

Party: Applicant  
Witness: Anthony Victor Lomas  
Statement No: 10  
Exhibit: "AVL10"  
Date: 25 July 2014

No. 7942 of 2008

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT

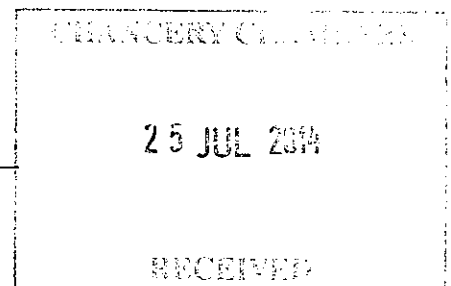
IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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TENTH WITNESS STATEMENT OF  
ANTHONY VICTOR LOMAS

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I, **Anthony Victor Lomas** of PricewaterhouseCoopers LLP ("**PwC**") of 7 More London Riverside, London, SE1 2RT say as follows:

1. I am a Partner in the firm of PwC of the above address and am one of the joint administrators (the "**Joint Administrators**") of Lehman Brothers International (Europe) (in administration) ("**LBIE**").
2. I make this statement in relation to the application for directions issued on 12 June 2014 on behalf of the Joint Administrators pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the "**Act**"), as described below (the "**Application**") and further to paragraph 6 of the Order of the Honourable Mr Justice David Richards in this matter dated 25 June 2014.
3. There is now produced and shown to me marked "**AVL10**" a paginated bundle of documents and correspondence, to which I shall refer. Save where otherwise stated, page references in this statement are to the contents of this exhibit. References to a "Rule" are to a provision of the Insolvency Rules 1986. Terms capitalised but not otherwise defined have the meaning given to them in the Application.

4. Save where otherwise stated, this witness statement is made from facts and matters that are within my own knowledge. Nothing that I say in this witness statement is intended to be a waiver of any privilege to which LBIE and/or the Joint Administrators are entitled and no such privilege is waived.
5. Certain background to the Application is set out in my ninth witness statement dated 11 June 2014. I do not repeat in this witness statement the matters already set out in that witness statement.

**(A) BACKGROUND AND PURPOSE OF THE WITNESS STATEMENT**

6. As a result of the size and complexity of the Administration, the Joint Administrators are required to allocate amongst themselves the day-to-day management of the various areas of the Administration. The allocation of responsibilities among the Joint Administrators has evolved throughout the duration of the Administration and is regularly reassessed as required. Accordingly, the involvement of the various Joint Administrators in the processes described in this witness statement has changed from time to time. Whilst I give this witness statement as the Joint Administrator with responsibility for the conduct of this Application, in this witness statement I draw as necessary on information provided to me by my fellow Joint Administrators and LBIE and PwC staff working on the Administration.
7. In order to assist the Court in the determination of the questions relating to the Post-Administration Contracts, the Joint Administrators, with the assistance of their solicitors, Linklaters LLP, have conducted a review of documents relating to the development and evolution of CDDs using key word searches across the documentation of those considered to be key custodians during the most relevant time periods. That review was conducted with a view to testing, verifying and supporting as appropriate, my recollection of these issues, and that of my fellow Joint Administrators and the other members of the PwC and LBIE teams with whom I have discussed these issues in preparing this statement.

8. For each of the CDDs entered into, there are typically, in addition to the final CDD itself, drafts of the deed exchanged between the parties as well as correspondence and other related documentation. The Joint Administrators considered a review of all such material in their control in respect of every executed CDD to be disproportionate and instead adopted a targeted approach to the document review focusing on what they consider to be the key periods (for the purposes of the Application) in the development and evolution of the Post-Administration Contracts.
9. This witness statement is intended to provide factual background to the Court for the purposes of determining the questions in the Application which concern the impact of releases contained in Post-Administration Contracts on creditors' claims for Statutory Interest and Currency Conversion Claims (being questions 34 to 36). I set out in this witness statement the background to, and the development of, the CRA and CDDs. In order to provide context that may be helpful to the Court in its consideration of the effect of the release provisions contained in Post-Administration Contracts, I explain the background to and genesis of the CRA and the CDDs, before turning to the subsequent modification of the CDDs in 2012 expressly to address the question of Statutory Interest and later, in late 2013, expressly to address the matter of Currency Conversion Claims.
10. Over 1,500 CDDs have been entered into with approximately 1,180 different counterparties over the course of the past four years. Each of these CDDs was produced and negotiated by LBIE personnel, typically drawn from LBIE's front office and legal teams, and/or PwC personnel, with the Joint Administrators having an oversight role and becoming involved in particular issues on a case by case basis as and when necessary. The team within the Administration (both past and present) responsible for the development and negotiation of the CDDs has included over 100 individuals.
11. It is, accordingly, not my intention in this witness statement to seek to address all possible variations that exist within the body of executed CDDs, which includes a number of different templates used by LBIE to

cater for the different characteristics of the underlying unsecured claims. However, in order to assist the Court, and for completeness, I exhibit to this witness statement a copy of each of the current or last used form of, template CDDs. In this witness statement, I address only the forms of CDDs used for third party financial trading creditors, which represent the vast majority of LBIE's third party creditors. Accordingly, all references to "unsecured claims" for the purposes of this statement are to the unsecured claims of financial trading creditors. The Joint Administrators have used different forms of contract to document agreements reached in respect of affiliate, non-trading and employee unsecured claims with which I do not deal in this witness statement.

12. I structure the remainder of this witness statement as follows:

(B) **Trust Property and the CRA:** In section B, I explain the issues faced by the Joint Administrators at the commencement of the Administration concerning how to deal with property held by LBIE on trust and the resulting development of the CRA;

(C) **Unsecured Claims:** In section C, I explain the mechanisms considered by the Joint Administrators from early 2010 in order to deal with the agreement of unsecured claims and the development of a consensual approach, implemented through the use of CDDs;

(D) **Claims Determination Deeds:** In section D, I describe the genesis and purpose of the CDDs and set out the relevant release provisions;

(E) **Statutory Interest:** In section E, I explain when the issue of Statutory Interest first arose in the context of the CDDs and how this was dealt with by the Joint Administrators, leading ultimately to the inclusion of additional language expressly relating to Statutory Interest in the CDDs and subsequently, in the Client Money Supplemental Deeds;

(F) **Currency Conversion Claims:** In section F, I turn to the matter of Currency Conversion Claims, describing how queries regarding such claims came to be raised in 2013 and how they were dealt with by the

Joint Administrators, leading ultimately to the inclusion of a carve-out in the CDDs preserving such claims; and

**(G) Recent developments and the admission of claims without a CDD:** Finally, in section G, I summarise how recent developments have resulted in the Joint Administrators admitting certain unsecured claims other than by way of a CDD. I also refer to the fact that over the course of the Administration, the Joint Administrators have, on occasion, admitted unsecured claims by way of a bespoke contract.

**(B) TRUST PROPERTY AND THE CRA**

13. For the reasons that follow, dealing with the unsecured claims of creditors was not an immediate priority at the commencement of the Administration. One of the immediate priorities of the Joint Administrators following their appointment was to create a stable operating environment which would facilitate the realisation of value for the LBIE estate. In order for this to be achieved, and for the Administration to progress, it was of fundamental importance that priority be given to the realisation of assets, including cash, securities and financial contracts that were in-the-money for LBIE.
14. The Joint Administrators also faced, from the outset of the Administration, pressure to deal with claims in respect of property held by LBIE on trust, primarily for its clients. Prior to the Administration, LBIE had held, in the course of its prime brokerage, custody and other businesses, a very considerable quantity of securities and cash on trust for clients and other parties (including affiliates) ("**Trust Property**"). The Joint Administrators faced immediate calls for the return of Trust Property, which in many cases was critical to the businesses of LBIE's former clients.
15. The Joint Administrators wished, where possible and with minimal risk to the Administration, to return Trust Property as quickly as possible. The return of Trust Property was initially conducted on an *ad hoc*, bilateral basis with priority given to those who were able to demonstrate particular

hardship or who provided an indemnity and agreed to return the Trust Property to LBIE in the event it was ultimately determined that the Trust Property should not have been returned to them.

