



**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMPANIES COURT (ChD)**

**IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)**  
**AND IN THE MATTER OF LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

CR-2008-000026

Before Mr Justice Marcus Smith

Dated 24 July 2020

**B E T W E E N:**

**THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN ADMINISTRATION)**  
The LBHI2 Administrators / Applicants

**-AND-**

- (1) LEHMAN BROTHERS HOLDINGS SCOTTISH LP 3
- (2) LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)
- (3) DEUTSCHE BANK A.G. (LONDON BRANCH)

LBHI2 Respondents

**---and---**

**THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)**  
The PLC Administrators / Applicants

**-AND-**

- (1) LEHMAN BROTHERS HOLDINGS INC.
- (2) THE JOINT LIQUIDATORS OF LB GP NO 1 LIMITED (IN LIQUIDATION)
- (3) DEUTSCHE BANK A.G. (LONDON BRANCH)

PLC Respondents

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**ORDER**

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**UPON** the LBHI2 Administrators' application dated 16 March 2018 for directions pursuant to paragraphs 63 and/or 68(2) of Schedule B1 to the Insolvency Act 1986 in the administration of LB Holdings Intermediate 2 Limited ("**LBHI2**") and the PLC Administrators' application dated 16 March 2018 for directions pursuant to paragraphs 63 and/or 68(2) of Schedule B1 to the Insolvency Act 1986 in the administration of Lehman Brothers Holdings plc ("**PLC**") (the "**LBHI2 Application**" and the "**PLC Application**" respectively, and together the "**Applications**")

**AND UPON** the trial of the LBHI2 Application and the PLC Application heard on 11, 12, 13, 14, 15, 19, 20, 21 and 22 November 2019 (with supplemental written submissions thereafter) and on 7 May 2020 (with supplemental written submissions thereafter)

**AND UPON** the judgment of Mr Justice Marcus Smith on the Applications (the "**Judgment**") handed down on 3 July 2020 at a hearing without the attendance of the parties or Counsel (the "**3 July Hearing**")

**AND UPON** the Orders of Mr Justice Marcus Smith adjourning the 3 July Hearing and the consideration of any application for permission to appeal to 10:30 am on 24 July 2020 (the "**Adjourned Hearing**"), as amended by the Order of Mr Justice Marcus Smith dated 11 August 2020 extending time for the filing of any appellant's notice under CPR Rule 52.12(2) (the "**Extension Order**")

**AND UPON** hearing from Mr Arden QC, Counsel for the LBHI2 Administrators, Mr Beltrami QC, Counsel for the PLC Administrators, Mr Phillips QC, Counsel for LBHI and SLP3, Mr Fisher QC, Counsel for Deutsche Bank A.G. (London Branch) and Ms Hilliard QC, Counsel for LB GP No1 Limited (In Liquidation), at the Adjourned Hearing, heard remotely by video

**LBHI2 APPLICATION (CR-2009-000052)**

**IT IS DECLARED THAT:**

1. The claims of PLC under two long-term subordinated loan facility agreements and one short-term subordinated loan facility agreement with LBHI2, all dated 1 November 2006 (together the "**LBHI2 Sub-Debt**"), are claims that rank for distribution before the claims of Lehman Brothers Holdings Scottish LP3 ("**SLP3**") under the Floating Rate Subordinated Notes issued by LBHI2 pursuant to an offering circular dated 26 April 2007 and amended by extraordinary resolution on 3 September 2008 (the "**LBHI2 Sub-Notes**").

**AND IT IS ORDERED THAT:**

2. The LBHI2 Administrators' costs of the Applications shall be paid as an expense of LBHI2's administration.
3. Subject as follows, SLP3 shall pay the costs of the PLC Administrators in respect of the LBHI2 Application, such costs to be subject to detailed assessment on the standard basis if not agreed. The costs for which SLP3 is liable under this paragraph shall not include the costs incurred by the PLC Administrators in connection with their participation in the disclosure exercise carried out by the PLC Administrators pursuant to paragraphs 4(a) and 5 of the order made by Mr Justice Mann on 24 July 2018.
4. Subject as follows, SLP3 has permission to appeal the declaration set out at paragraph 1 above. This permission does not extend to, and permission to appeal is refused in respect of, the grounds of appeal identified at paragraphs 53 to 55 of SLP3's skeleton argument dated 22 July 2020 whereby SLP3 contended that the Court erred in holding that the LBHI2 Sub-Notes should not be rectified.

