Trust Property through a scheme of arrangement under Section 895 of the Companies Act

2006 (the "**Scheme**"). As explained in paragraph 130 below, the Administrators have, with the approval of the creditors' committee, established a working group to explore how such a Scheme might operate and to act as a sounding board on behalf of the affected creditor group. The Administrators, by this application, wish to request the permission of the Court to propose the Scheme, the feasibility and practicality of which is currently being assessed. If the Administrators conclude that there is a reasonable prospect of the Scheme being acceptable to those who would be affected by it, and they consider the Scheme to be a fair one, they intend to return to Court in due course to seek leave to convene the Scheme meeting.

C. SUMMARY OF WORK UNDERTAKEN BY THE ADMINISTRATORS IN RELATION TO TRUST PROPERTY

- 17** Following the making of the Trust Property Order, the Administrators have continued to deal with the Trust Property in accordance with the Schedule.
- 18** A large team of people (comprising in excess of one hundred staff of the Administrators and Linklaters as well as numerous staff from Lehman and Nomura International Plc) has been deployed specifically to deal with the issue of Trust Property. This team (the "**Trust Property Team**") has been responsible for or, insofar as the relevant activities impact upon Trust Property (since several activities do not relate solely to Trust Property), has been involved in the following:
 - 18.1** identifying and taking appropriate steps to attempt to gain control of all Trust Property;
 - 18.2** seeking to identify the entire population of clients that purport to have claims, rights or interests in Trust Property ("**Trust Claims**");
 - 18.3** identifying, from LBIE's records, the accounts held with affiliates of LBIE where Trust Property may be located and contacting the relevant affiliates to obtain confirmation of the securities and/or monies that are being held;

- 18.4 identifying, from LBIE's records, the accounts held with third-party banks, custodians (other than affiliates of LBIE), agents, counterparties, exchanges and clearing houses (the "**Depots**") where Trust Property may be located and contacting the Depots to obtain confirmation of the securities and/or monies that are being held;
- 18.5 working with the Depots to understand any liquidation of securities or realisation of monies;
- 18.6 making claims in other insolvent estates which may hold Trust Property (e.g. the Client Money held by Lehman Brothers Bankhaus AG ("**Bankhaus**"));
- 18.7 seeking to revise LBIE's records for failed or broken trades as a consequence of the administration to enable the actual (rather than theoretical) Trust Property to be identified and reconciled;
- 18.8 identifying the impact of termination notices that have been served since the commencement of the administration and assessing their validity and their impact on Trust Claims;
- 18.9 establishing and implementing a protocol in relation to corporate actions that may need to be undertaken in relation to Trust Property;
- 18.10 progressing the reconciliation of LBIE's books and records with those of the Depots and affiliates, by security and by client, with a view to identifying and resolving discrepancies;
- 18.11 designing, installing and configuring new IT systems on which all available data from the internal systems of LBIE relating to potential Trust Property is managed, with a view to facilitating and expediting the process of returning Trust Property;
- 18.12 writing to all of the clients who may have claims, rights or other interests in the Trust Property to obtain from them full details in relation to all alleged Trust Claims;

- 18.13 reconciling the data obtained as a result of the reconciliation process referred to in sub-paragraph 18.10 above with the information obtained from clients;
 - 18.14 considering potential cases for the early return of Trust Property in accordance with the prioritisation principles referred to in the Schedule;
 - 18.15 determining the extent to which clients purporting to have Trust Claims have any indebtedness to LBIE and any other Lehman Group entity and whether there are any other reasons for the exercise of any lien LBIE may have over the relevant Trust Property;
 - 18.16 analysing the wide range of legal issues that have arisen;
 - 18.17 conducting a detailed review of the contractual arrangements between LBIE and many of its clients;
 - 18.18 establishing the extent to which clients might have competing Trust Claims; and
 - 18.19 including the Financial Services Authority (the “**FSA**”) in regular meetings regarding progress made and challenges encountered.
- 19 As a practical matter, the majority of the work of the Trust Property Team is undertaken by two sub-teams; one which is directed at resolving issues arising with respect to Trust Assets (the “**Trust Assets Team**”) and another which is dedicated to resolving issues arising with respect to Client Money (the “**Client Money Team**”). Further detail of the work being undertaken in respect of Trust Assets and Client Money is set out below in Sections D and E, respectively.
- 20 A committee (the “**Trust Property Committee**”) has been set up to oversee the operation and the overall management of the Trust Property Team. As envisaged in paragraph 2.2 of the Schedule, the Trust Property Team has set up a sub-committee (referred to as the “**Hardship and Prioritisation Committee**”) whose role it is to apply, and to keep under review, the prioritisation principles referred to in the Schedule.

- 21** On 28 October 2008, the Administrators wrote to all known creditors and counterparties of LBIE to whom notice of the appointment of the Administrators was sent, enclosing a notice of the first meeting of creditors and the Administrators' Proposals for Achieving the Purpose of the Administration (the "**Proposals**"). Both the form of that letter and the Proposals were also posted on the PwC website and are reproduced at **pages 1 to 55 of exhibit "SAP2"**.
- 22** In the Proposals, details of the Administrators' actions to date were set out in some detail (see **pages 16 to 47 of exhibit "SAP2"**). Among the Proposals (see proposal (ii) at **page 48 of exhibit "SAP2"**), the Administrators proposed that they will identify and return Trust Property in accordance with the Trust Property Order and that the Administrators will be looking to have the costs of dealing with Trust Property borne by such assets.
- 23** The Proposals were considered and approved at the first meeting of LBIE's creditors on 14 November 2008, with one minor amendment relating to the currencies in which the Administrators will maintain house funds realised during the administration. A copy of the final version of the Proposals, as approved by the creditors' meeting, appears at **pages 56 to 58 of exhibit "SAP2"**.
- 24** The Administrators have also engaged in an extensive communications programme, including web presentations, maintaining a web service answering frequently asked questions, attending meetings with representatives of the hedge fund industry in London and New York, operating a query management system for all clients including Trust Property clients and, where appropriate, developing new infrastructure to support clients and the administration.
- 25** The Administrators have returned a number of holdings of Trust Property since October 2008. These holdings of Trust Property have been returned on terms that seek to ensure that the LBIE estate is adequately protected in the event that competing Trust Claims arise. This is further discussed in Sections D and E below.

D. TRUST ASSETS

- 26 In this section I explain the principal work that has been, and is being, undertaken with respect to Trust Assets.

Securing Trust Assets

- 27 Prior to administration, LBIE held securities (including those comprising Trust Assets) through various Depots and affiliates. One of the key issues in relation to Trust Assets (as well as to property belonging to LBIE) is the physical management of securities and the initial task that the Administrators have faced in relation to Trust Assets has been to secure possession or control of those assets. Extensive resources have been committed by the Administrators to obtain information from, and access to the assets held by, Depots and affiliates and ultimately to secure the return or distribution of such assets. This work is critical to identifying and returning Trust Property to clients, but has presented a number of challenges. I set out below some examples of the issues that have arisen, as well as the manner in which the Administrators have sought to deal with those issues.
- 28 Prior to insolvency, different entities within the Lehman Group routinely acted as depositories or sub-custodians for one another, where commercially convenient. In the case of US securities, for instance, the result was that many (but not all) securities traded, received or held by LBIE for its clients and for its own account in the Depository Trust Company (“DTC”) were held in a DTC account managed by Lehman Brothers Inc (“LBI”). The relevant holder of this DTC account was therefore LBI (rather than LBIE). LBI holds over 5,000 different lines of stock which, LBIE’s records indicate, are held as LBIE Trust Assets.
- 29 The Administrators have made progress in their dealings with the trustee appointed in respect of LBI (the “SIPC Trustee”) and have obtained access to some information from LBI’s books and records concerning the securities held in the LBI DTC account. In addition, LBIE has submitted claims on behalf of itself and its clients against LBI and an agreement has been reached between the SIPC Trustee and LBIE (the “Claims Agreement”)

regarding the filing of such claims and providing for further efforts to share data in the future (see paragraph 36 below). However, DTC has not yet provided the Administrators with data from its own books and records and this will be necessary before a full reconciliation is possible. The issues that have arisen in relation to LBI and DTC are set out below.