16. However, the Joint Administrators faced considerable difficulties in returning Trust Property to its owners. In particular:

16.1 the return of Trust Property (over which LBIE usually had security rights) involved an assessment both of a party's entitlement to Trust Property and its unsecured position vis-à-vis LBIE (that is, whether it was a creditor or a debtor of LBIE), both of which were, in many cases, highly complex;

16.2 LBIE faced competing claims from other parties (including affiliates) to some Trust Property;

16.3 the above factors, together with considerable uncertainty (particularly at that early stage of the Administration) as to the accuracy of LBIE's books and records, gave rise to a risk of LBIE:

a) returning Trust Property to the wrong party; and/or

b) returning Trust Property to a party that was a debtor of LBIE with attendant downside for the LBIE unsecured estate.

17. The Joint Administrators' first proposal was to return Trust Property by way of a scheme of arrangement pursuant to section 895 of the Companies Act 2006 (the "**Trust Property Scheme**"). On 14 July 2009, the Administrators made an application to the High Court to sanction the Trust Property Scheme (a copy of the application is at pages 1 to 2). However in August 2009, the High Court decided that it did not have jurisdiction to sanction a scheme compromising proprietary rights and therefore would not be able to sanction the Trust Property Scheme (a copy of that decision is at pages 3 to 24). In November 2009, the Court of Appeal upheld that decision (a copy of the Court of Appeal's judgment is at pages 25 to 50).

18. As a result of that decision, the Joint Administrators instead focused on developing a consensual, contractual mechanism for returning Trust Property. In consultation with the Claim Resolution Agreement Working Group (a sub-committee of the LBIE Creditors' Committee) and personnel from the Administration, the Joint Administrators developed proposals for the return of Trust Property based on a standard methodology for the valuation of claims.
19. The CRA was the multilateral contract produced to govern the return of Trust Property (a copy of the current version of the CRA and its schedules is at pages 51 to 333). The CRA provided for the release of a signatory's existing claims against LBIE in exchange for new rights. In particular, signatories (being those clients of LBIE who had an entitlement to Trust Property and who opted to accede to the CRA) released their rights in respect of:
- a) all Trust Property distributed in accordance with the CRA, thus reducing the risk of competing claims being brought against LBIE, the Joint Administrators or signatories to the CRA; and
  - b) "**Financial Contracts**" (as defined in the CRA), thus giving LBIE a degree of certainty as to the unsecured claims arising from such contracts (albeit that the CRA substituted those rights for new rights to agree unsecured claims based on the terms of the Financial Contracts).
20. The release clause contained in the CRA (the "**CRA Release Clause**") is in the following form:
- "With effect from its Accession Date, each Signatory shall waive and release the following Claims against the Release Parties (to the extent that they are not Excluded Claims, and subject to Clause 4.3):*
- 4.2.1 all Claims for or in respect of any payment for or on account of any Asset which is or was at any time the subject of an Asset Claim;*

4.2.2 *all Claims for consequential or economic loss (including Claims for loss of bargain, loss of value or other losses computed by reference to the value which may have been available to a Signatory had any obligation of the Company to the Signatory been duly performed in a timely manner in accordance with its terms) in respect of any Asset which is or was at any time the subject of an Asset Claim; and*

4.2.3 *all Claims (apart from, for the avoidance of doubt, Modified Claims) in respect of any Financial Contract,*

*(together, the "Released Claims").*

21. A "Claim" is defined under the CRA as

*"a claim in law or in equity of whatsoever nature: (i) including for (but not limited to) breach of contract, tort, restitutionary claims and breach of trust; (ii) whether arising by, amongst other things, reason of insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise; and (iii) for, amongst other things, the enforcement of any right to, or any liability in respect of a right to: (a) seek or enforce judgment; (b) exercise any remedy (for damages or otherwise), indemnity and contribution, whether for losses (including consequential loss, economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise), costs, and expenses of any nature; or (c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever..."*

22. In consideration for the release of these claims, a signatory would, in addition to any receipt of Trust Property, become entitled to have its



unsecured claims or liabilities determined in accordance with the CRA, giving rise to a new "**Net Contractual Position**" under the CRA. Clause 4.4.2 of the CRA is in the following form:

**"4.4.2 Released Claims**

*All Signatories shall have their Released Claims exchanged for the following, as appropriate:*

*(i) the right to have their Net Contractual Position, Allocations, Distributions and Appropriations determined on the basis set out in this Agreement;*

*(ii) the right to claim as a new obligation of the Company their Net Financial Claim (if any); and*

*(iii) an Ascertained Claim (if any) for such amount as is determined under this Agreement (including any Capped Net 19/9 Shortfall Claim, in accordance with clause 5 (19/9 Shortfall Claim) of the Common Terms),*

*(together with the Modified Claims as modified by Clause 4.4.1, the "**New Claims**")."*

23. In the event that the Net Contractual Position (calculated pursuant to Clause 24.2 of the CRA by reference to the Close-Out Amount(s) in respect of the Financial Contract(s) (as defined therein) between LBIE and the creditor) was payable to LBIE (a "**Net Financial Liability**"), such liability would be applied against a signatory's entitlement to Trust Property available for return to it, thereby reducing the amount of Trust Property to be distributed to that signatory. In the event that the net figure was a claim against LBIE (a "**Net Financial Claim**"), that would be admitted as an unsecured claim against LBIE for the purposes of any future distributions from the LBIE unsecured estate.
24. Clause 20.4.7 of the CRA deals with the accrual of interest in determining the Close-Out Amount in respect of a Financial Contract as follows:

*"20.4.7 Accrual of interest: in determining the Close-Out Amount in respect of a Financial Contract, no interest shall accrue on any unpaid Liability of the Company from the Administration Date save to the extent that such interest would accrue under Rule 2.88 of the Insolvency Rules;"*

25. **"Close-Out Amount"** is defined in the CRA as follows:

*"in respect of a Financial Contract and each Signatory that is a party to it: (i) a single amount payable by either one of the Company or the relevant Signatory to the other as a result of termination of such Financial Contract as determined in accordance with Clause 20; or (ii) the aggregate of each Close-Out Component in accordance with Clause 21.3"*

26. Clause 25.1 of the CRA deals with the accrual of interest on a creditor's Net Financial Claim and provides as follows:

**"25.1 Net Financial Claim**

*A Net Contractual Position in respect of a Signatory expressed as a positive number will represent an amount due and owing by the Company to that Signatory, which shall constitute an ascertained unsecured claim of that Signatory in the winding-up of the Company or any distribution of the Company's assets to its unsecured creditors (such Claim, a "**Net Financial Claim**"). For the avoidance of doubt, no interest shall accrue on any Net Financial Claim, save to the extent provided in Rule 2.88 of the Insolvency Rules".*

27. The CRA was proposed by the Joint Administrators on 24 November 2009. It was proposed for collective approval and was therefore not subject to negotiation or amendment. The CRA was accepted by counterparties representing over 90 per cent of the Acceptance Value of the Acceptance Threshold Claims (as defined in the CRA). The bar date for claims in relation to Trust Property was 19 March 2010, with the first

returns to clients pursuant to the CRA process being made shortly thereafter.

**(C) UNSECURED CLAIMS**

28. By late 2009, the Joint Administrators had reached the conclusion that they would, in due course, be in a position to make distributions to unsecured creditors from the LBIE estate. Accordingly, on 2 December 2009, the Joint Administrators obtained from the High Court an Order to convert the Administration into a Distributing Administration (the "**Rule 2.95 Order**") (a copy of the Rule 2.95 Order is at page 334 to 337).
29. On, or about, 4 December 2009, the Joint Administrators sent to all creditors whose addresses were known to them at that time a notice pursuant to Rule 2.95 informing them that the Joint Administrators proposed to make a distribution to LBIE's unsecured creditors (the "**Distribution Notice**"). The Distribution Notice specified 31 December 2010 as the date up to which proofs of debt could be lodged (the "**Last Date for Proving**") which, by reason of Rule 2.97(1), required the Joint Administrators to declare a dividend to unsecured creditors by 28 February 2011 (a copy of the Distribution Notice is at page 338).
30. The sending out of the Distribution Notice caused the set-off provisions contained in Rule 2.85 to come into effect, affording the Joint Administrators greater certainty as to the level of claims facing the LBIE estate as they continued to prepare to make distributions to creditors.
31. Obtaining the Rule 2.95 Order was a necessary step and a catalyst in the development of an unsecured claims determination process for the LBIE estate. Once the Joint Administrators had obtained the Rule 2.95 Order, we actively encouraged creditors to submit their proofs of debt as soon as possible and well in advance of the Last Date for Proving.

