

No. 7942 of 2008 / CR-2008-000012

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

Before The Honourable Mr[s] Justice []

[] the [] day of [] 2018

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

[Draft] ORDER

UPON THE APPLICATION of (1) Lehman Brothers International (Europe) (in administration) (“**the Company**”) as trustee of the trust of client money under the client money rules as at 15 September 2008 (“**CASS 7**”) of which the “*firm*” within the meaning of CASS 7.7.2R is the Company (the “**Client Money Trust**”); and (2) Russell Downs, Julian Guy Parr, Gillian Eleanor Bruce and Edward John MacNamara as the joint administrators of the Company (the “**Administrators**”), by their application notice dated 20 September 2018 made pursuant to rule 64 of the Civil Procedure Rules 1998 and / or the inherent jurisdiction of the Court and / or paragraph 63 of Schedule B1 to the Insolvency Act 1986

AND UPON reading the evidence filed

AND UPON HEARING Daniel Bayfield QC for the Company and the Administrators

AND UPON the Administrators having caused the Company to make distributions of client money in aggregate equal to 100c in the \$ of the Client Money Entitlement (as defined below)

AND UPON the Administrators having identified a number of persons holding Client Money Entitlements to whom distributions have not been made (whether because they have been dissolved, because they have not responded to communications from the Administrators or otherwise)

AND UPON the Administrators wishing to close the Client Money Trust and make a Final Client Distribution (as defined below) in respect of Client Money Entitlements and Client Surplus Entitlements (as defined below) and distributing the remaining funds to the general estate of the Company

IT IS ORDERED AND DIRECTED that:

1. The procedure set out in the schedule hereto and marked **“A”** (the **“Client Money Distribution Procedure”**) shall apply for the purpose of ascertaining the claims of clients, and persons claiming to be clients, to share in a final distribution to the Company’s clients out of the funds remaining in the Client Money Trust (the **“Final Client Distribution”**), and the Company and the Administrators shall be at liberty to act in accordance with that procedure. Subject to the terms of this Order, the Final Client Distribution shall comprise:
 - (1) a distribution towards the discharge of client money entitlements as against the Client Money Trust calculated in accordance with CASS 7 (**“Client Money Entitlements”**) to the extent that they remain unpaid; and
 - (2) a distribution of any further sums (in excess of the Client Money Entitlements) which the Administrators believe that clients are or may be entitled to receive in accordance with CASS 7 or the general law (**“Client Surplus Entitlements”**).
2. Once the Administrators have given notice of their intention to make the Final Client Distribution in accordance with Rule 6 of the Client Money Distribution Procedure, they shall be at liberty to cause the Company to distribute property or any part thereof of the Client Money Trust on the basis that:
 - (1) subject to each of subparagraphs 2(2) to 2(4) below, the only clients with a Client Money Entitlement are the clients who have submitted (or, by reason of subparagraph 2(4) below, are deemed to have submitted) a **“client money proof”** as defined in Rule 1 of the Client Money Distribution Procedure by 5 pm on **“the last date for proving”** as defined in Rule 6 of the Client Money Distribution Procedure;

- (2) any person claiming an entitlement against the Client Money Trust (a “**Client Money Claimant**”) whose client money proof has been rejected does not have a Client Money Entitlement *unless* that person has filed an application with the Court to appeal against that rejection within the time specified by Rule 4(2) of the Client Money Distribution Procedure and given notice to the Administrators of the filing of that application as required by Rule 4(3) of the Client Money Distribution Procedure;
- (3) any Client Money Claimant whose client money proof is accepted as to part (the “**accepted part**”), but rejected as to part (the “**rejected part**”) does not have a Client Money Entitlement in respect of the rejected part *unless* that person has filed an application with the Court to appeal against the rejection of the rejected part within the time specified by Rule 4(2) of the Client Money Distribution Procedure and given notice to the Administrators of the filing of that application as required by Rule 4(3) of the Client Money Distribution Procedure; and
- (4) each Existing Claimant is to be deemed to have submitted a client money proof (prior to 5pm on the last date for proving) which has been accepted for the Existing Claimant Amount.

For the avoidance of doubt:

- (a) no Existing Claimant is required to take any further steps in order to be entitled to receive a distribution from the Client Money Trust in respect of the Existing Claimant Amount (or any Client Surplus Entitlement in respect of the Existing Claimant Amount); and
- (b) the Administrators may nonetheless require Existing Claimants to provide payment instructions in respect of the Final Client Distribution in order for those Existing Claimants to be paid a Final Client Distribution.