- 30** When the Administrators initially approached the SIPC Trustee with a view to securing possession or control of the relevant assets, the SIPC Trustee indicated that DTC had only been willing to provide information concerning the securities held in the account (which would include LBIE's house and client assets) to Deloitte, advisers to the SIPC Trustee, and not to the SIPC Trustee itself. The Administrators therefore initiated discussions with Deloitte and with counsel to the SIPC Trustee as to the availability of and access to data regarding the relevant Trust Assets. The SIPC Trustee initially agreed to pass on to DTC a request, on LBIE's behalf, that DTC provide LBIE with access to information concerning the relevant accounts. However, the SIPC Trustee later informed LBIE that DTC had rejected this request.
- 31** In addition to taking the above steps, the Administrators also made a request to DTC directly seeking information regarding assets held by it, ultimately for LBIE and LBIE's clients. In response, DTC indicated that it may provide the Administrators with such information, subject to certain conditions. To date, the Administrators have been unable to gain the necessary consents to meet these conditions. Until this information has been provided, the Administrators will not have complete information on whether the LBIE house and client securities are still held in the LBI DTC account. The Administrators and the SIPC Trustee are continuing negotiations regarding DTC access in light of LBIE's omnibus claim (see paragraph 36 below).
- 32** An additional barrier to obtaining information about LBIE client assets in the US has been the fact that most of LBI's pertinent IT systems and databases, which could be used to reconstruct and reconcile LBIE positions in LBI accounts, were transferred to Barclays Capital Inc ("**Barclays**") following the sale of certain assets belonging to Lehman Brothers Holdings

Inc (“LBHI”) and LBI to Barclays. The SIPC Trustee has stated publicly that it has been difficult to secure information from Barclays in this respect, although the SIPC Trustee is continuing negotiations to reach a more general agreement with Barclays in relation to IT access. At the same time, the Administrators are negotiating directly with Barclays, with a view to entering into a transitional services agreement on behalf of LBIE, pursuant to which, in return for a fee, LBIE will secure access to those software systems which it used prior to entering into administration and which are now under the control of Barclays.

- 33** The Administrators’ advisers have sought information from various third-parties including the SIPC Trustee, LBHI and Barclays, with US regulators acting as facilitators. After long negotiations, Barclays has recently provided the Administrators with data from LBI’s books and records as to those US securities which are believed to be held for LBIE’s clients by DTC. This data was first provided in a format that did not, as a technical matter, allow the Administrators to reconcile it with LBIE’s data. The Administrators, the SIPC Trustee and Barclays are seeking to resolve this problem and to convert the information to a technically useable format. The LBI-related information provided by Barclays cannot be treated as definitive since reconciliation with DTC’s own books and records will ultimately be necessary ahead of gaining control of the underlying assets.
- 34** The Administrators have also been actively monitoring actions taken by parties in the US bankruptcy proceedings concerning LBHI that could affect assets belonging to LBIE and its clients, and have taken steps to protect LBIE’s interests and those of LBIE’s clients where those interests may be threatened.
- 35** In an effort to establish and maintain a level of co-operation with LBHI, the Administrators (on behalf of LBIE) have entered into transitional services arrangements with LBHI, pursuant to which the parties have agreed to provide one another with access to their books and records as well as, for instance, providing certain limited reciprocal back-office support.
- 36** Furthermore, LBIE and the SIPC Trustee entered into the Claims Agreement on 27 January 2009. It is recognised in the Claims Agreement

that, notwithstanding the Administrators' considerable efforts to retrieve and analyse as much data as possible for the purpose of providing information in relation to these claims, LBIE faces considerable difficulty in this regard, including missing or inaccessible records and IT data. The SIPC Trustee acknowledges the difficulties faced by the Administrators in retrieving and analysing LBIE's books and records. The Claims Agreement sets out the parties' agreement as to the extent of the information required to have been filed by LBIE by 30 January 2009 regarding the claims against LBI. Pursuant to the Claims Agreement, LBIE filed an omnibus claim both on its own behalf and on behalf of its clients prior to the 30 January 2009 deadline. LBIE has since received confirmation from the SIPC Trustee that the claim it filed on behalf of itself and its clients was submitted by the deadline. The Claims Agreement provided that the parties would continue to reconcile LBIE's claim amounts after 30 January 2009 and continue to negotiate further agreements on procedures for the treatment of and ultimate return of assets. It was also agreed that the parties would cooperate in efforts to obtain information and access to data systems, records and information from Barclays for these purposes.

- 37 Whilst obtaining information from LBI has been particularly complex, similar issues arise in respect of other affiliates which held money and securities on behalf of LBIE and its clients. In Asia, the Administrators have no visibility in relation to Depots in which Lehman Brothers Japan Inc ("**LBJ**") and the Lehman Group entities in Hong Kong ("**Lehman Hong Kong**") hold client assets on behalf of LBIE. Until such information is provided to the Administrators it is not possible to perform a full reconciliation. This is further complicated by the fact that LBIE's books and records do not distinguish between LBIE assets held by LBJ and those held by Lehman Hong Kong. Additionally, the system for recording stock loans used by Lehman Group entities in Asia differs from that used by LBIE. Therefore, additional analysis is required to reconcile LBIE's records of its client positions held by its Asian affiliates. The Administrators are in dialogue with representatives of, and advisers to, LBJ and are continuing to work towards reconciling LBIE's books and records with those of LBJ. The analysis of the LBIE client assets held by Lehman Hong Kong is ongoing.

- 38** A number of further issues have arisen in the context of dealing with the investment exchanges and clearing systems through which LBIE operated. LBIE's access to these exchanges and clearing systems was in many cases frozen on administration. The Administrators have therefore had to negotiate the continuation of LBIE's access to the exchanges or find alternative methods of accessing and dealing with securities and trading positions.
- 39** Dealing with custodians covering 80 markets has presented its own challenges, and the Administrators have been engaged in dialogue with a variety of custodians with regard to:
- 39.1** the timely provision by the custodians of information as to their holdings on behalf of LBIE, to be reconciled with LBIE's own books and records (as described further below);
 - 39.2** the assertion by custodians of general rights of set-off and other securities rights; and
 - 39.3** the assertion by custodians of rights of set-off said to arise under relevant contracts.
- 40** Where the rights of set-off referred to above have been asserted in relation to house assets it is necessary to review whether or not particular assets in house accounts are in fact owned by LBIE. For example, I am advised that LBIE entered into certain securities transactions in its own name which were then booked to the trading accounts of certain of its affiliates. Such transactions and the respective rights and obligations of the affiliates are under review. In order to understand the position as regards any particular account with a custodian, the documents governing that account have had to be located, reviewed and analysed.
- 41** A key area in which the Administrators have been required actively to engage with exchanges is in relation to the many trades that failed to settle as a result of the administration ("**failed trades**"). There are more than 142,000 unsettled cash trades reported. In addition, there are extensive failed derivatives trades.

- 42 The issues being addressed have never been tackled before on this scale. This has resulted in numerous market participants taking opposing positions to LBIE, particularly in relation to “over the counter” trades (i.e. trades entered into directly between LBIE and the relevant counterparty, as opposed to being entered into via, for example, an exchange). The Administrators continue to work with regulators, settlement systems and clearing houses/central counterparties to agree a basis on which failed trades can be addressed. Reconciling data held by LBIE with that held by third parties (see paragraphs 44 to 56 below), especially exchanges, central counterparties and settlement agent banks who have applied their default rules to close out the relevant positions, is a time consuming exercise requiring a review and possible cancellation of affected trades.
- 43 These activities are potentially material to the determination of the position of Prime Brokerage clients as they may have entered into trades which failed. This, in turn impacts upon the reconciliation of their claims to Trust Property. The progress of the return of Trust Assets is therefore dependent on the work done in this arena, a significant proportion of the results of which is required to determine claims over Trust Assets.

Reconciliation

- 44 Before explaining the reconciliation exercises which are being undertaken, it is worth putting these activities in context. The Administrators currently estimate that there are US\$22billion of Trust Assets and US\$2.1billion of Client Money segregated pre-administration. Current estimates indicate that, at the time it went into administration, LBIE had approximately \$1.25 trillion of assets and liabilities in aggregate.
- 45 The IT-based systems that recorded and stored LBIE’s books and records were highly complex, consisting of in excess of 110 discrete systems. Some of these systems require manual input and were initially suspended on 15 September 2008. Others continued to operate automatically, making various postings on the assumption that positions were maturing and being closed in line with their contractual settlement dates - i.e. on the (incorrect) basis that LBIE’s business was continuing to operate as normal.

Furthermore, some systems, while forming an integral part of the overall data-control framework that housed LBIE's books and records, were controlled not by LBIE, but by its affiliates, such as LBI. Following the sale of certain former Lehman Brothers business units to Barclays, the control and access that LBIE is able to exercise over various systems was materially impaired.