*The need for an alternative method of determining unsecured claims*

32. As set out in Section 5 of the Third Progress Report (a copy of which is at pages 339 to 438 with Section 5 at 371 to 376), for the period 15

September 2009 to 14 March 2010, the Joint Administrators envisaged at that time that approximately 4,500 counterparties were likely to be creditors of LBIE.

33. The Joint Administrators were acutely aware that the majority of LBIE's creditors had claims arising under complex financial trading contracts and that the process of determining such claims under the statutory proof of debt regime would be complicated and lengthy. The scale of the valuation and validation process involved in determining the claims of such a large number of actual and potential claimants meant that the Joint Administrators considered it appropriate to give serious consideration to alternative processes for determining unsecured creditors' claims.
34. It was believed that a systematic, consensual approach applicable to all creditors would facilitate the making of a distribution to unsecured creditors within a more expeditious timeframe than would be the case if the Joint Administrators were to follow a more conventional, bilateral claims agreement process.
35. Accordingly, creditors were informed in April 2010 (see the executive summary to the Third Progress Report (a copy of which is at pages 347 to 351)) that the Joint Administrators were exploring options to simplify and accelerate the claim determination and asset distribution process. In Section 5 of the Third Progress Report dealing with unsecured creditors (at pages 371 to 376) it was stated (at page 36):

*"Whilst it is now possible for the formal process of claim agreement to progress, the Administrators believe that scope may exist to accelerate the claim admission and asset distribution process and are exploring how a more rapid distribution can be achieved under alternative mechanisms.*

*The Administrators have identified a number of options and these are in the process of being explored."*

36. The Joint Administrators considered a number of mechanisms for effecting a systematic, collective approach to the determination of unsecured claims including a scheme of arrangement, a CVA and a multilateral contract.
37. The Joint Administrators' intention at that time to explore a consensual approach, with a view to expediting the determination of unsecured creditors' claims, was reported in a press release on 16 June 2010 and summarised in a 'Creditor Update' dated 16 June 2010 (a copy of each of which appears at pages 439 to 440 and 441 to 443 respectively).
38. In seeking to effect a systematic, collective determination of unsecured claims, the Joint Administrators were, however, hindered by the judgment given by the Court of Appeal in August 2010 in respect of the Joint Administrators' application in relation to pre-administration client money (the "**Client Money Appeal Judgment**") (a copy of which is at page 444 to 526).
39. The practical impact of the Client Money Appeal Judgment was to create considerable uncertainty as to:
- a) which of LBIE's creditors had client money claims, unsecured claims, or both;
  - b) the value of the client money pool; and
  - c) therefore, what funds might be needed to 'top up' the client money pool that would otherwise be available for distribution to LBIE's unsecured creditors.
40. The Client Money Appeal Judgment created considerable uncertainty as to the level of distributions LBIE would ultimately be able to make to unsecured creditors. It was accordingly apparent that the Joint Administrators would not be able to declare a distribution to unsecured creditors by 28 February 2011 as required by the Distribution Notice. In the Fourth Progress Report (a copy of which appears at pages 527 to 610), the Joint Administrators (at page 11) explained that they intended

to make an application to the Court to extend the notice of proposed distribution:

*"The Administrators are currently unable to estimate the quantum or timing of any future dividend distribution. Due primarily to the impact of the Appeal Court Judgment and ongoing issues with Affiliates, very material uncertainties exist regarding the ultimate amount of funds available and the eventual level of admissible creditors' claims.*

[...]

*The Administrators intend to make an application to the UK High Court to extend the Notice of Proposed Distribution for a further two years. Further details will be provided to creditors in due course. In consultation with the Committee, the Administrators will continue to seek ways to expedite the resolution of the very complex issues that remain to be resolved, in order to be in a position to pay a first interim dividend to unsecured creditors as soon as possible within the extension period".*

41. Accordingly, following an application to the High Court by the Joint Administrators, the Last Date for Proving specified in the Distribution Notice was on 13 December 2010, by order of the High Court, extended for a two year period to 31 December 2012 (a copy of that order is at pages 611 to 613).

*Project Canada (The Consensual Approach)*

42. Having determined not to use the previously considered systematic, collective approaches to determine unsecured claims, the Joint Administrators focused on developing a bilateral claims agreement for creditors in order to accelerate the claims agreement process, whilst also accommodating the uncertainty created by the Client Money Appeal Judgment. This process of development was undertaken in consultation with the Unsecured Creditors' Resolution Working Group, which included members of the Creditors' Committee. This project was referred to

externally as the Consensual Approach but was referred to internally as Project Canada.

43. The Joint Administrators decided to progress the agreement of the amount of creditors' claims on the basis that the question of whether all or part of the agreed claim constituted client money would be held over for subsequent determination or agreement. The claim (or any part of it) would only become an admitted claim that ranked for dividend once there had been a determination, assignment or waiver of some or all of the creditor's client money entitlements. I explain at paragraph 52 below the supplemental deeds that were ultimately entered into for this purpose.
44. Project Canada proceeded on the basis that LBIE would offer a creditor a single number representing LBIE's determination of the creditor's claim taking account of the positions under all master agreements and other financial trading arrangements between LBIE and the creditor (the "**LBIE Determination**"). LBIE's calculation was based on its own valuation which the Joint Administrators considered to be a reliable and pragmatic alternative to a bespoke assessment of the vast amount of counterparty-generated data, and which approach ultimately proved to be acceptable to a significant proportion of unsecured creditors who accepted LBIE's Determination and entered into a CDD.
45. Creditors were advised that the LBIE Determination was not intended to be a matter for negotiation and that they were entitled either to accept or reject it. If the LBIE Determination was accepted, the agreement would be formalised in a CDD (provided the other terms thereof were accepted by the creditor). If the LBIE Determination was rejected, the creditor would be advised that it would be able to negotiate its claim on a bilateral basis at a later stage.
46. In November 2010, LBIE formally commenced the communication of LBIE Determinations to creditors.

(D) CLAIMS DETERMINATION DEEDS

47. The CDDs were (and continue to be) used by the Joint Administrators for the purposes of agreeing the amount of unsecured and client money claims and to document the releases, ongoing rights and obligations of LBIE and the creditor. In addition, they set out a mechanism by which a creditor can notify LBIE of a transfer of its claim to a third party.
48. The purpose of the CDDs was to provide an efficient process for agreeing the amount of a creditor's claim. The Joint Administrators also wanted to ensure that, once a claim amount had been agreed, it could not subsequently be reopened by the creditor. From a creditor's perspective, entering into a CDD gave it certainty as to the amount of its claim and, upon the claim becoming an Admitted Claim pursuant to the terms of the CDD, an entitlement to participate in such dividends as would be paid in the Administration. In addition, if the creditor wished to sell its claim, the transfer notice mechanism ensured that both the creditor and the Joint Administrators had a defined process by which the claim assignment would be acknowledged by LBIE, which was regarded as beneficial in the claims trading market.
49. As mentioned above in paragraph 39, in late 2010 there was a degree of uncertainty as regards the extent of a creditor's client money entitlement. The original CDD template (an "**Agreed Claims CDD**") accommodated that uncertainty by agreeing the amount of a creditor's claim but leaving it for a later determination or agreement as to whether the claim constituted a Client Money Claim (as defined therein) or an unsecured creditor claim (or a combination of the two). This enabled the claims agreement process to proceed where, in the absence of such a structure creating optionality, the Joint Administrators and the creditors would have been unable to proceed until there was greater certainty regarding the extent of client money entitlements.