For the purposes of this paragraph 2:

“**Existing Claimant**” means a person to whom the Company has issued an Existing Claimant Certificate.

“**Existing Claimant Amount**” means the Client Money Entitlement of an Existing Claimant (as determined by the Company and stated in that Existing Claimant’s Existing Claimant Certificate).

“Existing Claimant Certificate” means a certificate issued by the Company after 2018 to a person which identifies the Company’s determination of the Client Money Entitlement of that person. Each Existing Claimant Certificate shall be named and identified as such.

3. Having made the Final Client Distribution, if any assets remain in or from time to time accrue to the Client Money Trust, the Administrators shall be at liberty to cause the Company to distribute those assets (including by making distributions *in specie* (whether by way of assignment or otherwise) of claims against third parties, including the Company’s admitted claim of US\$1,008,000,000 in the bankruptcy of Lehman Brothers Holding Inc. and a claim for the refund of a €538,064 German withholding tax deduction) to the Company’s general estate from time to time in accordance with CASS 7.7.2R (the **“House Distributions”**).
4. If the Administrators cause the Company to act in accordance with this Order, neither the Company nor the Administrators shall be liable, with respect to the Final Client Distribution or the House Distributions, to any client of the Company:
 - (1) of whom the Administrators were not actually aware as at 5pm London time on the last date for proving and, for these purposes, the Administrators shall be deemed not to have been aware of any clients who have not submitted (or have not, by reason of subparagraph 2(4) above, been deemed to have submitted) a client money proof (as defined in the Client Money Distribution Procedure) by 5 pm on the last date for proving;
 - (2) who it is later established (by agreement or by the Court) has a Client Money Entitlement but who had failed to file an application with the Court to appeal against the rejection of its client money proof within the time specified by Rule 4(2) of the Client Money Distribution Procedure and/or give notice to the Administrators of the filing of such application as required by Rule 4(3) of the Client Money Distribution Procedure; or
 - (3) whose Client Money Entitlement is later agreed or established by the Court as being greater than the accepted part of its claim, but who had failed to file an application with the Court to appeal against the rejection of its client money proof within the time specified by Rule 4(2) of the Client Money Distribution Procedure and/or give notice to the Administrators of the filing of such application as required by Rule 4(3) of the Client Money Distribution Procedure; or
 - (4) whose Client Money Entitlement is later agreed or established by the Court as being greater than the Client Money Entitlement which it claimed (or was deemed to have claimed, by reason of subparagraph 2(4) above) in its client money proof.

5. Subject to paragraph 9 below, nothing in this Order operates to preclude clients falling within any of paragraphs 4(1), 4(2) or 4(3) above from claiming a proprietary interest in any monies or assets representing the traceable proceeds of the Client Money Trust (if and to the extent that such a claim would otherwise be available as a matter of law). For the avoidance of doubt, nothing in this Order is intended to acknowledge or suggest that any such claim would in fact be available to any such client.
6. For the avoidance of doubt, the Administrators shall act in accordance with this Order and the Client Money Distribution Procedure solely as agents of the Company in its capacity as trustee of the Client Money Trust, and nothing in this Order or in the Client Money Distribution Procedure or in the performance thereof shall result in the Administrators assuming liability as trustees.
7. The costs of and occasioned by the Application may be paid as costs properly attributable to the distribution of the Client Money Trust within the meaning of CASS 7.7.2R(4).
8. The Company and the Administrators shall have liberty to apply to the Court including to vary or modify the terms of this Order and the Client Money Distribution Procedure.
9. If the Company, acting in accordance with this Order (and as trustee of the Client Money Trust), makes any distribution from the Client Money Trust to (i) the general estate of the Company and/or (ii) Laurifer Limited from which monies are received by the Company, then the Administrators shall have liberty to distribute those assets as part of the Company's general estate in accordance with applicable provisions of the Insolvency Act 1986, the Insolvency (England and Wales) Rules 2016 and the common law. Pursuant to section 1157(2) of the Companies Act 2006, the Administrators are hereby granted relief from any liability for negligence, default, breach of duty or breach of trust which might otherwise arise in favour of any Client Money Claimant as a result of the Administrators so acting.

SCHEDULE A

Client Money Distribution Procedure

In this Schedule:

Any expression not defined herein has the meaning defined in the Order or, as applicable, in CASS 7 and other provisions of the Financial Services Authority's Handbook including the Glossary thereto as at 15 September 2008.

"business day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Claim Form" means a client money claim form, completed to the satisfaction of the Administrators, in the form available at the following website: [].

"Court" means the High Court of Justice of England and Wales, Business and Property Courts of England and Wales, Insolvency and Companies List (ChD), or any appellate court with jurisdiction to hear appeals therefrom.