- 46** The Administrators have continued to liaise with Lehman staff in order to understand how these systems operated under normal conditions and how they have been impacted by LBIE's administration. They have also taken steps manually to bring the data contained in those systems up to date. This has been necessary for a number of reasons. For instance, the IT systems that recorded the data comprising LBIE's books and records operated on a "contractual settlement" basis, meaning that they recorded trades as having settled whether or not they had in fact settled. In reality, typically three days can elapse between the date on which a trade is concluded and the date on which it settles (i.e. the date on which the relevant securities are actually "delivered"). The result is that trades for which instructions were received in the days leading up to 15 September 2008 but which failed to settle as a result of LBIE entering administration are nonetheless, in some circumstances, recorded in LBIE's books and records as if they had actually settled. In order for the books and records to reflect the true position as at 15 September 2008, it is necessary for the Administrators manually to identify (by reference to various sources, including exchanges and custodians) those trades that failed and then 'reverse' them out of LBIE's books and records. This time-consuming exercise is made more complex by the fact that not all trades booked during the last three business days prior to 15 September 2008 failed to settle. Whether or not any particular trade failed depends upon factors such as the jurisdiction and/or market in which the relevant trade was due to settle.
- 47** In updating LBIE's systems to reflect the position at any given time since 15 September 2008, it is necessary manually to input into those systems information regarding 'asset servicing' receipts (such as dividend receipts)

that have occurred since that date. Prior to its entry into administration, LBIE's standard processes continuously updated its books and records to reflect such events. While certain elements of those processes were automated, manual inputs and reconciliations were also required on an ongoing basis. This work is now being carried out by some of the 360 Lehman staff who have been retained by the Administrators. The task of manually updating LBIE's books and records to reflect asset servicing receipts since 15 September 2008 has initially, for reasons of feasibility and convenience, been conducted by reference to particular lines of stock. This is only possible in the case of those Depots that have provided relevant information. The next task (which will need to be completed before LBIE's books and records can be derived in a format that is appropriate for the purposes of assessing clients' entitlements to Trust Property) will be to reflect this information by reference to particular clients.

- 48** In addition to updating LBIE's books and records so as to reflect ordinary 'asset servicing' events, in order accurately to reflect the current position, those books and records also need to be updated to reflect actions taken by LBIE's trading counterparties. As noted above, LBIE's entry into administration prompted many Depots to liquidate certain of LBIE's house positions with them and to exercise purported rights of set-off in relation to the proceeds of such liquidation. Similarly, a large number of counterparties to "over the counter" derivative transactions (which are, by their nature, highly complex to value) have exercised rights to terminate those transactions, necessitating the valuation by the Administrators of the close-out positions in respect of those transactions and, in some instances, of the collateral held by the counterparty. Such a high volume of counterparty activity would not have been expected in the ordinary course of LBIE's business and has compounded the difficulties described above as regards the bringing up to date of LBIE's books and records.
- 49** As noted above, this process of updating the data contained in LBIE's systems has involved liaising with LBI in order to obtain up to date information in relation to the 100 LBIE systems within LBI's control, to the

extent that LBI has been able and prepared to provide such information. Discussions with LBI regarding such issues are ongoing.

- 50** In addition to updating the data comprising LBIE's books and records, the Administrators have been working to reconcile those books and records with the books and records of the various Depots and affiliates, and those of each of the relevant clients (where available). As regards the Depots and affiliates, the reconciliation process is reliant upon the ability of the Administrators to obtain accurate and up to date information from the Depots and affiliates themselves. As described above, this has been a protracted and difficult process in many cases. For example I describe above (paragraph 33) the position as regards US securities held in DTC. Once useable data is received from Barclays, the Administrators will reconcile the information derived from this data with LBIE's books and records, as manually updated. As noted above, if and when the position as recorded in DTC's own books and records (including details of all asset servicing receipts) is communicated to the Administrators, a further reconciliation process will need to be undertaken in relation to that information.
- 51** In addition to reconciling LBIE's records with data received from the Depots and affiliates, the records need to be reconciled with information received from LBIE's clients. The Administrators have written to 1,707 account holders (constituting Prime Services, Futures, Safe Custody and Private Investment Management clients) thought potentially to have claims, rights or other interests in Trust Property, in order to obtain from them full details of such claims, rights or other interests which the clients purport to have in relation to Trust Property, including: (i) confirmation of positions and balances held with LBIE as at 7:56am on 15 September 2008 (the time the administration order was made by the Court); (ii) copies of any contractual agreements and other relevant documentation; and (iii) details of all positions terminated or closed since 7:56am on 15 September 2008 together with the basis of any valuations assumed in the client's calculations.

- 52** The Administrators also issued a notice on their website inviting those clients to whom the letters were not sent, but who nonetheless believed that they might have a Trust Claim, to supply details of claims, rights or interests which they believe they have in relation to Trust Property and attached sample letters (tailored both to institutional clients and Private Investment Management clients) in a format that was capable of being downloaded from the website. Copies of these sample letters are reproduced at **pages 59 to 81 of exhibit "SAP2"**.
- 53** As at 13 February 2009, the Administrators have received some 950 responses to the letters written to account holders (including both complete and part responses). Thus, approximately 56% of those clients which, according to LBIE's records, may have Trust Property held by LBIE and to whom the Administrators have written have responded. The Administrators have also received 230 responses to the notice on the website (which are currently being investigated). The Administrators are continually seeking to identify any information that remains outstanding and are engaging in further correspondence with clients to obtain such information.
- 54** Once in receipt of all of the necessary information and valuations from a client, the Administrators are engaging in the process of reconciling such information and valuations with those of LBIE, as manually updated. The end result ought to be that the position can be examined by reference to three independent sets of records, being those of LBIE, those of the relevant Depot or affiliate and those of the client. It is only by engaging in this process that the Administrators consider that they can be confident that they are acting on complete information when they explore how to return Trust Assets. However, in order for this reconciliation process to be effective, it is necessary to identify and understand the entire population of claims to Trust Property.
- 55** The Administrators' staff have established a detailed process model to maximise the efficiency with which this three-way reconciliation exercise takes place and thereby the speed with which Trust Assets can be reconciled. This process model is entirely bespoke to the administration of the Lehman Administration Companies and would not have been needed in

the ordinary course of business of the relevant companies. It therefore needed to be designed, tested and implemented.

- 56 Where discrepancies arise between the updated records of LBIE and those of a client, Depot or affiliate, the Administrators have been investigating, and will continue to investigate, such discrepancies and are attempting to resolve them. Only once such resolution has been achieved can the net position of any particular client be determined.

Legal issues

- 57 The Administrators have spent a considerable amount of time investigating and liaising with their legal team in relation to a variety of issues concerning Trust Assets.
- 58 As part of this process the Administrators have instructed their advisers to undertake a review of the legal documentation relating to the Prime Services clients (being the largest category of clients with claims on Trust Property) on a client by client basis. I am advised that the extent to which Prime Brokerage agreements entered into by LBIE were the subject of individual negotiation with each client has meant that it has not been possible to conduct this review on a sample basis or to review only the "standard terms" used by LBIE. The "standard" agreements used by LBIE developed over time and were sometimes amended on a case by case basis. The position of any particular Prime Brokerage client, including as regards its entitlement to Trust Property, can therefore only be established by reviewing all the agreements entered into by LBIE with that client. The review of legal documentation is also being extended to clients from other areas of LBIE's business which may also have claims to Trust Property, such as corporate clients who used LBIE as a custodian.
- 59 The sources of documentation that need to be searched for this purpose are numerous and varied. This is because of the de-centralised manner in which legal documents were stored by LBIE. The Administrators have identified, collected and processed data from twelve softcopy and five hardcopy data sources. Work is ongoing to upload all relevant documentation from such sources onto a single dedicated electronic

repository, with a view to facilitating a more efficient review process and to ensuring access to such documentation in the long term.

- 60** The manner in which documents were stored has meant that it has not always been clear whether they have been superseded by subsequent agreements entered into between LBIE and the relevant client. In addition, an initial review of the documents governing a particular client relationship has often pointed towards the existence of additional agreements with that client that have not been located in the course of the Administrators' searches. Since the administration began, several clients have supplied the Administrators with copies of documents that the Administrators and their advisers have been unable to locate through carrying out routine searches of LBIE's most relevant databases.
- 61** The Administrators' analysis of a particular client's position is predominantly driven by such client's account information, which is recorded against the account name(s) used in LBIE's systems. It is not always possible to determine from the account name(s) the legal name of the relevant client. However, in order for the Administrators' advisers to conduct their initial searches and subsequently their reviews of the legal documentation for such a client they need to know the client's legal name. This means that the first stage of such due diligence sometimes requires the advisers to engage in time-consuming investigations to determine the legal name of the client.
- 62** Despite the challenges referred to above, significant progress has been made in this general review process. By the end of January 2009, the Administrators' advisers had reviewed 2,125 documents relating to in excess of 1,000 LBIE counterparties.
- 63** The review of the legal documentation has been directed at identifying and resolving a number of key issues which have a direct bearing on assessing whether a given counterparty has an entitlement to Trust Property, and the extent of such entitlement. Such issues have included, for instance, whether assets have been delivered to LBIE outright by way of title transfer; whether (where LBIE is holding Trust Assets) LBIE had a right of use over assets and whether such right of use was subject to any restriction; and whether LBIE had any right of security in respect of Trust Assets that might

entitle it not to return the assets until all liabilities owing to LBIE and/or its affiliates have been satisfied.

