

Party: Applicants  
Witness: Anthony Victor Lomas  
Statement No.: 1  
Exhibit: "AVL1"  
Date: 14 February 2013

Nos. 7942 and 7945 of 2008 and No. 429 of 2009

**IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT**

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)  
(IN ADMINISTRATION)**

**IN THE MATTER OF LEHMAN BROTHERS LIMITED  
(IN ADMINISTRATION)**

**IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED  
(IN ADMINISTRATION)**

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

**(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS  
INTERNATIONAL (EUROPE) (IN ADMINISTRATION)**

**(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN  
ADMINISTRATION)**

**(3) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2  
LIMITED (IN ADMINISTRATION)**

**Applicants**

**-and-**

**LEHMAN BROTHERS HOLDINGS, INC**

**Respondent**

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**WITNESS STATEMENT OF**

**ANTHONY VICTOR LOMAS**

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I, **Anthony Victor Lomas** of PricewaterhouseCoopers LLP ("PwC") of 7 More London, Riverside, London, SE1 2RT say as follows:

1. I am a Partner in the firm of PwC of the above address and am one of the joint administrators of each of Lehman Brothers International (Europe) (in administration) ("**LBIE**"), Lehman Brothers Limited (in administration) ("**LBL**") and LB Holdings Intermediate 2 Limited (in administration) ("**LBHI2**").
2. There is now produced and shown to me marked "**AVL1**" a paginated bundle of documents and correspondence, to which I shall refer. Save where otherwise stated, page references in this statement are to the contents of this exhibit.
3. Save where otherwise stated this witness statement is made from facts and matters that are within my own knowledge. The facts set out in this statement have been agreed by the joint administrators for each of LBIE, LBHI2 and LBL and by Lehman Brothers Holdings, Inc ("**LBHI**") (the "**Parties**") (insofar as the facts are within LBHI's knowledge). Similarly the directions sought in the joint application made on 14 January 2013 pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the "**Act**") by the joint administrators of each of LBIE, LBL and LBHI2 (the "**Joint Application**") have been agreed between the Parties. However, for the avoidance of doubt, the Parties are not in agreement as to the answers to the questions posed in the Joint Application.
4. I make this statement in relation to the Joint Application. There is a single respondent to the Joint Application, being LBHI. The Joint Application seeks directions in connection with the functions of the joint administrators of LBIE, LBL and LBHI2. I make this statement in order to provide background to the Court for the purposes of an initial hearing in relation to the Joint Application at which directions will be sought if required.

(A) **BACKGROUND**

5. LBIE was the principal trading company within the UK-regulated group of Lehman Brothers companies (the "**UK Regulated Group**") and is an English unlimited company. LBL and LBHI2 are the only shareholders of LBIE. LBL owns one ordinary share of \$1. LBHI2 owns:

5.1 6,273,113,999 ordinary shares of \$1 each in LBIE;

5.2 2,000,000 5% redeemable Class A preference shares of \$1000 each; and

5.3 5,100,000 5% redeemable Class B shares of \$1000 each.

A copy of LBIE's most recent Articles and Memorandum of Association appears at **pages 1 to 24**.

6. A structure chart for the relevant companies to the Joint Application is at **page 25**.
7. LBIE entered into administration on 15 September 2008. The current administrators of LBIE are Russell Downs, Steven Anthony Pearson, Derek Anthony Howell, Paul David Copley and myself (the "**LBIE Joint Administrators**").
8. The LBIE Joint Administrators' latest progress report, for the period from 15 March 2012 to 14 September 2012 (the "**LBIE Progress Report**") is at **pages 26 to 75**. It states (subject to some important caveats and assumptions) that "*the potential range of House recoveries that could eventually be available for distribution to unsecured creditors is estimated to be between c.£8.1bn and c.£14.2bn and the potential range of ordinary unsecured claims is estimated to be between c.£15.0bn and c.£54.6bn.*". The report therefore showed that the anticipated shortfall in the amount available for distribution to LBIE's ordinary unsecured creditors as at 12 October 2012 was between £0.8 billion and £46.5 billion. The level of ordinary unsecured claims is significantly influenced by the proofs of debt submitted by overseas affiliates and the LBIE Joint Administrators have announced several material transactions since the LBIE Progress Report leading to a meaningful reduction in the upper case estimate of claims.
9. Whilst the LBIE Joint Administrators cannot predict the final outcome with certainty, there is a growing view that LBIE may be able to pay all unsecured unsubordinated claims in full. Indeed, in a buoyant secondary market for claims, LBIE debt has been trading at a level significantly above par, suggesting that the market believes LBIE will pay such claims in full together (rightly or wrongly) with some element of statutory interest.
10. Notwithstanding the currently anticipated shortfall, the LBIE Progress Report noted that the LBIE Joint Administrators intended "*to consider the relative ranking of interest on unsecured claims versus subordinated debt at a future point in time, when the range of potential outcomes for unsecured creditors has narrowed significantly*". The Joint Application is intended, among other matters,