"Distribution Application" means the application by the application notice dated 20 September 2018 by which the Company and the Administrators applied for permission to act in accordance with the terms of this Schedule.

"Order" means the Order, on the Distribution Application, to which this Client Money Distribution Procedure is scheduled.

"payment details" means a person's electronic payment instructions or a current address to which the Administrators can send a cheque.

"Rule" means each of the sections of this Client Money Distribution Procedure numbered 1 to 11.

"sub-paragraph" means each of the sub-paragraphs of the Rules in this Client Money Distribution Procedure numbered in the format (1), (2) etc.

Claiming for a Client Money Entitlement

1.—(1) Subject to sub-paragraph (2) below, a person claiming to have a Client Money Entitlement (a **"Client Money Claimant"**) and wishing to recover its Client Money Entitlement in whole or in part must (subject to any order of the Court to the contrary) submit or have submitted their claim in writing to the Administrators; and they must do so or have done so by way of a Claim Form.

(2) Existing Claimants will be treated as having proved in respect of their Existing Claimant Amounts. As such, an Existing Claimant does not need to submit a Claim Form in respect of its Existing Claimant Amount.

(3) A Client Money Claimant is referred to as **"proving"** or having **"proved"** for their Client Money Entitlement and the Claim Form by which a Client Money Claimant seeks to establish their Client Money Entitlement is their **"client money proof"**.

(4) Subject to the next sub-paragraph, a Claim Form must contain (a) sufficient information to enable the Administrators to reach a decision on the admissibility of the claim, and (b) the claimant's payment details.

(5) The Administrators may call for any document or other evidence to be produced, where they think it necessary for the purpose of adjudicating on the whole or any part of the client money proof.

Costs of proving

2. Unless the Court otherwise orders—

(a) every Client Money Claimant shall bear the cost of proving their own entitlement, including costs incurred in providing documents or evidence under Rule 1; and

(b) costs incurred by the Company and by the Administrators in assessing a Client Money Claimant's Client Money Entitlement, including the costs of and occasioned by any appeal under Rule 4, are payable from the Client Money Trust as costs properly attributable to the distribution of the Client Money Trust (without prejudice to any right the Company and/or the Administrators may have to recover their costs of an appeal from the Client Money Claimant in such appeal).

Admission and rejection of client money proofs

3.—(1) The Administrators may admit a client money proof either for the whole amount claimed, or for part of that amount.

(2) If the Administrators reject a client money proof in whole or in part on or after the date of the Order, the Administrators shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the Client Money Claimant.

Appeal against decision on proof

4.—(1) If a Client Money Claimant is dissatisfied with the Administrators' decision with respect to their client money proof, that Client Money Claimant may apply to the Court for the decision to be reversed or varied. Any such application must be made pursuant to Chapter 2 of Part 14 of the Insolvency (England and Wales) Rules 2016, in the Company's administration proceedings, using the form of application notice appended to this Client Money Distribution Procedure ("**Form 1**").

(2) An application under sub-paragraph (1) must be filed with the Court within 21 days of the Client Money Claimant receiving the statement under Rule 3(2).

(3) A Client Money Claimant who files an application under sub-paragraph (1) above must forthwith, and in any event within 21 days of the Client Money Claimant receiving the statement under Rule 3(2), give notice in writing to the Administrators of the filing of that application.

(4) Where application is made to the Court under this Rule, the Court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the Administrators.

(5) Neither the Company nor the Administrators shall be personally liable for costs incurred by a Client Money Claimant or any other person in respect of an application under this Rule unless the Court otherwise orders.

Variation of proof

5.—(1) A Client Money Claimant's client money proof may at any time, by agreement with the Administrators, be varied as to the amount claimed.

Notice of Final Client Distribution

6.—(1) Once the Administrators propose to make the Final Client Distribution, the Administrators shall give notice of that fact.

(2) A notice pursuant to sub-paragraph (1) shall be given to all clients:

(a) who are shown in the Company's records: (i) to have had balances on their accounts with the Company as at 15 September 2008, whether positive or negative, except those (a) who have since entered into full and final settlement agreement with the Company and/or (b) who have waived or assigned their client money entitlements; and / or (ii) to have submitted a Claim Form to the Administrators; and

(b) in each case, whose current email addresses, fax numbers or addresses are known to the Administrators.

(3) A notice pursuant to sub-paragraph (1) shall, in addition, be published in the gazette and advertised in the following publications:

(a) Financial Times (all editions);

(b) The Times; and

(c) Wall Street Journal (USA edition and Europe & Asia edition).

