

# *Lehman Brothers*

## *Client Assets - Letter from the Administrators*



As a client of Lehman Brothers International (Europe) ("LBIE") you may recently have received a letter from the Administrators requesting the provision of certain information in respect of your positions (or those of your funds) with LBIE. The letter asks firms to provide a confirmation of positions and balances held with LBIE as at 7.56 a.m. on 15 September 2008 (when the Administration Order in respect of LBIE was made). The letter also provides a "suggested format" for the provision of the requested information in relation to each account name/account number.

It is important to note the following points in relation to this request:

- although your response will not amount to a formal, statutory proof of claim (which is not required at this stage), you should nonetheless exercise considerable care in preparing the response - any discrepancy between your response to the letter and your final proof may be prejudicial to your position;
- we would expect that, based on the statutory procedures which apply to an English law administration, the first meeting of creditors will be held in about a month's time in mid-November (subject to any potential postponement made with the approval of the court) - at this stage, in order to be able to vote at the meeting, you will need to have submitted reasonable details of your claim (but this need not amount to your final proof of claim);
- you should therefore not feel pressurised into responding to the Administrators' request by return - it is important to take the time to prepare the response carefully taking into account the issues raised in this note and not to rush into a reply which may prove prejudicial later;
- the letter attaches a "suggested format" for the response (in the form of an Excel spreadsheet) - however, you are not obliged to follow this format and there may be circumstances in which it would be in your best interests *not* to do so (see below);
- the suggested format for the response encourages the provision of data in relation to "net positions" - you should not automatically assume that claiming a net position is necessarily an advantageous thing to do: a complex legal analysis is likely to be required, looking at the terms of the contractual documentation, the relevant governing law, whether or not you issued notices of termination/close-out and the English (and, potentially, New York) law of set off;
- in this regard, your claim will, for the purposes of voting at the creditors' meeting, be adjusted *as if* any mandatory set-off under English insolvency law were applied on the day the votes are counted. However, you should make clear that any statement by you of a net position is made for that purpose only, and not for the purposes of your final claim for a distribution in due course, and not for any other purpose;
- the suggested format for the response also encourages the provision of data in relation to "nominal rehypothecated" assets but:
  - you may not have reliable information from LBIE as to the extent to which it exercised any rights of rehypothecation that it might have had under the contractual documentation; and
  - without reliable information, it could be prejudicial to your position to confirm to the Administrators that assets were "rehypothecated" since this could be taken to mean that you acknowledge that you have no proprietary claim in relation to those assets;

### *Client considerations:*

*Do not panic*

*Prepare your response carefully*

*You do not have to follow the suggested format of response*

*Reserve your legal rights*

- you are asked to provide details of all contractual agreements with LBIE and to attach them to your response - it is obviously important to identify the correct legal documents but you should remember that contracts can be varied by supplemental terms and also by conduct or orally, so you should be careful not to assert or imply in your response that the details you have provided are necessarily exhaustive of your legal relationship with LBIE;
- there is a box asking for any "further information" - this will provide you with an opportunity to raise any particular concerns you may have and to take advantage of the invitation made by the Administrators (in their "Client Assets Update" of 7 October 2008) to identify "high profile problems" and "hardship issues" in assisting them to determine whether to "prioritise" your claim;
- as a general matter, it would be important to ensure that the response contains suitable wording reserving your legal rights.

These are matters upon which we would be happy to provide further advice, specific to your circumstances, through your usual contact on Lehman-related issues.

If you have not received such a letter from the Administrators but you had accounts with LBIE please contact us.

## Disclaimer

Please note that the contents of this memorandum provide only an overview of the legal implications surrounding the administration of LBIE. They are intended for guidance only and should not be relied upon as legal advice. Clients' circumstances will differ in each case.

**Travers Smith LLP**

**15 October 2008**

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