Party: Applicant
Witness: Steven Anthony Pearson
Statement No: 7
Exhibit: "SAP7"
Date: 27 January 2015

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

SEVENTH WITNESS STATEMENT OF

STEVEN ANTHONY PEARSON

I, **Steven Anthony Pearson** of PricewaterhouseCoopers LLP ("**PwC**") of 1 Embankment Place, London, WC2N 6RH say as follows:

1. I am a licensed insolvency practitioner and a partner in PwC, a firm of accountants at the above address. I 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**") (the "**Application**") and further to paragraph 4 of the Order of the Honourable Mr Justice David Richards dated 21 November 2014 (the "**November Directions Order**").

3. There is now produced and shown to me marked "**SAP7**" a paginated bundle of documents 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 in this witness statement 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.

(A) PURPOSE AND CONTENT OF THIS WITNESS STATEMENT

5. The tenth witness statement of Anthony Victor Lomas dated 25 July 2014 ("**Lomas 10**") sets out the general background to the Claims Resolution Agreement, which became effective on 29 December 2009 (the "**CRA**"). I have read Lomas 10 and confirm that, to the extent that I have knowledge of the matters contained therein (i.e. as regards the CRA), I agree with its contents.

6. The witness statement of Mary Nell Browning ("**Ms Browning**") dated 31 October 2014 filed on behalf of the Third Respondent (the "**Browning Witness Statement**"), a hedge fund controlled by Baupost Group LLC (Baupost Group LLC, Carval Investors GB LLP and Davidson Kempner Capital Management LP together constitute, the "**Senior Creditor Group**"), makes a number of observations concerning the effect of certain provisions of the CRA.

7. Therefore, I make this witness statement to comply with paragraph 4 of the November Directions Order that the Joint Administrators provide additional factual evidence to address (to the extent not already addressed by the Joint Administrators in evidence): (a) the circumstances surrounding the entry into the CRA; and (b) any other matters that the Joint Administrators consider may be relevant to the Court's consideration of Issues 34 and 35. Issue 34 is concerned with whether a creditor's Currency Conversion Claim has been released in circumstances in which the creditor entered into, *inter alia*, the CRA.

Issue 35 is concerned with whether a creditor's claim to Statutory Interest has been released in whole or in part in circumstances in which the creditor entered into, *inter alia*, the CRA.

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

(B) **Background**: In section B, I provide an outline of the background to the need for the CRA and my role in its development.

(C) **Presently relevant clauses of the CRA**: In section C, I provide an outline of the principal clauses of the CRA that are relevant to issues 34 and 35.

(D) **Factual background and context**: In section D, I provide a description of the circumstances in which those provisions were developed and reported on by the Joint Administrators and the broader context of the progress of the Administration over the relevant period, which may be relevant to the construction of the presently relevant clauses of the CRA.

(E) **Response to the Browning Witness Statement:** In section E, I respond to certain observations made in the Browning Witness Statement.

(B) BACKGROUND

9. As noted in paragraph 6 of Lomas 10, the Joint Administrators have been required, as a result of the size and complexity of the Administration, 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, with primary responsibility for different activities being allocated to individual Joint Administrators. In turn, the Joint Administrators have delegated certain activities to members of the PwC and LBIE teams engaged on the Administration. These activities are

performed for and on behalf of the Joint Administrators and are carried out under the Joint Administrators' oversight.

10. From the date of my appointment as a Joint Administrator on 15 September 2008 until 1 July 2010, I performed the role of *de facto* Chief Executive Officer of LBIE in administration. In this context, I was responsible, amongst other things, for overseeing (i) the management of trust property assets held in the name of, or otherwise to the order of, LBIE for clients and other parties (including affiliates) through depositories, exchanges, clearing systems and sub-custodians (including Lehman Brothers Inc ("**LBI**")) as a result of LBIE's prime brokerage, custody and other businesses ("**Trust Assets**") and (ii) the plan for returning Trust Assets to beneficiaries that was ultimately implemented by the CRA. Until 1 July 2010, I was also responsible for the early stages of the unsecured claims determination process that became an increasing priority in 2010 after completion of the CRA.