to address that issue given the positive developments over the last several months.

11. LBL is a limited English company. It is a shareholder of LBIE as set out above at paragraph 5. It was the service company for the Lehman Group's operations in the UK, Europe and Middle East, holding most of the service contracts and employee contracts for UK companies within the Lehman Group. LBL also maintained IT systems and provided infrastructure support to the UK Regulated Group. Furthermore, it was the head lessee for the UK Regulated Group's headquarters at 25 Bank Street, London, as well as the Group Paying Agent for UK corporation tax, the Representative Member for the Lehman Group VAT registration, and the "Principal Employer" under the Lehman Brothers Pension Scheme (the "**Pension Scheme**"). The specific role and function of the Pension Scheme are known to the Court. It was considered at first instance, by the judge assigned by the Court to consider all matters arising from the administration of LBIE, and reported in the decision of *Bloom and Others v the Pension Regulator and Others* [2010] EWHC 3010 (Ch) found at **pages 76 to 131**. A copy of LBL's articles and memorandum of association is at **pages 132 to 148**.
12. LBL also entered into administration on 15 September 2008. Its current administrators are Michael John Andrew Jervis, Steven Anthony Pearson, Derek Anthony Howell, Dan Yoram Schwarzmann and myself (the "**LBL Joint Administrators**").
13. The LBL Joint Administrators' latest progress report is at **pages 149 to 161**. The LBL Joint Administrators presently have net realisations of approximately £110,000,000, which sum is potentially available for distribution to LBL's unsecured creditors. The amount of further realisations is uncertain but the LBL Joint Administrators believe that they are likely to equal or exceed realisations to date. Current estimated unsecured claims into LBL also remain uncertain but the probable range of unsecured claims is between £480,000,000 and £790,000,000. For the avoidance of doubt, this range does not include any sums in respect of which LBIE may seek to prove as contributory to LBIE pursuant to Section 74 of the Act (which is one of the issues for determination in the Joint Application). Preferential claims into LBL are approximately £1,900,000. LBL's creditors include the landlord of the 25 Bank Street office, suppliers of goods and services, former employees and the Pension Scheme. The LBL Joint Administrators are concerned to distribute a meaningful dividend to LBL's

creditors as soon as possible but can only do so once there is certainty around what level of reserve, if any, to make for the claims of LBIE. Until the LBL Joint Administrators have clarity on this key issue they do not anticipate being able to declare a dividend.

14. LBL's potential exposure to LBIE as a contributory is uncertain, both in terms of the quantum of the liability (if any) and when the quantum of liability will be ascertained. This uncertainty impacts the amount and timing of any distribution the administrators of LBL may pay its unsecured creditors (other than LBIE).
15. LBHI2 is a limited English company. It holds shares in LBIE as set out above at paragraph 5. It entered into administration on 14 January 2009. Its current administrators are Derek Anthony Howell, Michael John Andrew Jervis, Steven Anthony Pearson Dan Yoram Schwarzmann and myself (the "**LBHI2 Joint Administrators**").
16. The LBHI2 Joint Administrators' latest progress report is at **pages 162 to 171**. The LBHI2 Joint Administrators have made realisations to date of approximately £22,500,000. LBHI2's principal assets are its inter-company claims against LBL and LBIE as appears below (together with a guarantee claim against LBHI in respect of the balances owed to LBHI2 by LBIE).
17. LBHI is the ultimate parent for the Lehman Brothers group of companies worldwide. It is incorporated in the State of Delaware, USA. On 15 September 2008, it commenced Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York. On 6 December 2011, the Modified Third Amended Joint Chapter 11 Plan of LBHI and its affiliated debtors was confirmed by the United States Bankruptcy Court for the Southern District of New York. The plan became effective on 6 March 2012, at which point LBHI emerged from Chapter 11.
18. All three of the LBIE, LBL and LBHI2 estates have been insolvent since they entered into administration in September 2008 (in the case of LBIE and LBL) and January 2009 (in the case of LBHI2). They have a number of claims between themselves which are inter-conditional and form the subject of this Joint Application.