(4) A notice pursuant to sub-paragraph (1) must—

(a) state that it is the intention of the Administrators to make a final distribution to clients within the period of 6 weeks from the last date for proving as defined in sub-paragraph (b) below;

(b) specify a date ("**the last date for proving**") up to which client money proofs may be lodged being a date which—

(i) is the same date for all clients; and

(ii) is not less than 21 days from the date of the notice;

(c) state that no Existing Claimant shall be required to file a client money proof but that Existing Claimants must confirm their payment details in order to be paid in the proposed distribution in respect of the Existing Claim Amount (and any Client Surplus Entitlement in respect of the Existing Claim Amount); and

(d) state that, save for Existing Claimants, any client who has not already submitted a client money proof and does not submit a client money proof by the last date for proving will not be entitled to share in the proposed distribution.

(5) A failure by the Administrators to send a notice to one or more particular client(s) under sub-paragraph (2) will not invalidate the process in the Client Money Distribution Procedure and / or affect the operation of the Order.

Admission or rejection of proofs

7.—(1) Unless the Administrators have already dealt with them, within 14 days of the last date for proving in respect of any distribution, the Administrators shall—

- (a) admit or reject (in whole or in part) client money proofs that have been submitted; or
- (b) make such provision in respect of them as they think fit.

(2) The Administrators are not obliged to deal with client money proofs lodged after the last date for proving, but may do so if they think fit.

Postponement or cancellation of Final Client Distribution

8.— If in the period of 6 weeks referred to in Rule 6(4)(a) the Administrators consider that by reason of the size of the provision required to be made in respect of any unresolved Client Money Claim or for any other reason that it is expedient to do so, the Administrators may cancel or postpone the Final Client Distribution.

Payment of distributions and related matters

9.—(1) Where the Administrators have not, pursuant to Rule 8, cancelled or postponed the Final Client Distribution they shall, within the period of 6 weeks referred to in Rule 6(4)(a), proceed to make the proposed distribution.

(2) The Administrators shall make provision for the amount of any client money proof received by them by 5pm London time on the last date for proving and which they have rejected in whole or in part, where they have received notice of an application by the Client Money Claimant to appeal the rejection of their client money proof (in whole or in part) by the later of: (a) 5pm London time on the last date for proving; and (b) 21 days after the Administrators have sent a statement under Rule 3(2);

(3) The Administrators shall make provision for the value of any Client Money Entitlements and/or Client Surplus Entitlements that are shown in the Company's records (as at the last date for proving) but which are not paid to clients as part of the Final Client Distribution and shall deal with those monies, in accordance with any direction given by the Financial Conduct Authority or, if no such direction is given, any further directions given by the Court.

(4) The Administrators are not obliged to make provision for Client Money Entitlements in any circumstances other than those described at Rules 7(1)(b), 9(2) and 9(3) above; but the Administrators may, in their absolute discretion, make provision in other circumstances.

(5) Payment of distributions may be made by electronic bank transfer or cheque or by any other means agreed between the Administrators and the Client Money Claimant.

Client Money Entitlement established, increased or reduced after payment of distribution

10.—(1) If after payment of the Final Client Distribution (but before the payment of the House Distribution) any Client Money Claimant establishes a Client Money Entitlement, or an increased Client Money Entitlement, in either case for which the Administrators did not make provision under Rule 9, the Client Money Claimant is not entitled to disturb the Final Client Distribution; but is entitled to be paid, out of any client money that would otherwise have been distributed to the Company as part of a House Distribution, any distribution which the Client Money Claimant has failed to receive.

(2) Any distribution payable under sub-paragraph (1) shall be paid before the client money there referred to is applied to the payment of the relevant House Distribution.

(3) If, after a client's client money proof has been admitted, the amount of the client money proof is reduced, the Administrators have liberty to apply to the Court for an order that the client is liable to repay to the Administrators (for the benefit of the Client Money Trust) any amount overpaid by way of distribution together with interest.

Notices

11.— (1) Any notice or statement to be sent by the Administrators to a Client Money Claimant may be sent by email, fax and/or post and shall be deemed to have been received by the Client Money Claimant:

- (a) if sent by first class post to an address within the UK, 2 business days after posting;
- (b) if sent by airmail post to an address not within the UK, 5 business days after posting;
- (c) if sent by fax or email before 5 pm London time on a business day, on that business day; and
- (d) if sent by fax or email on a day that is not a business day or after 5 pm London time on a business day, on the next following business day.