11. A table containing a chronological summary of the key events concerning the return of Trust Assets in the Administration in the period from the Date of Administration to early December 2009, including those outlined in this statement is included as Schedule 1 to this statement.

12. As explained in further detail in Section D below, the CRA was initially conceived of as a scheme of arrangement to compromise claims to Trust Assets (the "**Scheme**"), the planning for which commenced in February 2009 and which was aired and discussed with creditors with potential claims to Trust Assets ("**Trust Asset Creditors**") and other potentially affected LBIE creditors over the ensuing months.

13. From the outset of the Administration, there was considerable pressure on the Joint Administrators to return Trust Assets as quickly as possible as they were, in many cases, critical to the business of those on whose behalf they were held. The Order of the Honourable Mr Justice Blackburne dated 7 October 2008 (the "**Trust Assets Order**") directed the Joint Administrators to prioritise the return of Trust Assets by giving

effect to the processes set out in a Schedule to the Order pending the approval by creditors of the Joint Administrators' proposals for achieving the purpose of the Administration.

14. At the initial creditors' meeting on 14 November 2008, LBIE's creditors approved the proposals (a copy of the proposals as agreed by creditors is at pages 1 to 3 of **SAP7**, the "**Proposals**"), which, *inter alia*, confirmed that the Joint Administrators proposed to identify and return Trust Assets in accordance with the Trust Assets Order (see Proposal (ii) at page 2 of **SAP7**).

15. Pursuant to the Trust Assets Order and the Proposals, the Joint Administrators progressed the return of Trust Assets. This was initially undertaken on a bilateral basis with clients who could make out a special case for prioritisation and who were able and willing to accept those returns on necessarily stringent conditions (including the provision of indemnities and/or undertakings in many cases backed by credit support to protect LBIE and/or the Joint Administrators from third party claims arising from the return of Trust Assets).

16. However, this process was unsatisfactory, from the Joint Administrators' and the Trust Asset Creditors' perspective, as it was time-consuming, costly and subject to uncertainties arising from the existence of competing claims to certain Trust Assets as well as from the scope and effectiveness of the undertakings and/or indemnities.

17. The complexity and difficulty in dealing with Trust Assets is illustrated by the fact that in excess of one hundred staff from PwC, Linklaters LLP and LBIE (as well as numerous staff from Nomura Holdings Inc) were deployed specifically to work on Trust Asset issues in the first six months of the Administration, in many cases on a full-time basis. In accordance with the Trust Assets Order, we formed a discrete sub-committee to monitor the procedures for returning Trust Assets and the efficiency and fairness of the methodology. Initially this sub-committee met daily. We were dealing with approximately two thousand clients who collectively

held in excess of 31,000 stock lines. We remained under constant pressure from Trust Asset Creditors to expedite the return of Trust Assets, many of whom made numerous written requests to the Joint Administrators in this regard. In the first six months of the Administration, we reviewed and responded to over 3,000 individual queries. The process of doing so involved the expenditure of considerable resources and was rarely straightforward.

18. In order to return Trust Assets to a particular client, it was first necessary to resolve a number of connected factual and legal issues. For example, LBIE's books and records needed to be updated and reconciled (in many cases, this required cooperation and input from third parties, some of whom were in their own insolvency processes), pending and failed trades resolved, assets (with varying degrees of liquidity) valued, sums arising under all relevant contracts ascertained (including, potentially, entitlements to "**Client Money**"[1]) and potential claims from other Trust Asset Creditors or Lehman affiliates identified and quantified. I provided considerable detail on the challenges in dealing with Trust Assets in the witness statement I provided to the Court in support of the Joint Administrators' application to the Court seeking liberty to promote a scheme of arrangement to deal with Trust Assets ("**Pearson 2**") (further details of which are provided in paragraphs 54 and 55 below).