**(B) THE CLAIMS AND THE ISSUES**

19. By an order dated 2 December 2009, the LBIE Joint Administrators were granted permission to make a distribution to LBIE's unsecured creditors. A copy of that order is at **pages 172 to 175**.
20. On 4 December 2009, the LBIE Joint Administrators gave notice of their intention to make a distribution to LBIE's unsecured creditors under Rule 2.95 of the Insolvency Rules 1986 (the "**Rules**") (**page 176**). Although the notice initially specified 31 December 2010 as the date up to which proofs of debt must be lodged, this date was extended to 31 December 2012. By a court order of 2 May 2012, the last date for proving was then brought forward to 31 July 2012, the period for the LBIE Joint Administrators to admit, reject or make provision for proofs of debt was extended to 31 October 2012 and the date by which a first interim dividend was to be made was extended to 31 December 2012.
21. On 21 December 2011, LBL lodged a proof of debt for £362,673,342.99 in LBIE's administration on the online portal operated by LBIE the "**(LBIE Claims Portal)**". A screen print of the LBL claim submitted on the LBIE Claims Portal is at **pages 177 to 194**.
22. LBL notified LBIE on 13 September 2012 that it reserved the right to make additional claims against LBIE in relation to the deficit in the Pension Scheme. That notification is at **pages 195**. This claim arises from LBL's status as the Principal Employer in respect of the Pension Scheme.
23. On 24 April 2012, LBHI2 lodged a proof of debt in LBIE's administration in respect of unsecured claims for:
  - 23.1 £38,089,911.30; and
  - 23.2 £1,254,165,598.48 pursuant to three subordinated loan agreements entered into on 1 November 2006 between LBHI2 (as lender) and LBIE (as borrower) (the "**LBHI2 Subordinated Debt**"). A screen print of the LBHI2 proof of debt submitted on the LBIE portal is at **pages 196 to 209**. Copies of the LBHI2 Subordinated Debt agreements are at **pages 210 to 260**.
24. The LBIE Joint Administrators have not yet formally admitted or rejected LBL's and LBHI2's respective proofs in LBIE's administration pending determination

of the other relationships between the parties, some of which are the subject of the Joint Application.

25. On 26 November 2012, the LBIE Joint Administrators sent out a notice to LBIE's creditors, pursuant to Rule 2.98 of the Rules, declaring a first interim dividend of 25.2 pence in the pound (the "**First Interim Dividend**") to all LBIE's unsecured creditors whose claims have been admitted for dividend purposes. The LBIE Joint Administrators paid the First Interim Dividend to LBIE's unsecured creditors on 30 November 2012. Funds disbursed were approximately £1,611,000,000
26. According to the Lehman Group accounting system, DBS, LBHI2 has a approximately £257,000,000 unsecured inter-company claim in LBL's administration. LBHI2 has yet to lodge its proof of debt in LBL's administration in respect of this amount.
27. The possible liability of LBL and LBHI2 as members of LBIE, in respect of a deficiency in LBIE, has been recognised as an issue from an early stage in the administrations of LBL and LBHI2. However, there have been a number of other issues requiring progress or resolution, and developments in a number of matters have now brought the possible liability into focus. In particular:
  - 27.1 LBL has made steady progress in realising its assets, particularly in the past 18 months, and now has a 'pot' of approximately £110,000,000 cash available to make a distribution to its unsecured creditors;
  - 27.2 LBIE has progressed its administration to the point that it has paid a first interim dividend of 25.2 pence in the pound (but has not paid anything in respect of the proofs submitted by LBL and LBHI2 in its administration); and
  - 27.3 The price at which LBIE unsecured claims have traded has risen fairly consistently through the period of its administration, from less than 50p in the pound initially and is now trading in excess of the par value of the admitted proofs, suggesting that the market believes LBIE will pay its liabilities in full (and an assumption that the ordinary unsecured claims will benefit from a payment of statutory and/or contractual interest).