- 64 One particular area of activity has been to identify the impact of termination notices that have been served since the commencement of the administration. Many of the trades that LBIE entered into with counterparties (including with clients who may be claiming an entitlement to Trust Property) were covered by Master Agreements. On a default event (such as LBIE being placed into administration), the Master Agreements stipulate the method and timing of early termination. The key events of a termination involve a termination notice (which establishes the date that the agreement is terminated) and a valuation statement (which shows the settlement amount for all the trades under that agreement). These documents are sent by the non-defaulting counterparty to LBIE.
- 65 To deal effectively with these terminations, they must be logged and validated. Where Trust Property claimants are Prime Brokerage clients who have terminated some or all of their contracts with LBIE, this work is critical in determining the liabilities of LBIE to those counterparties or of the counterparties to LBIE. This is important for two principal reasons.
- 66 First, LBIE may have claims which it is entitled to recover out of the Trust Property which would otherwise be available to that counterparty (e.g. under a charge granted in the Prime Brokerage contracts).
- 67 Second, the termination itself appears to affect the analysis of the extent of the Trust Property claims of the counterparty. I understand that the form of International Prime Brokerage Agreement ("**IPBA**") originally used by LBIE (referred to as the "**IPBA (Title Transfer Version)**") provided for title to all securities delivered by LBIE's counterparty to LBIE to pass to LBIE and I am advised that in such circumstances LBIE's counterparty has no proprietary interest in such securities. However, I understand that LBIE subsequently introduced a new agreement which provided that, instead of title to such securities being transferred to LBIE, title to the securities remained with the counterparty but was subject to a charge in favour of LBIE (the "**Charge Version**"). The Administrators intend to make an application to the Court to determine if the termination provisions of the

Charge Version have the effect that all outstanding obligations of the parties to the agreement to deliver securities are, upon termination, reduced to a contractual obligation to pay a monetary sum (such obligation to be netted off against all other obligations under the IPBA).

- 68** It has also been necessary closely to examine the underlying contractual documentation with counterparties in order to assess the various methods of calculating close-out positions that have been proffered by those parties. Further (and the validity of calculation methods aside), it has been necessary in some cases to examine the bases on which counterparties have purported to set-off certain rights and obligations against one another, whether those rights and obligations arise under a particular agreement or under multiple agreements governing the relevant client relationship.

Claims

- 69** Many clients who own or purport to own Trust Assets have written to the Administrators requesting that the Trust Assets be returned to them as a matter of priority. Such requests have either been received in response to the letter written to clients and referred to at paragraph 51 above or as a result of separate correspondence from clients and/or their legal advisers. A significant amount of resource has been expended on reviewing and responding to such requests. In some cases it has been possible to deal with such issues by way of a single exchange of correspondence but in others protracted correspondence and discussions with the client have followed and some cases have resulted in litigation (see paragraph 75 below). I explain below (paragraphs 76 to 86) the process that has been followed as regards the prioritisation of Trust Asset returns and the consideration by the Hardship and Prioritisation Committee of claims for the return of Trust Assets. However, for the reasons set out in the following paragraphs, it has not been possible at this stage of the administration to return most of the Trust Assets in respect of which requests have been received.
- 70** First, there exists uncertainty as to potential competing Trust Claims. If a client asserts a Trust Claim in respect of a given Trust Asset, the

Administrators have to try to establish, based on the information available to them, whether any other person could also seek to assert a Trust Claim in respect of the same Trust Asset. The removal of such uncertainty depends upon the Administrators having the necessary degree of assurance that the books and records of LBIE have been adequately updated since the time it went into administration and that all of the reconciliation exercises described above have been completed.

- 71** Second, there is a significant degree of uncertainty as to potential claims by affiliates of LBIE in respect of Trust Assets. In most cases Trust Assets are held by LBIE subject to security or set-off rights in respect of the liabilities of the client to LBIE and any of its affiliates. Potential claims by affiliates pursuant to such security arrangements cannot be established from the books and records of LBIE. LBIE can only definitively establish these if and when affiliates assert the claims. The Administrators accordingly intend to work with LBIE's affiliates in order to ascertain whether they purport to have such claims.
- 72** In addition there are a number of more complex issues that need to be determined on a case by case basis in order for the Administrators to be satisfied as to the entitlement of a client to the return of a particular holding of Trust Assets.
- 72.1** The Administrators need to be satisfied that the client does, in fact, have a proprietary claim to a particular asset. I am advised that this requires an examination of the contractual and other documents underpinning the relationship between LBIE and that client, and a consideration of applicable regulations and trust law in each case.
- 72.2** The Administrators need then to confirm that the particular asset is held by LBIE upon trust and is available for distribution. I am advised that if the asset is no longer held by or on behalf of LBIE, then LBIE does not hold the asset on trust. I am further advised that if an asset has been appropriated by LBIE pursuant to the rights of re-use which are available to it under certain agreements, then, similarly, LBIE will no longer hold that asset on trust.

- 72.3** Next, the Administrators will have to determine who is, *prima facie*, entitled to that particular asset.
- 72.4** If the Administrators have identified competing Trust Claims, they need then to consider how any shortfall in Trust Assets is to be allocated.
- 72.5** The Administrators need to consider how a client's liabilities (if any) to LBIE are to be calculated and, once valued, whether they are to be deducted from the assets which LBIE holds on trust for that client and, if so, which assets should be transferred to LBIE; this being particularly complex where there are multiple positions.
- 73** The breadth and complexity of the foregoing issues have meant that the initial discussions and correspondence with clients referred to above has focused primarily on assisting those clients in understanding the complexities that are faced by the Administrators and the reasons why it is often not possible promptly to return Trust Assets. Whilst some clients have accepted those initial explanations, others have sought to discuss the relevant issues with the Administrators and their advisers in more detail. In an effort to avoid undue expense in dealing with such queries, the Administrators have provided information on the PwC website and have, in particular, posted updates and information concerning Trust Property on seven separate occasions between 21 September 2008 and 20 January 2009. Copies of these updates and this information appear at **pages 82 to 94 of exhibit "SAP2"**. Nonetheless, there has been a significant level of engagement with individual clients whether by the Administrators and the Lehman staff or by their advisers on their behalf. In those cases where a qualifying request has been received for a prioritised return of Trust Assets, it has been considered by the Hardship and Prioritisation Committee as described below (paragraphs 76 and 77).
- 74** Notwithstanding the process that has been put in place in order to deal with the early return of Trust Assets in appropriate circumstances, some clients have sought to press their claim for the early return of Trust Assets by either threatening or instigating court proceedings. It has accordingly been

necessary to take steps to avoid court proceedings where possible and to defend those proceedings that have been commenced.

- 75 Litigation commenced against LBIE has been defended in order to protect the interests of the LBIE estate. To date, proceedings have been commenced against LBIE in seven jurisdictions. No claim has yet been successfully brought against LBIE for the return of assets. In England and Wales, Mr Justice Morgan and Mr Justice Blackburne handed down judgments on 22 September 2008 and 24 November 2008 respectively, in which they declined to order that a claim for the return of Trust Assets be heard on an expedited basis or that information be provided to the claimant clients other than in accordance with the procedures that have been established for these purposes by the Administrators. Defending those proceedings and those commenced in other jurisdictions has required a significant amount of time to be expended by the Administrators and their advisers, including legal advisers in England and Wales and in other jurisdictions.

Current approach to returning Trust Assets

- 76 Whilst the complexity of the administration of LBIE has meant that the Administrators have not been able to accede to many of the requests for prioritised return of Trust Assets, the Administrators are keen to return Trust Assets as expeditiously as possible and are sympathetic to the difficulties faced by clients as a result of uncertainty regarding whether and, if so when, they will receive their property. Accordingly, due consideration is given to each request that a Trust Asset be returned. Pursuant to the terms of the Trust Property Order and as mentioned above, the Hardship and Prioritisation Committee has been established and meets regularly in order to consider the return of Trust Assets. As at 23 February 2009, the claims of 72 clients have been considered by the Hardship and Prioritisation Committee, with assets having been returned to those clients where it was possible and appropriate to do so. The Hardship and Prioritisation Committee considers each case in accordance with the principles set out in the Trust Property Order but in many cases it is not possible for assets to be returned as requested.