**PLC APPLICATION (CR-2008-000026)**

**IT IS DECLARED THAT:**

5. The claims of Lehman Brothers Holdings Inc ("**LBHI**") under two long-term subordinated loan facility agreements dated 30 July 2004 and one short-term subordinated loan facility agreement dated 31 October 2005 (together the "**PLC Sub-Debt**") have not been released pursuant to a settlement agreement entered into as of 24 October 2011 between, amongst others, PLC and LBHI.

6. The claims of LBHI under the PLC Sub-Debt have not been reduced, discharged or diminished by virtue of any payments in respect of guarantee claims.
7. The claims of LBHI under the PLC Sub-Debt rank for distribution *pari passu* with the claims of LB GP No 1 Limited (in liquidation) (as General Partner of, respectively, Lehman Brothers UK Capital Funding LP, Lehman Brothers UK Capital Funding II LP and Lehman Brothers UK Capital Funding III LP) ("**GP1**") under Fixed Rate Subordinated Notes issued by PLC pursuant to offering circulars dated 29 March 2005, 19 September 2005, 26 October 2005 and 20 February 2006 (together the "**PLC Sub-Notes**").
8. The claims of GP1 under the PLC Sub-Notes are provable future debts, the quantum of which falls to be discounted under Rule 14.44 of the Insolvency (England and Wales) Rules 2016 (the "**2016 Rules**").
9. By virtue of Rule 14.23(1) of the 2016 Rules, GP1 may not prove for any interest accruing on the PLC Sub-Notes after 15 September 2008.

**AND IT IS DECLARED BY CONSENT THAT:**

10. Any liability of PLC which might be established under guarantees given by PLC by Deeds of Guarantee in favour of "Holders" (as defined in each Deed of Guarantee) of certain preferred securities issued by each of Lehman Brothers UK Capital Funding LP, Lehman Brothers UK Capital Funding II LP and Lehman Brothers UK Capital Funding III LP in the context of the transactions referenced at paragraph 7 above rank for distribution after any liabilities in respect of each of the PLC Sub-Debt and the PLC Sub-Notes.

**AND IT IS ORDERED THAT:**

11. Without prejudice to any Order in respect of costs made in favour of the PLC Administrators in the LBHI2 Application, the PLC Administrators' costs of the Applications shall be paid as an expense of PLC's administration.
12. Deutsche Bank A.G. (London Branch) shall pay the costs of LBHI in respect of the PLC Application insofar as they relate to the declarations at paragraphs 5, 6, 8 and 9 above and the Dividend Stopper argument (as defined at paragraph 32(2) and further explained at paragraph 366 of the Judgment), such costs (a) to be determined as being 30% of SLP3 and LBHI's total costs of the Applications; and (b) to be subject to detailed assessment on the standard basis if not agreed.
13. Deutsche Bank A.G. (London Branch) ("**Deutsche Bank**") shall pay 75% of the costs of LBHI in respect of the PLC Application insofar as they relate to the declaration at paragraph 7 above, such costs (a) to be determined as being 20% of SLP3 and LBHI's total costs of the Applications; and (b) to be subject to detailed assessment on the standard basis if not agreed.
14. For the avoidance of doubt, the effect of the costs orders at paragraphs 12-13 above is that Deutsche Bank shall be liable to pay, in aggregate, 45% of SLP3 and LBHI's total costs of the Applications.

15. The balance of 25% of LBHI's costs in respect of the PLC Application insofar as they relate to the declaration at paragraph 7 above (being 5% of SLP3 and LBHI's total costs of the Applications) be allocated to GP1, but such costs are to be borne by LBHI and irrecoverable from GP1.
16. Deutsche Bank's application for permission to appeal the declarations at paragraphs 5, 6, 8 and 9 of this Order is refused.
17. Subject as follows, Deutsche Bank and GP1 have permission to appeal the declaration at paragraph 7 of this Order. However, permission to appeal is refused in relation to Deutsche Bank's "Dividend Stopper argument" (as defined at paragraph 32(2) of the Judgment and as further explained at paragraph 366 of the Judgment), including any contention that the Court erred: (a) in the making of the factual findings made and recorded in paragraphs 365 to 377 of the Judgment; and/or (b) in rejecting the arguments made or recorded as having been made by Deutsche Bank, as described and dealt with in paragraphs 365 to 377 of the Judgment.

**APPEAL STEPS**

18. Pursuant to CPR 52.13(4)(a), the time for the filing of any Respondent's Notices be extended to 4.00pm on the date 28 days after the date specified for the filing of any Appellant's Notices in the Extension Order.
19. This Order is to be served by the solicitors for the LBHI2 Applicants on all parties to both Applications.
20. The Court has provided a sealed copy of this Order to the serving party:

**Dentons UK and Middle East LLP, One Fleet Place, London, EC4M 7WS**  
**Ref: 058056.00697/TB/NDB/JDS**