50. The Agreed Claims CDD provided for:
- 50.1 an agreed claim in the amount agreed between LBIE and the creditor (the "**Agreed Claim**");
  - 50.2 the Agreed Claim to become an "**Admitted Claim**", admitted for unsecured dividends in the Administration, upon either: (i) determination by LBIE of the creditor's Client Money Claims and distributions being made from the client money pool (with the Admitted Claim being the amount of the Agreed Claim less the amount of such distributions); or (ii) the creditor electing to be paid its Agreed Claim out of the unsecured estate rather than the client money pool by either releasing or assigning (to Laurifer, a company set up for the purpose by LBIE) its Client Money Claim; and
  - 50.3 waivers and releases designed to give LBIE and the Joint Administrators certainty in respect of the creditor's claims.
51. An Agreed Claims CDD is still used by LBIE in the event that a creditor prefers to execute that form of CDD.
52. Since the Agreed Claims CDD entitled a creditor subsequently to release or assign its Client Money Claims to Laurifer, thereby obtaining an Admitted Claim instead, LBIE subsequently produced template supplemental deeds (each a "**Client Money Supplemental Deed**") for this purpose. The use of Client Money Supplemental Deeds, which began in June 2011, is discussed further in paragraph 73 below.
53. The first CDD, which was an Agreed Claims CDD, was executed on 30 November 2010. By 14 March 2011, LBIE had executed 19 CDDs with creditors with such CDDs having aggregate claims in the amount of circa £362 million. The original Agreed Claims CDD was designed to be used in situations where the relationship between the creditor and LBIE concerned a single product, a single currency and no Trust Property claims. The initial recipients of CDDs were therefore generally counterparties of that kind with derivatives-based claims. As Project

Canada developed, additional CDD templates were created to cater for more complex counterparty relationships, for example where LBIE and the counterparty had entered into multiple agreements.

54. Uncertainty as to creditors' client money entitlements gradually diminished and, in April 2011, LBIE devised a CDD which would operate such that the agreed amount of a claim would become an Admitted Claim immediately upon execution (an "**Admitted Claims CDD**"). The Admitted Claims CDD was used in circumstances where there was little or no possibility of the creditor having a Client Money Claim. Admitted Claims CDDs contain very similar waivers and releases to those contained in Agreed Claims CDDs and referred to at paragraph 50.3 above.
55. As the claims determination process evolved, the Joint Administrators developed alternative forms of CDD to cater for the different characteristics of the claims being agreed or admitted. I set out in Appendix A to this witness statement a table referring to each of these CDD templates and explaining the circumstances in which each template is (or was) used. Copies of the current versions or the last used version of the templates are exhibited at pages 616 to 2000, as specifically referenced in the table at Appendix A.

*CDD creditor interaction*

56. When the Joint Administrators provide creditors with a CDD, it is usual practice that they do so with a standard form covering email. The precise wording of this email has evolved over time but has generally highlighted that:

56.1 the terms of the CDD, once executed, will establish the agreed claim amount which the counterparty will have against LBIE;

56.2 the counterparty should take independent professional advice on the contents of the deed before executing it; and

56.3 the terms of the CDD were intended to be non-negotiable

A copy of the cover email currently used is at pages 614.

57. The Joint Administrators have sought, so far as reasonably possible, to ensure that CDDs remain relatively standardised. However, LBIE has considered proposed amendments on a case by case basis.
58. Although a large number of different creditors have entered into CDDs, many of them were represented by a relatively small group of law firms, such that CDD amendments agreed with one creditor would often then be requested in the context of dealing with another creditor represented by the same solicitors. This process led to LBIE making global template revisions as and when such amendments were being commonly accepted by LBIE.

*Release Clause*

59. A broad release provision was included in the CDDs with the intention that the amount of the Agreed Claim or Admitted Claim (as the case may be) would not need to be revisited once it had been agreed in a CDD. The creditor gave a release, (generally at Clause 2.1 of the CDD) (the "**Release Clause**"), expressed so as not to apply to the Agreed or Admitted Claim, that was, save as described in paragraph 61 below, in the following (or similar) form:

*"the Creditor and (i) the Company and (ii) the Administrators are hereby each irrevocably and unconditionally released and forever discharged from any and all losses, costs, charges, expenses, Claims (including all Claims for interest costs and orders for costs), demands, actions, causes of action, Liabilities, rights and obligations (including those which arise hereafter upon a change in the relevant law) to or against each other and howsoever arising, whether known or unknown, whether arising in equity or under common law or statute or by reason of breach of contract or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether arising under the [Creditor] Agreement[s] or not, whether in existence now or coming into existence at some time in the future, and whether or not in the contemplation of the*

*Creditor and/or the Company and/or the Administrators on the date hereof...*

60. "Claim" is, save described in paragraph 61 below, as follows (or in similar terms):

*"a claim in law, in equity or otherwise and of whatsoever nature:*

*(i) including any and all claims, actions, liabilities, rights and obligations for breach of contract, tort, statute, restitutionary claims and breach of trust;*

*(ii) whether arising by reason of, amongst other things, insolvency or the termination, whether voluntary or for cause, of any contractual obligation or for any failure of a person to perform any contractual, legal or regulatory obligation or otherwise; [and/or]*

*(iii) for, amongst other things, the enforcement of any right to, or any liability in respect of a right to:*

*(a) seek or enforce judgment;*

*(b) exercise any remedy (for damages or otherwise), indemnity and contribution, whether for losses (including consequential loss, economic loss, loss of bargain, loss of value, or other losses computed by reference to value which may have been available had an obligation been duly performed in a timely manner, or otherwise), costs and expenses of any nature; or*

*(c) apply any set-off, netting, withholding, combination of accounts or retention or similar rights in respect of any claim or liability whatsoever, and/or*

*(iv) including a Proprietary Claim,*

*and "to Claim" and "Claimed" shall be construed accordingly;"*

61. The Release Clause is in materially the same form in each of the different forms of CDD save for those CDDs dealing with CRA Trust Property as discussed below. As regards the claims released, most

CDDs are in materially the form described in paragraph 60 above but some use different language so as to preserve certain types of claims depending on the circumstances (for example, certain claims arising in relation to the CRA or unsecured claims associated with asset shortfalls or trades pending at the time of administration). Similarly, Aggregator CDDs (as defined and explained below) take a different approach to defining the claims released. In later CDDs, the Statutory Interest Language and CCC Language (as defined and discussed in greater detail in Sections E and F of this witness statement, below) was included in the CDDs.

*Release Clause in Aggregator CDDs*

62. A number of CDD templates (as described in Appendix A), were designed specifically for use by those funds actively purchasing claims against LBIE in the secondary market (known colloquially as "aggregators") (the "**Aggregator CDDs**"). The Aggregator CDDs are used in circumstances where an original creditor has assigned its claim(s) against LBIE to an aggregator prior to the execution of a CDD. The release provisions in the Aggregator CDDs are in a different form from the standard form release in that they provide for the release of the claims of the original creditor that were assigned to the aggregator. The reason for this different form of release is that an aggregator may have acquired a number of different claims against LBIE and it is not intended that rights in relation to other claims (i.e. other than those being agreed in the CDD in question) be released by the CDD. A copy of an Aggregator CDD is at pages 791 to 820 . The release language in the Aggregator CDDs does not expressly refer to interest.

*Release Clause in relation to Trust CDDs*

*CRA Signatories*

63. As noted in Section B of this witness statement, the creditors who entered into the CRA (the "**CRA Signatories**" and each a "**CRA Signatory**") received, in consideration for the release of certain claims under the underlying agreements, an entitlement to a new Net Financial

Claim. Although it was not strictly necessary for the CRA Signatories to enter into CDDs in order to agree and admit their unsecured claims (as the CRA was intended to be a complete mechanism for the resolution of their claims), LBIE's policy is to request that creditors do so where they reach agreement with LBIE as to the amount of their claim. A CDD is considered to be a more straightforward and less time-consuming way of documenting that claim instead of issuing the various notices required under the CRA. From the creditor's perspective, this is also desirable as it allows them to transfer their claims pursuant to the transfer notice appended to the CDD which has become widely recognised in the market as the accepted procedure for LBIE acknowledging the assignment of such claims.