- 77** In light of the difficulties and complexities described above at paragraphs 70 to 72, and in order to ensure consistency with the Trust Property Order, an asset will only be returned where the following conditions have been satisfied:
- 77.1** the case must be one which is appropriate for prioritisation (whether on the basis of hardship or otherwise) in accordance with the principles set out in the Trust Property Order;
 - 77.2** the client must have provided adequate information and documentation in order for its claim to be analysed and substantiated;
 - 77.3** a reconciliation of the information received from the client must be undertaken with the data held on LBIE's systems and the data received from the relevant Depot as described in paragraphs 44 to 56 above. It must be sufficiently clear from this exercise that the assets to which the client is claiming to be entitled are, in fact, held on trust by LBIE for that client. There must be no evidence of competing Trust Claims;
 - 77.4** as part of the process of reconciling the data received from the client with that held by LBIE and received from the relevant Depot or affiliate it is necessary to check that the Depot or affiliate in fact holds the Trust Asset in question and is willing and able to transfer it to LBIE's client. As noted above, the Administrators do not yet have access to assets which are held by certain Depots and affiliates;
 - 77.5** the entirety of the particular client's relationship with LBIE must be analysed and understood. Most of the documents pursuant to which LBIE holds Trust Assets provide for security rights in favour of LBIE. Whether or not it will be appropriate for LBIE to release all or part of a Trust Asset will therefore depend upon the client's overall position with LBIE. For some clients, this will involve a detailed review of a range of complex documentation and relationships with LBIE. If there is any uncertainty as regards whether, or the extent to which, the client is indebted to LBIE, and therefore as regards whether, or the

extent to which, LBIE has a security interest that it may wish to exercise, it will not be possible for that client's assets to be returned. In the event that the legal review of the contracts governing the client's position gives rise to uncertainty as regards whether or not the client is entitled to the return of the assets in question, it will not be possible for that client's assets to be returned; and

- 77.6** the net liabilities of the relevant client must accordingly be relatively easy to ascertain and have been agreed as between LBIE and the client. Where the client has unterminated positions, this will include an agreed close-out and valuation of such positions.
- 78** In the event that these criteria can be satisfied by a particular client, the Hardship and Prioritisation Committee will agree that it is, in principle, appropriate for the Trust Assets to be returned to the client on a prioritised basis. However, in order to progress that return, it is necessary for the client to agree to provide certain comfort and protection to the LBIE estate (see paragraphs 80 to 86 below).
- 79** The complexity of the LBIE administration, including the issues outlined above, means that any return of Trust Assets which is currently being undertaken is occurring at a comparatively early stage of the LBIE administration. Notwithstanding the above processes and verifications that are carried out by the Administrators before the prioritised return of any Trust Asset, it remains the case that at this stage of the administration it is not possible for the Administrators to be certain that a client is entitled to the asset being returned to it. For example, as noted above (paragraph 53), there remains a significant number of clients who are yet to respond to the Administrators to confirm their positions with LBIE. Likewise, there is substantial work yet to be carried out with various of the Depots and affiliates which hold assets on behalf of LBIE. It is accordingly necessary for a client receiving a Trust Asset on a prioritised basis to enter into a deed of undertaking in order to ensure that appropriate protection is obtained for the LBIE estate and/or the Administrators and any potentially competing claimant.

- 80 The Administrators, together with their staff and advisers, have accordingly put in place a framework for such deeds of undertaking in order that Trust Assets can be returned without exposing the LBIE estate and/or the Administrators to additional risk. Appropriate return and indemnification arrangements and, if necessary, credit support for those arrangements are an essential part of this framework and, subject to *de minimis* limits and exceptional circumstances, all clients whose claims are processed on this basis are required to enter into such arrangements.
- 81 The Administrators' objectives in seeking such protection are to ensure that:
- 81.1 in the event that it is determined that returned assets should not have been returned, for example where it emerges that the returned assets were, in fact, the subject of competing Trust Claims, the client asset position and the LBIE estate are able to be restored (as far as practicable) to their respective positions had those assets not been returned on an expedited basis;
 - 81.2 the client whose claim is prioritised contributes to the cost of prioritisation (and that neither the LBIE estate nor the LBIE clients as a whole should be burdened with costs associated with a prioritised return); and
 - 81.3 the pool of clients (and their assets) to which costs might be allocated is not diminished.
- 82 The arrangements approved by the Administrators in furtherance of these objectives have varied on a case by case basis and will continue to do so and the terms of such arrangements have developed as the process of returning assets to clients has progressed. However, in summary, the current arrangements are as follows:
- 82.1 if the Administrators, acting in good faith, subsequently determine that any assets transferred on an expedited basis (the "**Transfer Assets**") should not have been so transferred, the transferee will be obliged:

- 82.1.1 to return such proportion of the Transfer Assets or equivalent securities as the Administrators determine should not have been transferred;
- 82.1.2 to pay an amount to LBIE equal to any proceeds earned on those assets since the date of the transfer; and
- 82.1.3 to pay the amount, if any, notified by LBIE as the amount of interest it would have earned on those proceeds.

(These sums, together, are referred to as the “**Return Amount**”.)

- 82.2 in the event that the transferee fails to pay any or all of the Return Amount, the transferee will be liable to pay an amount in respect of such failure calculated as the sum of:
 - 82.2.1 the actual or estimated cost to LBIE of acquiring replacement assets in the market;
 - 82.2.2 the proceeds that should have been returned to LBIE and any interest LBIE would have earned on those proceeds; and
 - 82.2.3 the costs incurred by the LBIE estate and/or the Administrators as a result of the transferee’s failure to pay the Return Amount;
- 82.3 if deemed appropriate by the Administrators, credit support in an agreed form is required. The guaranteed obligations in these circumstances include any indebtedness owed to any Lehman Brothers entity that would otherwise have been covered by a lien over the Transfer Assets;
- 82.4 the transferee must warrant to LBIE that it has no liabilities to LBIE affiliates;
- 82.5 the transferee pays a fixed sum contribution towards the cost of prioritising its claim (for a straightforward claim this is set at US\$50,000);

- 82.6** a retention of between 0.75% and 1.25% of the Transfer Assets will be held by LBIE pending determination of the amount (if any) of costs incurred in returning Trust Property which are to be charged to the Transfer Assets, following which determination such amount will be applied towards satisfying such charge, and any excess together with any interest earned on that retention will be returned to the transferee;
- 82.7** the transferee will agree to pay any amount by which the retention held by LBIE (together with any interest earned on that retention) is insufficient to satisfy the obligation of the transferee to pay the amount of such costs determined to be charged to the Transfer Assets.
- 83** If the client agrees that it is willing to proceed on the above basis, a draft deed of undertaking is forwarded to and discussed with the client. For commercial reasons this cannot be an indefinite undertaking, but needs to run for sufficiently long to accommodate possibly unknown claims. The Administrators take the view that this should be for a number of years. Once agreed and any conditions have been fulfilled the Trust Asset is returned to the client.
- 84** In the event that the client decides that the above requirements are unacceptable, the client's claim for the return of Trust Assets is likely to be dealt with in due course with other non-prioritised LBIE clients i.e. in the ordinary course of the administration.
- 85** As regards the costs retention referred to at sub-paragraph 82.6 above, the level of retention that may be called for in appropriate cases is, for obvious reasons, impossible to calculate accurately by reference to the actual costs for which the Trust Property claimant may ultimately be held to be liable, since those costs (both in total and the amount either attributable to Trust Property or to any particular Trust Property claimant) will not be known for a significant period of time. Accordingly, the Administrators have carried out a broad estimate of the total costs they currently consider the process of returning Trust Property to involve and have sought to apply that across the entire body of Trust Property, in order to determine what portion of any

Trust Property being returned they should retain. That is not intended to pre-judge the ultimate determination of the appropriate allocation of costs (either as between Trust Property and the general estate, or across the different holdings of Trust Property), nor the creditors' committee's determination of the proper quantum of costs. Rather, it is an attempt to reduce, on an ongoing basis, the risk in respect of costs to either the general estate or the other Trust Property beneficiaries, that might otherwise arise from the gradual return of Trust Property prior to the final determination of the amount and appropriate allocation of the Administrators' remuneration and costs.