(2) Any notices in respect of client money proofs to be sent to or served on the Company or the Administrators must be emailed to rebecca.browne@lbia-eu.com with a hard copy delivered for the attention of the Administrators to: Level 23, 25 Canada Square, London, E14 5LQ.

(3) Any notices in respect of appeals or legal proceedings to be sent to or served on the Company or the Administrators must be emailed to nick.porter@linklaters.com with a hard copy delivered for the attention of Nick Porter to: Linklaters LLP, 1 Silk Street, London, EC2Y 8HQ.

FORM 1: APPEAL AGAINST REJECTION OF CLIENT MONEY PROOF

Form IAA

Rule 1.35

Insolvency Act Application Notice

See Form IAA-N for
guidance notes on
how to complete
this Form IAA

Insert case number if
the court has
assigned one

No. 7942 of 2008 / CR-2008-000012

Delete/
complete as
necessary:

[a]

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

(a) High
Court,
London

INSOLVENCY AND COMPANIES LIST (ChD)

(b) High
Court B&PCs
DR

[b]

(c) Non-
B&PCs DR

(d) County Ct

[c]

[d]

Insert name of
Debtor/bankrupt or
company

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

[...]

Insert name(s) of
applicant(s)

APPLICANT(S)

AND

(1) LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN ADMINISTRATION) (as trustee of the Client Money Trust)

(2) RUSSELL DOWNS, JULIAN GUY PARR, GILLIAN ELEANOR BRUCE, and EDWARD JOHN MACNAMARA (as Administrators of the Company)

Insert name(s) of respondent(s)

RESPONDENTS

Delete/complete as applicable

This application is made pursuant to the Investment (England and Wales) Rules 2016, in accordance with Rule 4 of the Client Money Distribution Procedure prescribed by the Order of Mr[s] Justice [] dated [] 2018.

Insert required details (name, address, etc) of applicant(s)

The Applicant(s) is/are [...]

Insert required details (name, address, etc) of respondent(s)

The Respondents are

(1) Lehman Brothers International (Europe) (in administration) a company incorporated in England and Wales with registered number 02538254 whose registered address is Level 23, 25 Canada Square, London, E14 5LQ ("**the Company**") (as trustee of the Client Money Trust); and

(2) Russell Downs, Julian Guy Parr, Gillian Eleanor Bruce and Edward John MacNamara of 7 More London Riverside, London, SE1 2RT as Administrators of the Company (tel. 020 7804 4666 email russell.downs@uk.pwc.com).

Insert required details of the debtor or company that is the subject of the proceedings

This application is an appeal against the rejection of a client money proof pursuant to Rule 4 of the Client Money Distribution Procedure.

This application is made pursuant to the Investment (England and Wales) Rules 2016, in accordance with Rule 4 of the Client Money Distribution Procedure prescribed by the Order of Mr[s] Justice [] dated [] 2018.

The application shall be governed by the Client Money Distribution Procedure and the Court shall give directions for the determination of this application in accordance with that procedure and, as appropriate, Chapter 2 of Part 14 of the Insolvency (England and Wales) Rules 2016.

Identify level of judge and court or hearing centre (as per heading)

This application is made to the Judge.

Delete as applicable and if YES, insert the number assigned by the court

Is this application within existing insolvency proceedings? **YES**

The court reference number for the proceedings to which this application relates is: No. 7942 of 2008 / CR-2008-000012

The Applicant(s) seek(s) the following relief [OR order OR directions]:

(a) ...

(b) ...

Provide details of basis for application or identify the witness statement made in support

The [matters on which the Applicant(s) relies (rely)] [OR grounds upon which the Applicant(s) claim(s) to be entitled to this relief] [are as follows:

(a) ...

(b) ...]

[OR: are set out in the witness statement of *[insert the name of the witness who has provided evidence in support and the date of the statement]*]

The Applicant appends to this application a copy of: (1) its client money proof; and (2) the notice of rejection of that proof.

Insert names, addresses of those on whom the application is to be served (if any)

The names and addresses of the persons on whom it is intended to serve this application are:

Nick Porter, Linklaters LLP, One Silk Street, London EC2Y 8HQ

This is the address that the court will use for all communications to the Applicant until notified otherwise in writing

The address for service for the Applicant(s) is:

[...]

Tel. [...] email [...]

If the Application is authenticated by the sole member of a body, this fact and the body in question must be identified

Dated 20...

Signed

[Solicitor for] The Applicant(s)

Name

[Position Held]

For court use

(Where the Application is issued by e-filing, the endorsement will normally be on the front of the Application, beneath the seal)

Endorsement by the Court

This application will be heard:

Date

Time

Place

Insert address of court in which Application is to be issued

This application was issued at the Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL