

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD)  
IN THE MATTER OF LEHMAN BROTHERS HOLDINGS PLC  
(IN ADMINISTRATION)  
AND IN THE MATTER OF THE INSOLVENCY ACT 1986  
BETWEEN:

The Joint Administrators of Lehman Brothers Holdings Plc  
(in administration)

APPLICANTS

AND

(1) LB GP No. 1 Limited (in liquidation)  
(2) Lehman Brothers Holdings Inc.  
(3) Deutsche Bank A.G. (London Branch)

RESPONDENTS

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REPLY POSITION PAPER OF THE JOINT ADMINISTRATORS OF  
LEHMAN BROTHERS HOLDINGS PLC

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1. This Reply position paper sets out the JAs' position on a small number of discrete points raised by the parties.

### **The GP1 Position paper**

2. At paragraph 53 of its position paper, GP1 states its understanding that the JAs will not pay any dividend pending the determination of Priority Legal Issues 4 and 5 and that it is "*incumbent*" on the JAs immediately to correct this understanding if that is not their position. It is apparent from paragraph 55 that GP1 includes within the determination for these purposes, "*the resolution of any appeal*".

3. Putting aside the appropriateness or utility of seeking to use a position paper to impose a self-created obligation, the JAs' position following the resolution of the Distribution Directions Application is as stated at paragraphs 59 and 60 of their own position paper.
4. At paragraph 55 of its position paper, GP1 makes various assertions as to what would or would not be proper, reasonable, rational or fair. Consistently with their stated position, the JAs will address such assertions, if and when they arise and become relevant and in the context of any Judgment.

### **The DB position paper**

5. At paragraph 45 of its position paper, DB contends that: (a) if Priority Legal Issue 4 were to be raised by the JAs at all, then it should have been raised before the conclusion of *ECAPS1*; (b) it was "*incumbent*" on the JAs to raise it at the same time as *ECAPS1*, Issue 2, and that the JAs "*should not have permitted*" *ECAPS1*, Issue 2 to be raised if there is an issue as to whether PLC is entitled to the proceeds of the PLC Sub-Notes in any event.
6. Insofar as they are directed at them, the JAs reject these contentions:
  - a. The circumstances in which their application in *ECAPS1* came to be made were explained in the Third Witness Statement of Gillian Eleanor Bruce, dated 15 March 2018, to which reference will be made if such contentions are persisted with. In short, the application followed a process of engagement with interested parties and was intended to facilitate the resolution of issues within the PLC estate identified by those parties. No party at the time raised an issue as regards clause 2.11 of the ECAPS Guarantees and there was no reason for the JAs to include within *ECAPS1* any question as to the legal effect of that clause.
  - b. The circumstances in which the Priority Directions Application came to be made were explained in the Sixth Witness Statement of Edward John Macnamara, dated 14 March 2023, to which

reference will also be made if necessary. Again, the application followed a process of engagement with interested parties, in the course of which LBHI raised an issue as to the legal effect of clause 2.11. The JAs accordingly considered it appropriate to seek the direction of the court and formulated Priority Legal Issues 4 and 5 accordingly.

**ADRIAN BELTRAMI KC**

**KATE HOLDERNESS**

**HOGAN LOVELLS INTERNATIONAL LLP**

**28 July 2023**