- 86 If the retention is ultimately found to be more than is required, it will be returned to the relevant Trust Property beneficiary. If it is ultimately found to have been insufficient, the Administrators will need to seek the excess costs (hence the importance, in appropriate cases, of obtaining a guarantee and/or further security). As the process of the return of Trust Property progresses towards completion and, in particular, as it becomes possible (whether as a result of further directions from the Court or otherwise) to assess more accurately the likely level of costs (both in total and referable to particular Trust Property or Trust Property claimants), it may be appropriate to adjust the level of retention and, indeed, the approach to retention more generally.

Challenges with the current approach to returning Trust Assets

- 87 The Administrators recognise that the current approach is unsatisfactory in certain respects and will not meet the principal needs of clients. By way of example, it does not provide any finality to clients who remain liable under the undertaking for many years. Further, the requirement for external credit support may be hard to meet, particularly for clients who are themselves experiencing financial difficulties. The Administrators understand that clients may be unable to provide such credit support without pledging the returned asset, thus obviating much of the benefit of having the asset returned, at least for the duration of the undertaking.

- 88 The Administrators have tried to accommodate this by not always asking for credit support in respect of 100% of the value of the undertaking, but this creates risk for the estate and is only appropriate where the Administrators have a very high degree of confidence that (at least from the books and records of LBIE) there are unlikely to be competing Trust Claims and so the risk is low. However, the risk of competing Trust Claims cannot be eliminated.
- 89 As a result of the large number of issues affecting any given Trust Asset and the amount of work that needs to be done by the Administrators, their advisers and Lehman staff in respect of any given potential return, the current approach is inevitably time consuming and costly. Further, it is likely that going forward much more difficult cases will emerge which are not amenable to this current approach (either as a result of their complexity, or the issues identified above). Some of the above issues may only be capable of resolution through obtaining further directions from the Court or contested litigation.

Corporate Actions

- 90 In parallel with claims to, and returns of, Trust Assets, the Administrators have (pursuant to the terms of the Trust Property Order) established a protocol in relation to the implementation of corporate actions (such as the exercise of voting rights, the receipt of dividends, responding to rights issues and pre-emptive offers etc.) that need to be undertaken in relation to Trust Assets. They have set up a dedicated committee tasked with implementing this protocol (the "**Corporate Actions Committee**").
- 91 The Corporate Actions Committee meets regularly in order to consider what action should be taken in relation to corporate actions issues as they arise. The Corporate Actions Committee makes recommendations based upon a consideration of a variety of factors.
- 92 In essence, the Corporate Actions Committee will not take any steps in relation to a corporate action in respect of a security that is not beneficially owned by LBIE unless:
- 92.1 LBIE has received instructions from a client in relation to such action;

- 92.2 the Corporate Actions Committee is reasonably certain that such client has a beneficial interest in the relevant amount of the relevant security; and
 - 92.3 the Administrators have received an indemnity in relation to the taking of such action from such client.
- 93 The two principal exceptions to this are where the relevant corporate action is:
 - 93.1 subject to sub-paragraph 93.2 below, the grant of tradable rights to holders of the relevant securities. The Corporate Actions Committee will recommend that such rights be sold (including where, in relation to securities not beneficially owned by LBIE, no instructions have been received from a client of LBIE); or
 - 93.2 the grant of bonus rights to holders of the relevant securities. The Corporate Actions Committee will recommend that such rights be taken up (including where, in relation to securities not beneficially owned by LBIE, no instructions have been received from a client of LBIE).

E. CLIENT MONEY

- 94 In this section I explain the principal work that has been and is being undertaken with respect to Client Money. As will be apparent from the paragraphs below, there are certain issues which affect Client Money alone. However, in broad terms the work being done and approach being taken in respect of Client Money mirrors that described above in respect of Trust Assets. The work in relation to Client Money cannot in any event be entirely disconnected from the work in relation to Trust Assets. In certain respects, a particular client's entitlements to Trust Assets and to Client Money may be connected. An example of this is described below in paragraph 109.

Securing Client Money

- 95 Before explaining the activities being undertaken with respect to Client Money, I first explain what is meant by Client Money in this context, and

accordingly the breadth of the exercise being undertaken by the Administrators in this regard.

- 96** A large number of clients placed monies with LBIE. I am advised that whether such monies are subject to trust or proprietary claims primarily depends upon whether those monies fall within the scope of the definition of "client money" under the FSA's Client Money Rules. I am also advised that the FSA's Client Money Rules operate to create a statutory trust over monies falling within this definition, such that clients on whose behalf such monies are being held have a trust claim in respect thereof. As indicated in paragraph 9 above, monies falling within the scope of the definition of "client money" under the FSA's Client Money Rules are referred to throughout this witness statement as "Client Money".
- 97** I am advised that the vast majority of all other monies which clients placed with LBIE would comprise part of the general estate, and the relevant clients would therefore not be entitled to make any trust or proprietary claims in respect of such monies. For the avoidance of doubt, such monies are not referred to as Client Money in this witness statement. Nor are such monies considered "Trust Assets".
- 98** Neither LBIE nor the other Lehman Administration Companies were deposit-taking institutions. Accordingly, LBIE held Client Money in banks as well as with sub-custodians, settlement agents, exchanges and clearing houses and other entities. The first task that the Administrators have faced in relation to Client Money, therefore, has been to secure possession or control of that money. This has involved efforts to identify, collect in or consolidate control over all Client Money. This has included opening new LBIE accounts where appropriate to protect the money from credit risk and set-off and in the circumstances required by the FSA's Client Money Rules.
- 99** The Administrators have been liaising with numerous banks, clearing houses and other entities with whom Client Money was held in order to recover those monies. As has been the case in relation to Trust Assets, this task has presented a number of challenges. Nonetheless, the process of recovering monies from these various sources into a centrally administered pool is being actively pursued and considerable progress has been made.

Approximately US\$1billion of Client Money from a total of US\$2.1billion of Client Money segregated prior to the administration has been recovered to date.

- 100** A Client Money issue that has required considerable attention since the commencement of the administration is the recovery of a deposit of US\$1billion of Client Money made by LBIE with Bankhaus, a German bank affiliate of LBIE, which, as described in my First Statement, was placed into a temporary moratorium by the German regulator shortly after the commencement of LBIE's administration. On 12 November 2008, Bankhaus was placed into a German law insolvency process. Therefore there is uncertainty surrounding the timing and extent of the recovery of Client Money from Bankhaus. The Administrators and their advisers have been in regular contact with BaFin (the German banking regulator), Bankhaus and the German insolvency administrator of Bankhaus as regards the recovery of these Client Monies. The Administrators are also pursuing other means of recovery of the monies, including the making of a claim for compensation from the German Deposit Protection Fund. The Administrators are keeping the FSA and LBIE creditors informed of the position and all appropriate steps will continue to be taken in relation to the recovery of the Client Money deposit.
- 101** LBIE used the 'alternative method' of segregating Client Money which was permitted under the FSA's Client Money Rules. This method involved aggregating Client Money liabilities from LBIE business activities and segregating an equivalent cash amount. The Administrators are undertaking further work to investigate whether the amounts segregated prior to the administration as Client Money by LBIE were calculated appropriately. This work is taking time and considerable resource due to the complexities involved in LBIE's affairs.

Reconciliation

- 102** Just as is the case in relation to Trust Assets, a process of reconciliation is being carried out by the Administrators with respect to Client Money.

- 103** As regards LBIE's own books and records, the Administrators have sought to identify all business activities in respect of which Client Money balances arose (e.g. cash balances, futures). This data was typically fed into the Client Segregation System ("**CSS**") that was set up by LBIE in order to identify the Client Money that should be segregated and which was maintained by LBIE up until the time of the administration. The Administrators have been examining the Client Money balances shown by CSS as existing as at the time of the administration.
- 104** Once the data on CSS has been assessed and cross-referenced to any other relevant systems, and any necessary manual adjustments carried out in order to arrive at the Client Money entitlements by client, the Administrators will need also to consider the Client Money balances shown by the relevant banks, clearing houses and other entities with whom Client Money was held as existing at the time of the administration. It will also be necessary to reconcile this data with the Client Money balances which clients claim should have existed at the time of the administration once this information has been provided by clients.
- 105** In addition, it has been necessary for the Administrators to determine what Client Money has been received since the commencement of the administration on 15 September 2008 (e.g. in the form of interest payments, dividends and redemption proceeds in relation to maturing assets). As set out further below (see paragraph 115), I am advised that the treatment of such Client Money is not the same as that of Client Money received prior to LBIE entering into administration.