64. Accordingly, the Joint Administrators developed a number of CDDs specifically for CRA Signatories (the "**CRA Trust CDDs**"). These contained either release clauses similar to the Release Clause set out at paragraph 59 above or an alternative where various types of claims, in particular Trust Property claims, were being preserved to be dealt with in accordance with the CRA. In these cases, the CDD only contained releases with respect to the Net Financial Claim and certain other specific claims such as (if applicable) pre-administration client money claims. Examples of the two different forms of release under the CRA Trust CDDs are exhibited at pages 1088 to 1116 and 1176 to 1205 respectively. For completeness, I note that some creditors who had entered into a CRA Trust CDD with a narrower release clause subsequently entered into further CDDs as their previously preserved claims were determined or agreed.

*Non-CRA Signatories*

65. Although most Trust Property claimants acceded to the CRA (as described in paragraph 27 above), there were a number of creditors with Trust Property claims which did not (the "**Non-CRA Signatories**"). Such creditors are dealt with on a bilateral basis and CDDs were therefore created for this purpose. The release provisions in the Non-CRA Trust CDDs are in materially the same terms as the Release Clause in

paragraph 59 above, save that, depending on the particular circumstances, the release may carve-out additional claims, in particular, Trust Property claims, and does not always use the definition of "Claim" referred to at paragraph 60 above.

**(E) STATUTORY INTEREST**

66. Prior to 2012, the various CDD templates did not contain an express reference to Statutory Interest. In early 2012, the possibility of a Surplus was being discussed in the market and this triggered queries from certain counterparties as to the impact of the Release Clause on any entitlement they may have to Statutory Interest.
67. LBIE's initial reaction to these enquiries was to explain its view that the inclusion of language to preserve a creditor's right to Statutory Interest was unnecessary on the basis that the release did not waive any entitlement a creditor may have to Statutory Interest.
68. Given the increasing number of requests from creditors that the impact of the Release Clause on entitlements to Statutory Interest be clarified, however, the Joint Administrators agreed (on a case by case basis) to address this issue expressly in CDDs from mid-2012. The first CDD incorporating an express reference to Statutory Interest was executed on 28 June 2012.
69. The Joint Administrators did not ultimately have a difficulty in amending the CDD to include language expressly preserving claims for Statutory Interest as, while, to the best of the Joint Administrators' recollection, the impact of the Release Clause on Statutory interest was not considered during the development of the CDDs, it was never our intention that creditors would waive their right to Statutory Interest by virtue of the Release Clause.
70. In August 2012, the Joint Administrators decided that the suite of CDD templates should be revised in order to include standard language dealing with this issue. Standard language was subsequently agreed by

the Joint Administrators in September 2012 (the "**Statutory Interest Language**") in the following form:

*"For the avoidance of doubt, this Deed shall not prejudice, affect or restrict (and entry into this Deed is not intended to be, and shall not be construed as, an election of remedy or a waiver of limitation of) any rights or claims that the Creditor may have for or in respect of interest under rules 2.88(7) to 2.88(9) (inclusive) of the Insolvency Rules or section 189 of the Insolvency Act".*

71. All CDD templates were updated with the Statutory Interest Language in September 2012 and CDDs executed after this date generally contain the Statutory Interest Language. There may be a number of CDDs executed after the global template revision which do not contain the Statutory Interest Language because the draft CDD was sent to the counterparty prior to the global template amendments having been made and was not amended prior to execution to include the Statutory Interest Language. Those CDDs executed in the period 28 June 2012 to September 2012 which refer to Statutory Interest contain slightly different language, materially in the form which appears in Appendix B to this witness statement.
72. As noted in paragraph 50 above, under an Agreed Claims CDD, a creditor would obtain an Agreed Claim, which would only become an Admitted Claim upon either determination by LBIE of the creditor's Client Money Claims or the creditor electing, through a Client Money Supplemental Deed, to be paid its Agreed Claim out of the unsecured estate by either releasing or assigning its Client Money Claim.
73. The Client Money Supplemental Deeds are short documents designed to convert an Agreed Claim into an Admitted Claim. As stated at paragraph 66 above, prior to August 2012, the CDD templates did not expressly reference Statutory Interest. Following the revision to the CDD templates during August and September 2012 to address Statutory Interest, the template Client Money Supplemental Deeds were similarly updated in



early September 2012 to include the following language in relation to Statutory Interest (the "**CM Statutory Interest Language**"):

*"For the avoidance of doubt, this Deed and the CDD[s] shall not prejudice, affect or restrict (and entry into this Deed is not intended to be, and shall not be construed as, an election of remedy or a waiver or limitation of) any rights or claims that the Creditor may have for or in respect of interest on its Admitted Claims (if any) under rules 2.88(7) to 2.88(9) (inclusive) of the Insolvency Rules or section 189 of the Insolvency Act " .*

**(F) CURRENCY CONVERSION CLAIMS**

74. The possibility of a Currency Conversion Claim was raised for the first time in the context of the application issued by the Joint Administrators on 14 February 2013 for directions in relation to, amongst other things, the priority ranking, in the event of a Surplus, of (i) amounts owing from LBIE to its immediate parent, LB Holdings Intermediate 2 Limited, under certain subordinated debt agreements and (ii) Statutory Interest (the "**Waterfall I Application**"). In March 2013, Lydian Overseas Partners Master Fund Limited was joined to the Waterfall Application to argue for the existence of Currency Conversion Claims and their priority ranking behind Statutory Interest and ahead of the subordinated debt (and the Waterfall I Application was amended to include that issue for determination). At that point in time, the CDDs did not refer to Currency Conversion Claims.
75. In mid-2013, certain creditors made enquiries as to whether the Joint Administrators would be willing expressly to preserve the creditor's rights in respect of Currency Conversion Claims in the CDDs. The question of the impact of the Release Clause on Currency Conversion Claims was then specifically raised on 11 October 2013, at the Pre-Trial Review for the Waterfall I Application, when it was suggested by Leading Counsel for LBHI2 that, under the terms of the Release Clause, a creditor had waived any right to such a claim. The resulting uncertainty as to the effect of the Release Clause on such claims meant that creditors were

not executing CDDs and the progress of the claims determination process was materially impaired during the latter part of 2013.

76. The Joint Administrators' initial response to such enquiries was to state that no amendments would be made to the CDD templates. However, further to ongoing discussions with a number of creditors, the Joint Administrators subsequently revisited their position and engaged with certain creditors and their legal advisors on this issue. They did so largely because there was such concern about the effect of the Release Clause on Currency Conversion Claims that creditors were refusing to sign CDDs.

*Currency Conversion Carve-out Language*

77. LBIE sought to agree appropriate preservation language with the law firms that had raised this issue over the course of several months at the end of 2013 and into early 2014. This proved very difficult and during the course of negotiations, interim versions of such language were included in CDDs executed by a number of creditors (together, the "**Interim CCC Language**"). The two most prevalent forms of interim language used are contained in Appendix C for completeness.
78. By mid-February 2014, further to additional consultation with, and feedback from, a number of creditors and their advisors, the Joint Administrators approved a final form of the language dealing with Currency Conversion Claims to be inserted in the CDD templates (the "**CCC Language**") as follows:

*"Nothing in this Deed shall (i) prevent the Creditor from asserting a Currency Conversion Claim; (ii) operate as a discharge or release of a Currency Conversion Claim if any such claim exists; or (iii) constitute an acknowledgement by the Company of the existence (as a matter of law or fact) of any Currency Conversion Claim".*

79. **Currency Conversion Claim** was defined as "a non-provable claim, if any, that may be asserted by the Creditor where:

- (i) the Admitted Claim is paid in full by the Company by way of distributions in the Administration or following a Liquidation Event; and*
- (ii) the Creditor has a contractual right to be paid part or all of the Admitted Claims which are agreed in accordance with this Deed in a Contractual Currency (the sum arising from such right, the "**Original Foreign Currency Amount**"); and*
- (iii) the total amount received by the Creditor in distributions of principal in respect of such part (or all) of the Admitted Claims relating to the Original Foreign Currency Amount, when converted into the relevant Contractual Currency upon the dates of distribution, is less than the Original Foreign Currency Amount.*

*When calculating its claim under (ii) and (iii) above, the Creditor may take into account the difference between any interest accrued on the Original Foreign Currency Amount, and any interest received in relation to such part (or all) of the Admitted Claim relating to the Original Foreign Currency Amount pursuant to Rule 2.88 of the Insolvency Rules, when converted into the relevant Contractual Currency upon the dates of distribution."*

80. CDDs executed since mid-February 2014 have generally contained the CCC Language.

**(G) RECENT DEVELOPMENTS AND THE ADMISSION OF CLAIMS WITHOUT CDDs**

81. Owing to (i) the impaired progress, in late 2013, in the agreement of CDDs as a result of counterparties' concerns about the effect of the Release Clause on Currency Conversion Claims (noted in paragraphs 75-76 above), (ii) a concern that, in order to maximise the period in which Statutory Interest would be payable, some counterparties were not engaging with LBIE; and (iii) the desire on the part of the Joint

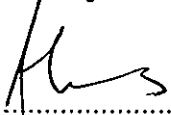
Administrators to continue to make progress in determining creditors' unsecured claims, LBIE has since December 2013 determined the claims of certain creditors using admittance letters instead of CDDs (the "**Admittance Letters**"). They do so in the event that the creditor is not willing to sign a CDD.