28. Since LBL and LBHI2 lodged their respective proofs in LBIE's administration, it has become clear that there are a number of complex legal issues which impact upon the correct treatment of intercompany claims, the priority of distributions to be made out of the LBIE estate, the ability of the LBL Joint Administrators to make dividend payments and the ability of the LBHI2 Joint Administrators to progress LBHI2's administration. There are two overarching issues:

28.1 In the event of LBIE's ordinary unsecured and unsubordinated creditors being paid in full, whether statutory interest payable to ordinary unsecured creditors pursuant to Rule 2.88(7) of the Rules is payable in priority to the LBHI2 Subordinated Debt; and

28.2 Whether LBL and LBHI2 are liable pursuant to section 74 of the Act to contribute to LBIE's assets in an amount sufficient for payment of LBIE's debts and liabilities and, if so, what the scope is of that liability. Further related issues arise, including as regards the adjustment of the rights of the contributories between themselves and the ability of LBL and LBHI2 to lodge proofs of debt in LBIE's administration (or any subsequent liquidation) and of LBIE to lodge proofs of debt in the administrations (or any subsequent liquidations) of LBL and LBHI2.

29. The Joint Application seeks the Court's directions in respect of these issues.

30. The issue outlined at paragraph 28.1 above is addressed by question 11 of the directions sought in the Joint Application. The Parties have agreed that LBIE shall be treated as sole applicant for the purposes of question 11. The issues outlined at paragraph 28.2 above are addressed by questions 1 to 10 of the directions in the Joint Application. The Parties have agreed that LBL and LBHI2 shall be treated as joint applicants for the purposes of questions 1 to 10.

**(C) REASONS FOR ADDRESSING THESE ISSUES NOW**

31. The LBL Joint Administrators may be in a position during the second half of 2013 to finalise all LBL's existing creditor claims and make a distribution, interim or otherwise, on the basis of those claims. They cannot do so until they have clarity as to whether LBL has any contingent liability pursuant to section 74 of the Act.

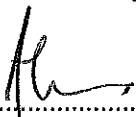


32. Pending resolution of the issues to be determined in the Joint Application, the Joint Administrators of LBHI2 cannot make any progress in LBHI2's administration as they cannot make any judgement as to their likely assets and liabilities. They need clarity as to: (a) whether LBHI2 has any contingent liability pursuant to section 74 of the Act; and (b) the ranking of the Subordinated Debt.
33. As explained more fully in the LBIE Progress Report, there remain a large number of issues yet to be resolved in LBIE's administration which will significantly impact the level of recovery for LBIE's ordinary unsecured creditors. However, the outcome of the Joint Application is itself important in ultimately determining the extent of the recovery for LBIE's unsecured creditors. In particular, the issue regarding the priority between the claims of ordinary unsecured creditors for statutory interest pursuant to Rule 2.88(7) and the LBHI2 Subordinated Debt looks increasingly likely to become an issue of real importance given the rapidly reducing forecast estimated deficiency within LBIE. Therefore, notwithstanding the large number of other issues that will impact the level of recovery for LBIE's ordinary unsecured creditors, the LBIE Joint Administrators recognise the need expeditiously to resolve the issues in the Joint Application.

#### **(D) CONCLUSION**

34. For the reasons set out above, the Court is respectfully requested to provide directions for the determination of the issues identified in the Joint Application.
35. I believe that the facts stated in this witness statement are true.

**Dated 14 February 2013**

  
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**Anthony Victor Lomas**

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(2) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS LIMITED (IN  
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LIMITED (IN ADMINISTRATION)**

**Applicants**

**-and-**

**LEHMAN BROTHERS HOLDINGS, INC**

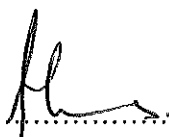
**Respondent**

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**EXHIBIT "AVL1" TO FIRST WITNESS  
STATEMENT OF ANTHONY VICTOR LOMAS**

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This is the exhibit marked "AVL1" referred to in the First Witness Statement of Anthony Victor Lomas dated 14 February 2013.

Signed .....  .....

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