Legal issues

- 106** The Administrators have spent a considerable amount of time investigating a wide range of issues concerning Client Money. In particular, in conjunction with their advisers, they have had carefully to assess the scope and application of the FSA's Client Money Rules and attempt to resolve certain issues of interpretation with the FSA.
- 107** In relation to this, I understand that there are issues concerning what money should be included within the pool of Client Money received prior to

administration and which persons may have claims against that pool. In addition, I understand that there are issues concerning the nature of any obligations LBIE may have in relation to any Client Money which was unsegregated at the time of administration. One unresolved issue in this context is the extent to which LBIE was required to segregate, as Client Money, money that it held for its affiliates. Given the potentially significant effect that the resolution of these issues may have both on clients with Client Money claims and on the general estate, it is currently planned that the Administrators will apply to Court for directions on these and related issues.

- 108** In addition, I am advised that there are a number of foreign exchange issues surrounding the appropriate treatment of Client Money, including the extent of LBIE's obligations, if any, to manage foreign exchange risk on behalf of clients with Client Money claims following administration. It is therefore likely that directions will also need to be sought from the Court on these and related issues in due course.
- 109** The Administrators and their legal advisers are also having to consider the appropriate treatment of money which was segregated as Client Money in lieu of assets in order to protect a client's position where there was a shortfall in stock at the relevant Depot. I understand that these so called "Depot Breaks" raise issues regarding whether the money was required to be segregated in the first instance and, if not, whether it is available to the general estate of LBIE. To the extent that it is not, I am advised that there are also issues surrounding what distributions should be made to affected clients. These and related issues are also likely to be the subject of an application for directions from the Court.
- 110** The Administrators and their advisers are also undertaking a review of the underlying documentation (and in some instances correspondence) with each client on whose behalf money may have been held in order to determine whether, by virtue of the provisions in such documents, a given client has forgone its entitlement to claim that such money is, in fact, Client Money. I understand that this may be a further issue on which the Administrators will need to seek directions from the Court in due course.

- 111** The Administrators have also had to work through the implications of an important distinction (explained below at paragraph 115) laid down by the FSA between Client Money held prior to the commencement of LBIE's administration and Client Money received after that time. This has included considering such implications in respect of Client Money that was in the course of payment around the time of administration in order to determine the precise time of receipt and, accordingly, whether the money was received pre- or post-administration.
- 112** Other, miscellaneous legal issues have also arisen from time to time in relation to Client Money. These include, for example, the status of monies paid to LBIE allegedly by mistake, the status of pre-administration payments made by LBIE but subsequently returned by the receiving bank and the appropriate balance to be struck by the Administrators in depositing Client Money between safety of those funds (from credit risk or set-off) and interest earned on the funds.

Claims

- 113** As is the case in respect of Trust Assets, many clients who own or purport to own Client Money have written to the Administrators requesting that the Client Money be returned to them as a matter of priority. There is a general constraint on the interim return of Client Money held by LBIE prior to the administration. This is explained further below. However, claims for the return of post-administration Client Money are generally dealt with by the Administrators and their advisers in the same manner as described above in relation to Trust Assets.

Returns

- 114** I am advised that the appointment of the Administrators constituted a 'primary pooling event' under the FSA's Client Money Rules. I am advised that this means that the Client Money held at the time of the administration in Client Money accounts is deemed to have been pooled into a single notional pool and a relevant client's entitlement is to a rateable share in this pool. Accordingly, the Administrators will only be in a position to establish rateable entitlements and then return to relevant clients the appropriate

proportion of the Client Money held by LBIE at the time of its administration once they have been able to identify and reconcile all clients' claims to an entitlement to share in this pool. In light of the various legal issues that need to be resolved which may impact upon the extent of the available pool and the number of claimants against it and the valuation of their respective entitlements, interim payments out of the pool cannot sensibly be made at this stage.

115 I am advised that Client Money received by LBIE post-administration does not form part of the pool of pre-administration Client Money and is therefore capable, in principle, of being returned in full to the client from or on whose behalf it was received once all appropriate steps have been undertaken to obtain control of these monies and to establish the client's entitlement. The task of obtaining control of these monies is complicated by the fact that, despite revised standard settlement instructions having been issued to counterparties in the wake of LBIE entering administration, cash potentially constituting post-administration Client Money has continued to be paid by some counterparties into an LBHI account, pursuant to arrangements that were in place between LBIE and those counterparties prior to 15 September 2008. Accordingly, the Administrators are engaged in gathering evidence (for presentation to LBHI) that, as regards any particular payment received by LBHI after 15 September 2008, such payment comprised post-administration LBIE Client Money.

116 Subject to the inability to return pre-administration Client Money at this juncture (and to the point raised immediately above as to control of the post-administration Client Money), the process for the prioritised return of post-administration Client Money is the same as described in the context of Trust Assets at paragraphs 76 to 86, above. This includes the client entering into a deed of undertaking (as described at paragraphs 80 to 83, above, in the context of Trust Assets) to ensure appropriate protection for the estate.

F. SCHEME PROPOSAL

117 The Administrators are very mindful of the importance of dealing with claims for Trust Property efficiently and swiftly. We appreciate that assets

and monies held by LBIE on trust for clients belong to those clients and that the delay in distributing those assets and monies to clients is causing difficulty and in some cases distress. It is also leading to unfavourable comparisons of the regime under which the Administrators are acting, when measured against the reported progress of other insolvency regimes in other jurisdictions. At the same time the Administrators are also fully mindful of their obligations to the unsecured creditors of LBIE and would not wish to effect distributions in a manner which could potentially expose them to further loss. The Administrators are therefore looking for a path which will enable them to progress the distribution of Trust Property by eliminating these uncertainties but which also provides an appropriate measure of protection to LBIE and to the Administrators.

- 118** Before the Administrators are properly able to distribute any Trust Property, all Trust Claims must be identified. The scope of information which may be used when identifying such claims must therefore be established. In order to determine Trust Claims with finality, the Administrators need to be able to define the body of information (including books and records) to which they will have regard. The scope of this information will also need to be communicated to potential claimants to assist their understanding of how Trust Claims will be determined.
- 119** The extent to which Trust Property is in the control of LBIE must also be ascertained. Where Trust Property is no longer held by or on behalf of LBIE, it is clearly no longer possible for LBIE to return it.
- 120** I am advised that it may not only be LBIE's clients who have Trust Claims. Clients may have agreed that LBIE could offset any sums due to LBIE or its affiliates against their assets and monies. Further, non-affiliates may have been granted interests in Trust Property by clients or may assert such interests against LBIE or its affiliates.

Potential options for dealing with Trust Property

- 121** In order to deal with the basic issues surrounding the identification of persons who have Trust Claims and the distribution of Trust Property, the Administrators have considered seeking to establish a final claims

submission date for Trust Claims. This would operate to limit the information to which the Administrators will have regard when determining Trust Claims to the books and records of LBIE (following reconciliation as already described in this witness statement) and claims made by creditors before the final claims submission date. On this basis, the Administrators could establish entitlements to Trust Property held by them without needing to have regard to claims received after that date.

- 122** If the information can be ascertained with certainty so as to eliminate the risk of competing Trust Claims being asserted after the final claims submission date, this will assist the Administrators in making final distributions of Trust Property potentially without the need for undertakings and indemnities from the recipients. It may also remove some risk to LBIE of liability arising as result of the distributions being challenged.
- 123** Having considered with their advisers the options available to them in this regard, the Administrators are minded to explore a framework to deal with the resolution of these uncertainties through a scheme of arrangement under Section 895 of the Companies Act 2006. The Administrators wish to advise the Court of their current intention to assess the feasibility of a Scheme which is currently being discussed with a representative group of clients with a view to eliminating the uncertainties referred to above through the imposition of a binding final claims submission date. If the Administrators consider that there is a reasonable prospect of an appropriate Scheme being acceptable to the affected creditors and they consider the Scheme to be a fair one, they intend to return to Court in due course to seek leave to convene the appropriate Scheme meeting.
- 124** Such a Scheme is consistent with the Proposals, specifically paragraph (ii) of the Proposals which states that the Administrators will identify and return Trust Property in accordance with the Trust Property Order. Whilst proposal viii(a) allows the Administrators to formulate proposals for a scheme of arrangement as a potential exit route strategy to bring the administration to an end, the Scheme currently envisaged by the Administrators is not intended to have this effect.