82. The Admittance Letters expressly state that the admission of the creditor's unsecured claim is without prejudice to any further rights they may have to (i) any interest payable under Rules 2.88(7)-(9) (inclusive) of the Rules; or (ii) any non-provable claim that may arise due to the creditor having had a contractual right to be paid an amount in a currency other than sterling (the "**Contractual Currency**"), if the distributions from LBIE (converted from sterling to the Contractual Currency at the time of the distributions) are lower than such amount in the Contractual Currency when converted to sterling at the time of LBIE's administration.
83. I also note, for completeness, that there were a very limited number of instances in the Administration in which a creditor's unsecured claim was admitted through a bespoke contract.

**STATEMENT OF TRUTH**

84. I believe that the facts stated in this witness statement are true.

**Dated 25 July 2014**

  
.....

**Anthony Victor Lomas**

Party: Applicant  
Witness: Anthony Victor Lomas  
Statement No: 10  
Exhibit: "AVL10"  
Date: 25 July 2014

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT  
IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN  
ADMINISTRATION)  
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

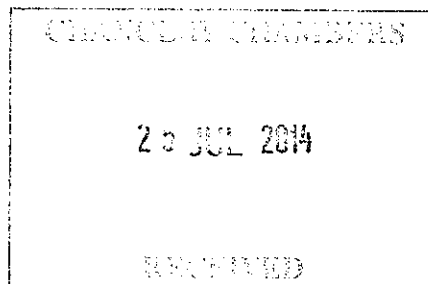
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EXHIBIT "AVL10" TO  
TENTH WITNESS STATEMENT OF  
ANTHONY VICTOR LOMAS

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This is the exhibit marked "AVL10" referred to in the Tenth Witness Statement of Anthony Victor Lomas dated 25 July 2014.

Signed .....  .....



## Appendix A: CDD and Client Money Supplemental Deed Templates

Template No.	Current Title	Description	Exhibit Ref. (Pages)
1 (NON-PB)	Single_Multiple Claims_No Counterclaim	<p>Agreed Claims CDD. Originally used because LBIE could not determine client money entitlements ("CME") and, later, when LBIE was better able to determine CME, it continued to be used upon request by a creditor.</p> <p>This template preserves the option for the creditor to take its CME (when determined) as an unsecured claim or as a client money claim. The Agreed Claim will not be admitted until the CME is waived/assigned, or a determination of the CME has been made by LBIE and CM distributions paid, in which case the amount of the Agreed Claim less the CM distributions will be admitted. (See CM Supplements).</p>	616 to 644
1.1	Client Money_ Non Assignment_ Admitted unsecured and agreed Client Money claims _Hybrid_ Single Currency	Hybrid Deed. Intended for use in situations where a creditor has CME (and wishes to retain it) in addition to an unsecured claim that it wishes to be admitted for dividends.	645 to 676
1.2	Client Money Non Assignment_ Admitted unsecured and agreed Client Money claims _Hybrid_ Multiple currency version	Hybrid Deed. As above, for situations where the CME arises under multiple currencies.	677 to 708
1.3	Client Money – Hybrid_ Assignment Version Admitted unsecured and agreed Client Money claims assignment	Hybrid Deed. Situations where a creditor has CME and wishes to assign the CME to Laurifer so that the entire claim is admitted for dividend from the unsecured estate. Can be used for single and multiple currency CME.	709 to 739

Template No.	Current Title	Description	Exhibit Ref. (Pages)
<b>1B (NON-PB)</b>	Single/Multiple Claims _Upfront Specific Client Money Waiver	<p>Originally to be used for situations where LBIE could not determine CME but could be comfortable (based on a review of the underlying master agreement(s)) that there was, at most, a 'medium risk' of the creditor having a CME. As such, the CME is specifically waived in the CDD.</p> <p>The unsecured claim is admitted for dividend.</p> <p>Also used for non-CRA counterparties with no trust assets remaining and no CME.</p>	740 to 765
<b>1C (NON-PB)</b>	Single/Multiple Claims _Upfront Generic Waiver	<p>This template has the effect of waiving any and all CME but just refers to 'Proprietary Claims' rather than client money. This was used in situations where LBIE had not determined the CME but could be comfortable (on the basis of a master agreement review) that there was a "low to no risk" of CME. Later (post Supreme Court CM judgment), when LBIE was better able to determine whether there is any CME, this was (and is) used in situations where the creditor does not have CME.</p> <p>Unsecured claim is admitted for dividend.</p> <p>Also used for non-CRA counterparties with no trust assets remaining and no CME.</p>	766 to 790
<b>3 (NON-PB)</b>	Aggregator Single Claim/Multiple Claims _No Counterclaim	<p>Agreed Claims CDD. Similar to template 1, except this template is used where the creditor has acquired the claim from the original claim holder. The release is therefore limited to the assigned claim as the creditor may have additional claims it is pursuing against LBIE. Many aggregators continue to use this template in their agreed forms.</p>	791 to 820

Template No.	Current Title	Description	Exhibit Ref. (Pages)
3B (NON-PB)	Aggregator Single Claim/Multiple Claims_No Counterclaim_ Upfront Specific Client Money Waiver	Similar to template 1B except this template is used where the creditor has acquired the claim from the original claim holder. The release is therefore limited to the assigned claim as the creditor may have additional claims it is pursuing against LBIE.	821 to 846
3C (NON-PB)	Aggregator Single Claim/Multiple Claims_No Counterclaim_ Upfront Generic Waiver	Similar to template 1C, except this template is used where the creditor has acquired the claim from the original claim holder. The release is therefore limited to the assigned claim as the creditor may have additional claims it is pursuing against LBIE.	827 to 871
4	Single Claim/Single Counterclaim	<p>Agreed Claims CDD. (Replaced in most cases by either 1.3 if CME is being assigned, or 10G if retaining CME)</p> <p>Similar to Template 1 save that it was used where LBIE had a counterclaim and (because the CME, at that time, could not be determined) there was a chance that some portion of the creditor's CME (once determined) would have been used in the CDD to 'set-off' LBIE's counterclaim. The CDD refers to this portion as the "Excess Client Money Claim" and such Excess Client Money Claim is assigned to Laurifer.</p> <p>The Agreed Claim is not admitted.</p>	872 to 911
PB VERSIONS OF 1,1B,1C,3,3B,3C		<p>Similar to NON-PB versions except they deal with creditors who have agreements which potentially create a security interest in favour of a LBIE affiliate which, if the creditor is indebted to such affiliate, it may exercise over any payments due to the creditor from LBIE. Some additional representations are included to deal with this, and reps are repeated. There are other minor drafting differences between the PB and NON-PB versions.</p>	912 to 1087



