



*Lehman Brothers International (Europe)
(in administration) (LBIE)*

Return of Assets – Court Hearing 16 March 2009

Further to our update of 27 February 2009 [click here to view](#) in relation to the return of trust assets, on 16 March 2009 following the joint administrators' application for directions, Mr Justice Blackburne ordered that **the administrators of LBIE be permitted to propose a Scheme of Arrangement** under Part 26 of the Companies Act 2006 (a "Scheme") **between LBIE and its creditors in relation to the return of securities and cash held by LBIE on trust for its clients** (the "Trust Assets"). Mr Justice Blackburne also ordered that the administrators of LBIE be permitted to reclaim their reasonable costs in relation to the proposition of such a Scheme from the Trust Assets, and, to the extent that the Trust Assets do not cover their costs in relation to the Scheme, from the estate of LBIE.

Whilst the terms of the Scheme have not yet been finalised and no draft is available, the administrators are of the view that a Scheme would represent the most flexible method of dealing with creditor claims in relation to Trust Assets. It may also be used in an effort to bring an unprecedented situation to a conclusion as quickly as possible. The administrators, in their application, emphasised the difficulty they had experienced and continue to experience in assessing the large number of complex claims that have been made in relation to Trust Assets. Such complexities, arising particularly under prime brokerage arrangements, have been further complicated by a number of cross claims in relation to the same assets and with difficulty experienced in obtaining and reconciling data from international sources. By setting out a timetable for dealing with claims, one purpose of the Scheme is likely to be the imposition of a "binding final claims submission date" for Trust Claims.

The administrators hope to have worked up a draft Scheme by the early summer. The intention is that many points (such as jurisdictional issues and creditor classes) can then be considered prior to September, following which the Scheme will be put before creditors and the court for approval. Sections 895 to 900 of the Companies Act 2006 allow the court to sanction an arrangement between a company and any class of its creditors. Court approval is required to call creditors' meetings. If the creditors voting on the Scheme support it (by majorities of 50% in number and 75% in value), and the court then approves the Scheme, it becomes binding on all affected creditors.

A brief submission was made at the hearing on behalf of the London Investment Banking Association ("LIBA"). Whilst LIBA did not oppose the application and the concept of a Scheme, they did express concern that it should not be used to set a precedent that might erode the certainty of trusts on which many investment banking practices are based. What form the Scheme eventually takes however, and whether it is subsequently approved by the requisite classes of creditors, remains to be seen.

It looks as if it will still be some time before most former clients of LBIE get their trust assets back. However, the administrators consider that if a Scheme can be delivered, that will be considerably quicker than any other alternative currently available.

Disclaimer

Please note that the contents of this note provide an overview only. It is intended as guidance only and should not be relied upon as legal advice. Clients' circumstances will differ in each case.

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