Limits on scope of the proposed Scheme

- 125** It is currently envisaged that any proposed Scheme will be limited to dealing with claims for the return of Trust Assets and certain Client Money and to ancillary claims arising out of or derived from such claims for delivery up. The Scheme will not deal with general unsecured claims.
- 126** The Administrators are aware that in promoting a possible Scheme they have to bear in mind a number of factors.
- 126.1** First, such a Scheme should assist in achieving the objective of the distribution of Trust Property efficiently and with finality to minimise the risk of challenge.
- 126.2** Second, such a Scheme should be constructed having regard to the desirability of minimising class issues so as to enhance its chances of success and to minimise the risk of a single creditor, or a small class of creditors, undermining the overall success of the Scheme and thereby damaging the interests of the creditors as a whole.
- 126.3** Third, such a Scheme should provide certainty. This means that, to the extent that the Scheme assists the Administrators in making a distribution, there should be no claims made to the distributed assets by LBIE and no claims arising from such distribution made by affected creditors against LBIE.
- 126.4** Fourth, such a Scheme should be one that is capable of being promoted and approved expeditiously. It should avoid needless controversy or issues on which it is likely that it will prove difficult to obtain consensus.
- 126.5** Finally, and only to the extent compatible with the foregoing, it may include a number of procedural matters to expedite the process of distribution.
- 127** Generally, the Administrators' preferred approach to the operation of a proposed Scheme would be that the clients' entitlement to Trust Property would be based on their rights under their contracts and applicable law. To the extent that legal issues require determination in order to effect

distributions, they may be determined outside of the Scheme (potentially by agreement, by seeking court directions or by resolution through a mechanism provided for in the Scheme). The Scheme will need to be sufficiently flexible to accommodate such court applications as may be required. The Court's determinations or other resolutions will also need to be incorporated into the mechanics of the Scheme. In addition such a Scheme could seek to deal with the issue of the costs of dealing with the Trust Property to which the Scheme applies.

- 128** If the Scheme establishes a final claims submission date for claims relating to Trust Property to which the Scheme applies, this will need to be advertised to provide creditors with a fair and reasonable opportunity to submit their claims. The Administrators would like the final claims submission date to be as soon as reasonably practicable and as may be acceptable to the creditors and the Court. Accordingly, once the decision has been made to proceed with a Scheme, the Administrators intend to make the final claims submission date as public as possible. The Administrators are already in contact with clients that have requested information about their claims but this will be followed up with further requests, public solicitation through the web, the press and industry bodies and the circularisation of the Scheme documents themselves.
- 129** It is important to the operation of any Scheme that any claim information provided after the final claims submission date will be disregarded to the extent that (in the Administrators' opinion) it is inconsistent with LBIE's books and records and that no other Scheme creditor should have their position prejudiced by reference to facts of which the Administrators only became aware after the final claims submission date, even if that was before the date of distribution of the relevant asset. It is not envisaged that a Scheme (and the operation of the final claims submission date) would prevent creditors making unsecured claims outside of the Scheme.

Next steps and timetable

- 130** The Administrators tabled in general terms their intention to seek to explore the possibility of promoting a Scheme at the most recent creditors'

committee meeting on 22 January 2009. With the agreement of the creditors' committee, the Administrators have established a working group consisting of representatives of the Administrators, their advisers, certain LBIE employees and the creditors' committee members, with the option of co-opting further members. This working group is to provide the Administrators with a "sounding board" of the affected creditor group with whom these matters can be aired. A meeting of this working group has already taken place and progress has been made in identifying the areas of concern and likely disagreement and the issues which will likely require determination before a possible scheme can be formulated and presented to the Court. A further meeting is scheduled.

- 131** The Administrators also propose following this application to publicise the application on their website and to hold open meetings with industry bodies to obtain the views of the industry as a whole on the possibility of pursuing a Scheme and to present to them some of the options being considered. The Administrators are mindful of the need to avoid putting any particular creditor into the position of being treated differently by reason of these discussions. Working with their advisers, the Administrators then propose to take the views of the working group and industry bodies into consideration and, if they conclude that a sufficiently well formulated Scheme can be promoted which is reasonably likely to meet the objectives set out above, they intend to revert to the Court in due course for leave to convene the appropriate Scheme meeting.

G. COSTS OF DEALING WITH TRUST PROPERTY

- 132** As will be apparent from Sections D and E above, a significant amount of work has been carried out by the Administrators to date and there will be a significant amount of further work required in order to address the issues identified above and any other issues that might arise in relation to the return to LBIE clients of Trust Property. It is accordingly the case that a significant proportion of the costs incurred in the administration to date and a significant proportion of those that will be incurred in the future, arises from the work necessarily being conducted by the Administrators and their advisers in relation to Trust Property.

- 133** The Administrators recognise that it may be appropriate for some or all of those costs to be borne by those LBIE clients to whom Trust Property is returned. As noted in paragraph 22 above, the Proposals approved by the creditors include a proposal that the Administrators will be looking to have the costs of dealing with Trust Property borne by such assets.
- 134** The nature of the costs incurred to date, the scale of the current and future costs and the merits of the different approaches to cost allocation are beyond the scope of this application and I therefore do not address those issues in this statement.
- 135** The Administrators do, however, consider it appropriate at this stage to seek the Court's confirmation that, to the extent that the Administrators are unable to recover out of the Trust Property their reasonable remuneration, costs and expenses, incurred in performing the tasks set out in the Schedule, whether pursuant to the proposed Scheme or otherwise, they shall be so paid and indemnified out of the assets of LBIE. Were it otherwise, the Administrators would not be able to complete the very significant work outlined above and which goes to the core of the LBIE administration. The Administrators recognise that they may need to apply to the Court in due course to determine who should bear such costs and how (if required) such costs should be calculated and allocated. In the meantime, I explain above that in the event that a Scheme is promulgated it may be possible to determine such issues within the Scheme, in respect of that Trust Property to which the Scheme applies.

H. OTHER COURT APPLICATIONS

136 In addition to considering the proposed Scheme, the Administrators propose to apply to the Court for directions on various issues that have arisen in the administration to date. As matters currently stand, the Administrators intend to make applications on the following issues (some of which have already been referred to in this statement) in the first instance:

- 136.1** whether the effect of a client terminating the IPBA Charge Version is to extinguish the proprietary interests which the client might

otherwise have in the securities that had not been re-hypothecated by LBIE (see paragraph 67 above); and

136.2 issues relating to the remit and application of the FSA's Client Money Rules, including:

136.2.1 the scope of the Client Money to be pooled pursuant to Rule 7.9.6 of the FSA's Client Money Rules (in place at the time of administration) and who has client money entitlements to that pool;

136.2.2 what obligations LBIE has in relation to any money which was not segregated by it in accordance with the FSA's Client Money Rules;

136.2.3 what obligations LBIE has, following administration, to adjust pre- and post-administration Client Money (including whether, for example, any such obligations include an obligation to manage foreign exchange risk, as discussed above at paragraph 108);

136.2.4 whether certain arrangements in relation to money held on behalf of clients fell within the scope of Rule 7.2.3R of the FSA's Client Money Rules, such that it should not be considered to be Client Money or otherwise treated as Trust Property; and

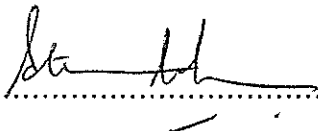
136.2.5 which costs associated with the identification and distribution of pre-administration Client Money should be met from the Client Money pool.

I. CONCLUSION

137 In all the circumstances, the Administrators respectfully invite the Court to make the Order sought.

STATEMENT OF TRUTH

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

Signed: 

STEVEN ANTHONY PEARSON

25 February 2009

Schedule 1

List of Lehman Administration Companies

Company Name	Date of Appointment
Lehman Brothers International (Europe)	15 September 2008
Lehman Brothers Limited	15 September 2008
Lehman Brothers Holdings PLC	15 September 2008
LB UK Re Holdings Limited	15 September 2008
Storm Funding Limited	23 September 2008
Mable Commercial Funding Limited	23 September 2008
Lehman Brothers Europe Limited	23 September 2008
Lehman Brothers UK Holdings Ltd	29 September 2008
LB UK Financing Ltd	2 October 2008
LB SF No. 1	2 October 2008
Cherry Tree Mortgages Limited	13 October 2008
Lehman Brothers Lease and Financing No. 1 Limited	24 October 2008
Zestdew Limited	29 October 2008
Monaco NPL (No. 1) Limited	29 October 2008
Lehman Commercial Mortgage Conduit Limited	30 October 2008
LB RE Financing No. 3 Limited	30 October 2008
Lehman Brothers (PTG) Limited	6 November 2008
Eldon Street Holdings Limited	9 December 2008
LB Holdings Intermediate 2 Limited	14 January 2009

Applicants
S A Pearson
Second Statement
"SAP2"
25 February 2009

No. 7942 of 2008

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

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

**AND IN THE MATTER OF THE INSOLVENCY ACT
1986**

**WITNESS STATEMENT OF
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