Template No.	Current Title	Description	Exhibit Ref. (Pages)
<b>Trust Templates – CRA/non-CRA</b>			
<b>6A</b>	CRA_no trust assets _Specific CM Waiver	<p>The CRA version of template 1B in situations where the counterparty has no further asset claims (within administration control (“WAC”) or outside administration control (“OAC”). This CDD makes it very clear that any and all pre-administration CME is being waived to avoid any potential uncertainty.</p> <p>Unsecured claim is admitted for dividend. In some cases the asset shortfall claim was booted on to a CDD based on this template but this did not affect the scope of the releases. The template also caters for the situation where the client had already accepted a CM Proposal that discharged its pre-administration client money claims, so no further waiver of such claims is required in the CDD.</p>	1088 to 1116
<b>6B</b>	CRA_no trust assets _preservation of client money	<p>The CRA version of template 1 in situations where the counterparty has no further asset claims (WAC or OAC). The claim is agreed but not admitted. (See CM Supplements.)</p>	1117 to 1147
<b>7A</b>	CRA_NCP_trust assets reserved specific CM waiver	<p>For CRA signatories with outstanding trust assets claims. The CDD deals with the admittance of the unsecured claim whilst preserving the signatory's trust assets claims, and any Depot Break Claims.</p> <p>CME (other than in respect of any Depot Break Claims) is waived and a single admitted claim is provided. The template also caters for the situation where the client had already accepted a CM Proposal or otherwise assigned its pre-administration CM claim, so no further waiver of such claims is required in the CDD.</p>	1148 to 1175

Template No.	Current Title	Description	Exhibit Ref. (Pages)
7A (Caldey)	CRA_NCP_trust assets and Caldey claim reserved_specific CM waiver	For CRA signatories with outstanding trust assets claims. The template is the same as 7A but explicitly preserves the Common Terms Claims of a Caldey beneficiary.	1176 to 1205
7B	CRA_NCP_trust assets and Caldey claim reserved_specific CM waiver	For CRA signatories with outstanding trust assets claim. The CDD agrees the unsecured claim whilst preserving the signatory's trust assets claim and any Depot Break Claims. CME is preserved in the CDD and therefore the claim is not admitted.	1206 to 1236
7B (Caldey)	CRA_NCP_trust assets post Caldey_trust assets reserved	For CRA signatories with outstanding trust assets claims. The template is the same as 7B but explicitly preserves the Common Terms Claims of a Caldey beneficiary.	1237 to 1268
7D	CRA_NCP_LBI Pending Trade_Trust Assets Reserved_Specific Waiver	Similar to Template 7A save that only part of the creditor's Net Financial Claim ("NFC") is quantified and admitted. Any claim in excess of the Minimum Net Financial Claim agreed in the CDD (the "MNFC") arising from LBI pending trades constitutes a separate unsecured claim to be agreed in a pending trades CDD once determined.  No longer used as all pending trades claims have been resolved.	1269 to 1302
7E	CRA_NCP_LBI Pending Trade_Trust Assets Reserved	Similar to Template 7D save that CME is preserved in the CDD and therefore the claim is not admitted.	1303 to 1338

Template No.	Current Title	Description	Exhibit Ref. (Pages)
	Pending Trades Remaining Claims (CRA)	Used where the creditor had entered into a CDD based on template 7D or 7E and was later determined to have further unsecured claims arising from pending trades. The Deed agrees and admits the further claims.	1339 to 1358
9A	Non CRA_no LBI asset claim_CM waiver	<p>For non-CRA creditors with an outstanding WAC assets claim and no LBI assets claim. This template was used generally prior to the Omnibus Settlement Agreement ("OSA") becoming effective and was then updated, and the other versions of template 9A produced to cater for clients with LBI asset claims.</p> <p>CME (other than in respect of any Depot Break Claims) is waived and a single admitted claim is provided. The template also caters for the situation where the client had already accepted a CM Proposal, so no further waiver of such claims is required in the CDD.</p>	1359 to 1386
9A (OSA - LBI and WAC assets)	Non CRA_OSA_WAC_and_LBI asset_CM waiver	Like template 9A, but for non-CRA creditors with an outstanding LBI assets claim and WAC assets claims. This template was only published for use once the OSA became effective.	1387 to 1418
9B	Non CRA_no LBI asset claim_CM preserved	<p>For non-CRA creditors with an outstanding WAC assets claim and no LBI assets claim. This template was used generally prior to the OSA becoming effective and was then updated, and the other version of template 9B produced to cater for clients with LBI asset claims.</p> <p>CM is preserved and the claim is not admitted.</p>	1419 to 1453

Template No.	Current Title	Description	Exhibit Ref. (Pages)
9B (OSA - LBI and WAC assets)	Non-CRA_OSA beneficiary_CM preserved	Like template 9B, but for non-CRA creditors with an outstanding LBI assets claim and a WAC assets claim. This template was only published for use once the OSA became effective.	1454 to 1486
9D	PB and TA_Single or Multiple Claim_LBI Pending Trades_Upfront	<p>Similar to template 9A except that only part of the non-CRA creditor's unsecured claim is quantified and admitted (the "<b>Minimum Agreed Claim</b>"). Any claim in excess of the Minimum Agreed Claim arising from pending trades constitutes a separate unsecured claim to be agreed in a pending trades CDD once determined.</p> <p>CME (other than in respect of any Depot Break Claims) is waived and a single admitted claim is provided. The template also caters for the situation where the client had already accepted a CM Proposal, so no further waiver of such claims is required in the CDD.</p> <p>No longer used as all pending trades claims have been resolved.</p>	1487 to 1524
9E	PB and TA_Single or Multiple Claim_LBI Pending Trades_Upfront	<p>Similar to Template 9D save that CME is preserved in the CDD and therefore the claim is not admitted.</p> <p>No longer used as all pending trades claims have been resolved.</p>	1525 to 1564

Template No.	Current title.	Description.	Exhibit Ref. (Pages)
	Pending Trades Remaining Claims (non-CRA)	Used where the creditor had entered into a CDD based on template 9D or 9E and was later determined to have further unsecured claims arising from pending trades. The Deed agrees and admits the further claims.	1565 to 1584
<b>Asset Shortfall Series</b>			
8A	CRA_asset shortfall claim	<p>For CRA signatories that have an asset shortfall claim with no depot breaks giving rise to CME.</p> <p>Claims in relation to property custodied with Lehman Brothers in Hong Kong ("LBHK") may be preserved if applicable in an alternative form of 8A.</p> <p>There are alternative versions of the releases in clause 2, the broader release being used if the creditor has no outstanding Common Terms Claims.</p>	1585 to 1656

Template No.	Current Title	Description	Exhibit Ref. (Pages)
8B	CRA_asset shortfall claim	<p>For CRA signatories that have an asset shortfall claim with depot breaks giving rise to CME, which had been preserved in an earlier CDD. The amount of the claim agreed in the new CDD based on template 8B (the "Agreed Shortfall Claim Amount") includes the value of any depot break claims that have not been resolved.</p> <p>Claims in relation to property custodied with LBHK may be preserved if applicable in an alternative form of 8B.</p> <p>There are alternative versions of the releases in clause 2, the broader release being used if the creditor has no outstanding Common Terms Claims.</p> <p>CME is preserved and the Agreed Shortfall Claim Amount is not admitted.</p>	1657 to 1732
8C	CRA_Net_Shortfall_CM_Counterclaim	<p>For CRA signatory that has a Net Financial Liability (owes an unsecured debt to LBIE) but that amount is less than its asset shortfall claim (and including any depot break claims). The two amounts are set-off and the Agreed Claim Amount is agreed.</p> <p>CME is preserved and the claim is not admitted.</p>	1733 to 1766
<b>Client Money Only Series</b>			
10A	Client Money Only_Deed (Single Currency)	<p>For creditor with only CME (no unsecured) that wishes to retain its CME. The creditor gives up the right for the claim to be admitted for unsecured dividend (except with respect to any client money shortfall).</p>	1767 to 1795

Template No.	Current Title	Description	Exhibit Ref (Pages)
10B	Client Money Only Deed (Multiple Currencies)	As above, but where CME arises under multiple currencies.	1796 to 1825
10C	Client Money Only Deed_ Individuals (Single Currency)	Same as 10A except for individuals.	1826 to 1854
10D	Client Money Only Deed_ Individuals (Multiple Currencies)	As 10C above except where CME arises under multiple currencies.	1855 to 1884
10F	Client Money Only Deed_ Counterclaim (Single Currency)	Similar to template 4, except this template finalises the CME, assigns an amount equal in value to the counterclaim to Laurifer, and the creditor gives up the right for the balance of the claim to be admitted (except with respect to any client money shortfall). 10A is often used instead where LBIE does not deem it necessary to describe any counterclaim.	1885 to 1914
10G	Client Money Only Deed_ Counterclaim (Multiple Currencies)	As 10F above, but CME arises under multiple currencies. 10B is often used instead where LBIE does not deem it necessary to describe any counterclaim.	1915 to 1945
<b>Supplemental Deeds</b>			
Original CM Deed Poll		A client money waiver document used for counterparties who had signed template 1 but who LBIE subsequently determined had a 'low risk' of a CME. Provided for an admitted unsecured claim.	1946 to 1948

Template No.	Current Title	Description	Exhibit Ref. (Pages)
<b>CM1</b>	Client Money Optionality_ Client Money Only Determination_ Full Waiver	<p>ALL SUPPLEMENTAL DEEDS USED WHERE TEMPLATES 1, 3, 4, 6B, 7B, 7E, 9B and 9E have been used and act to finally admit the unsecured claim or allow creditor to retain its CME (or both if applicable).</p> <p>This template is for creditors with no CME or situations where LBIE was/is happy to accept a waiver of the CME rather than an assignment.</p>	1949 to 1953
<b>CM2.A</b>	Client Money Optionality Client Money Only Determination_ Single Currency_ No Admitted Claim	<p>This template is for creditors who have a CME for the full value of their Agreed Claim under the earlier CDD and wish to retain their CME as a client money claim. CME arises in a single currency. The creditor gives up the right for the Agreed Claim to be admitted for unsecured dividend (except with respect to any client money shortfall).</p>	1954 to 1957
<b>CM2.B</b>	Client Money Optionality_ Client Money Only Determination_ Multiple Currencies_ No Admitted Claim	<p>This template is for creditors who have a CME for the full value of their Agreed Claim under the earlier CDD and wish to retain their CME as a client money claim. CME arises in multiple currencies. The creditor gives up the right for the Agreed Claim to be admitted for unsecured dividend (except with respect to any client money shortfall).</p>	1958 to 1962
<b>CM3.A</b>	Client Money Optionality_ Client Money Determination and Waiver of any further Client Money Claims	<p>This template is for creditors who do have a CME for part of the value of their Agreed Claim under the earlier CDD and they wish to retain their CME as a client money claim. The CME (in a single currency) is agreed, and the balance is admitted as an unsecured claim. The creditor gives up any right for the CME to be admitted for unsecured dividend (except with respect to any client money shortfall).</p>	1963 to 1967



Template No.	Current Title	Description	Exhibit Ref. (Pages)
<b>CM3.B</b>	Client Money Optionality_ Client Money Determination and Waiver of any further Client Money Claims_ Multi Currency Claims	This template is for creditors who have a CME for part of the value of their Agreed Claim under the earlier CDD and they wish to retain their CME as a client money claim. The CME (in multiple currencies) is agreed and the balance is admitted as an unsecured claim. The creditor gives up any right for the CME to be admitted for unsecured dividend (except with respect to any client money shortfall).	1968 to 1973
<b>CM4</b>	Client Money Optionality_ Assignment of Entire Client Money Claim	This template is for creditors who do have a CME with respect to all or part of their Agreed Claim and wish to assign their CME to Laurifer so that the whole of their Agreed Claim is then admitted.	1974 to 1978
<b>CM4.A.1</b>	Client Money Optionality_ Assignment of Entire Client Money Claim_ Before CM Determination	This template is for creditors who may have a CME with respect to all or part of their Agreed Claim and wish to assign their CME to Laurifer so that the whole of their Agreed Claim is then admitted. This template is used where LBIE does not wish to specify the CME, potentially because it has not yet been able to determine the exact CME.	1979 to 1983
<b>CM4.A.2</b>	Client Money Optionality_ Assignment of Entire Client Money Claim_ Before CM Determination_ Aggregator_ Multiple CDDs	This template is for aggregators who may have a CME under multiple claims and wish to assign their CME to Laurifer so that the whole of the multiple claims are then admitted. This template is used where LBIE does not wish to specify the CME, potentially because it has not yet been able to determine the exact CME.	1984 to 1990
<b>Asset Shortfall Supplemental Deeds</b>			
<b>CM1 (ASC)</b>	Asset Shortfall Claims_ Client Money Optionality_ Client Money Only Determination_ Full Waiver	Similar to CM1 but deals with any depot breaks claims included in the Agreed Shortfall Claim Amount. Used to supplement template 8B.	1991 to 1995

Template No.	Current Title.	Description.	Exhibit Ref. (Pages)
CM4 (ASC)	Asset Shortfall Claims_Client Money Optionality_ Assignment of Entire Client Money Claim	Similar to CM4 but deals with any depot breaks claims included in the Agreed Shortfall Claim Amount. Used to supplement template 8B.	1996 to 2000

## Appendix B

### Interim Statutory Interest language

*"For the avoidance of doubt, this Deed shall not prejudice, affect or restrict (and entry into this Deed is not intended to be, and shall not be construed as, an election of remedy or a waiver or limitation of) any rights or claims that the Creditor may have for or in respect of interest under rule 2.88 of the Insolvency Rules or section 189 of the Insolvency Act (or any equivalent provision)."*

## Appendix C

### 1 Interim CCC Language version 1

*"Nothing in this Deed shall either (i) prevent the Creditor from asserting a Currency Conversion Claim; or (ii) operate as a discharge or release of a Currency Conversion Claim."*

**Currency Conversion Claim** is defined as:

*"a non-provable claim, if any, that may arise where:*

- (i) the Admitted Claim Amount is paid in full by the Company by way of distributions in the Administration or following a Liquidation Event; and*
- (ii) the Creditor has a contractual right to be paid part or all of the Admitted Claim Amount in a Contractual Currency; and*
- (iii) the total amount paid to the Creditor in distributions from the Administration or following a Liquidation Event in respect of such part (or all) of the Admitted Claim Amount to which the entitlement referred to (ii) above applies, when converted into the relevant Contractual Currency upon the dates of distribution is less than the value of such sum when converted into the relevant Contractual Currency at the Exchange Rate."*

### 2 Interim CCC Language version 2

*"Nothing in this Deed shall (i) prevent the Creditor from asserting a Currency Conversion Claim; (ii) operate as a discharge or release of a Currency Conversion Claim if any such claim exists; or (iii) constitute an acknowledgement by the Company of the existence (as a matter of law or fact) of any Currency Conversion Claim."*

**Currency Conversion Claim** is defined as:

*"a non-provable claim, if any, that may be asserted by the Creditor where:*

- (i) the Admitted Claim Amount is paid in full by the Company by way of distributions in the Administration or following a Liquidation Event; and*
- (ii) the Creditor has a contractual right to be paid part or all of the Admitted Claims which are agreed in accordance with this Deed in a Contractual Currency (the sum arising from such right, the "**Original Foreign Currency Amount**"); and*
- (iii) the total amount received by the Creditor in respect of such part (or all) of the Admitted Claims relating to the Original Foreign Currency Amount, when converted into the relevant Contractual Currency upon the dates of distribution, is less than the Original Foreign Currency Amount.*

*When calculating its claim under (ii) and (iii) above, the Creditor may take into account the difference between any interest accrued on the Original Foreign Currency Amount, and any interest received in relation to such part (or all) of the Admitted Claims relating to the Original Foreign Currency Amount pursuant to Rule 2.88 of the Insolvency Rules, when converted into the relevant Contractual Currency upon the dates of distribution."*

**Party: Applicant**  
**Witness: Anthony Victor Lomas**  
**Statement No: 10**  
**Exhibit: "AVL10"**  
**Date: 25 July 2014**

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**  
**COMPANIES COURT**  
**IN THE MATTER OF LEHMAN BROTHERS**  
**INTERNATIONAL (EUROPE) (IN**  
**ADMINISTRATION)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT**  
**1986**

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**TENTH WITNESS STATEMENT**  
**OF**  
**ANTHONY VICTOR LOMAS**

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