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PricewaterhouseCoopers tries to win approval for Lehman Brothers' assets scheme



(Nick Ray/Times Newspapers)

PricewaterhouseCoopers says that its proposed scheme will speed proceedings. Without it it would be obliged to negotiate with each hedge fund individually, which it says would add years to the process

Michael Herman

PricewaterhouseCoopers (PwC), the administrator of Lehman Brothers in Europe, will return to court this morning for a second attempt to win approval for a plan designed to speed up the administration.

PwC is appealing against a High Court decision to block its idea, which it says would take years off the time that hedge funds have to wait for the return of assets frozen when Lehmans collapsed last year.

About 900 European investment funds that traded through Lehman Europe and held their portfolios at the bank had about \$23 billion (£14 billion) of shares, bonds and other financial instruments frozen when Lehmans entered administration on September 15 last year.

How and when these assets should be returned has become the thorniest issue of the Lehmans administration, with many hedge funds claiming that they cannot survive unless their property is returned. About \$14 billion of assets has been returned to the funds, but the remaining \$9 billion is proving more difficult, amid discrepancies over who owns what, poor record-keeping and, PwC says, the fact that there are not enough assets left in Lehmans to meet all the demands.

Frustrated by what they said was an unfairly slow process, a group of funds sued PwC — unsuccessfully — for the immediate return of their assets soon after the administration began. The administrator, which acknowledges the urgency of the situation, has since been working on a solution, which takes the form of a scheme of arrangement — a legal mechanism whereby funds that held assets in Lehmans would surrender their right to individual claims and accept that PwC would divide the available assets in the most equitable way.

Without the scheme, PwC is obliged to negotiate with each hedge fund one by one, which it says would add years to the process and does not solve the issue that there are not enough assets to satisfy all claims.

The scheme is designed to solve situations where, for example, two hedge funds each claim to have held one million British Telecom (BT) shares in their Lehmans accounts but PwC says there are only

1.5 million BT shares available. Under the scheme, the funds would agree that each would accept 750,000 BT shares immediately, with the hope of receiving the balance in future.

The scheme has the blessing of the Lehman Brothers European Creditors committee, but was shot down by the High Court in August. Such a scheme must pass two hurdles before it can be implemented: a High Court or higher judge must approve it as legally acceptable; and 75 per cent of the hedge funds affected must agree to it in a vote. PwC says that it "is confident of the support" of the relevant funds.

The hearing will last two days. As at the High Court, the London Investment Banking Association (LIBA), a trade body for investment banks and securities firms, will speak at the hearing. LIBA does not oppose the PwC scheme outright but says, given the issues at stake, it wants to make sure that the court hears all sides of the argument. PwC is advised by Linklaters; LIBA is represented by Freshfields Bruckhaus Deringer.

'Probably the most complex' bankruptcy yet

The Lehman Brothers scheme of arrangement is the brainchild of Steven Pearson, one of four PricewaterhouseCoopers (PwC) partners running the insolvency, and David Ereira, a partner at Linklaters, leading a team of 100 lawyers dedicated to helping PwC to clean up the mess (Michael Herman writes).

Mr Pearson joined PwC in 1989 and became a partner in 1997. Before tackling Lehmans, he cut his teeth on the administrations of Enron Europe and MG Rover. Mr Ereira is one of 20 Linklaters partners and 80 associates advising PwC on Lehmans.

When it was first announced, Mr Pearson said the Lehmans scheme was "probably the most complex" of its kind. Rivals who have examined it told The Times that Mr Pearson's boast was "probably" right.

Regardless of whether the scheme is approved, Mr Pearson and Mr Ereira are likely to remain popular within their respective firms. Recent court filings show that PwC has earned £154 million in Lehmans-related fees, with Linklaters billing £68 million.

Linklaters leapt to justify its fees by saying that the Lehman Brothers' bankruptcy was the "most complicated in history, raising many novel legal issues of unparalleled scale and complexity".

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