19. Therefore, in consultation with our advisers, the Joint Administrators considered what other options might be available in order to expedite and streamline the process. As a result of this, it was decided to explore a framework to deal with the resolution of the various uncertainties surrounding Trust Asset claims through the Scheme.

20. In the case of the development of the Scheme, it soon became apparent that, in order to establish a claimant's entitlement to the return of Trust Assets through, and prior to making any distribution of Trust Assets in accordance with, the Scheme, it would be necessary for any liabilities of

[1] Being the client cash balances held by LBIE as at 15 September 2008 or received thereafter by LBIE and which are in each case subject to the UK FSA's (now FCA's) client money rules and/or applicable client money distribution rules.

a claimant owed to LBIE under any financial contracts with LBIE to be ascertained in order to protect LBIE's position (and thus the position of the general creditor body). Without taking this step, LBIE would be unable to exercise its rights arising pursuant to any lien or other security interest granted in favour of LBIE (or other members of the Lehman group) over the Trust Assets and thus would be at risk of over distributing assets.

21. To enable the calculation of the net balance due to Trust Asset Creditors, the draft Scheme provided, *inter alia*, for:

    21.1 the termination of open financial contracts;

    21.2 a mechanism for valuing the amount due on the termination of financial contracts; and

    21.3 the aggregation of those amounts to determine the claimant's net financial position with LBIE (defined under the draft Scheme and then CRA as the "**Net Contractual Position**").

22. Where the calculation of the Net Contractual Position gave rise to a positive balance owing by LBIE, the draft Scheme provided that this would give rise to the right to claim as a new obligation of LBIE – a "**Net Financial Claim**" (as defined in the draft Scheme and then the CRA, as referred to at paragraph 35.7 below). This sum would constitute "*an ascertained unsecured claim...in LBIE's winding up or any other distribution of LBIE's assets generally to its unsecured creditors*" (see paragraph 20.4.7 of the Mini-ES (defined in paragraph 65 below) and clause 25.1 of the CRA (excerpted in paragraph 35.7 below), which is in substantively similar terms).

23. The draft Scheme did not contain any distribution mechanism as regards ordinary, unsecured claims and, indeed, there was at the time of its development no firm view as to the appropriate method for effecting such distributions. However, there was benefit (for LBIE/the Joint Administrators and creditors) in seeking to agree unsecured claim values

so that, as and when a distribution mechanism was implemented (whether through the Administration or otherwise), the valuation of the new claim created under the Scheme could simply be fed into that process. There was an additional benefit for creditors being able to agree unsecured claims as it enhanced their ability to sell their claim (e.g. via specialist brokers who trade in unsecured claims against insolvent companies) and thus realise value and liquidity sooner than they otherwise would if waiting for a distribution in the insolvency of LBIE.

24. Although the principal objective of the Scheme was the return of Trust Assets, the resolution of the unsecured financial claims of Trust Asset Creditors was always an integral element of the structure embodied in the draft Scheme (and subsequently the CRA). With the exception of claims to Client Money (issues in respect of which were otherwise being dealt with by the Court), the draft Scheme was intended to bring finality to all elements of the relationship between LBIE and Trust Asset Creditors, including with respect to their financial contracts.

25. The draft Scheme was designed to operate as an arrangement whereby, *inter alia*, (save for certain limited exceptions, e.g. as regards Client Money entitlements) Scheme participants gave up all proprietary claims to assets and financial claims against LBIE in return for receiving a set of new rights under the Scheme (primarily the right to share in the return of Trust Assets on a particular basis and to obtain a new unsecured claim at a value to be determined under the draft Scheme).

26. As explained in paragraph 17 of Lomas 10, the Joint Administrators were not able to implement the draft Scheme as a result of a decision of the High Court (confirmed on appeal on 6 November 2009) that it did not have the jurisdiction to sanction it. The feedback we received from certain Trust Asset Creditors between March and late August 2009 (when the High Court decided it did not have the jurisdiction to sanction the draft Scheme) was that a significant majority of Trust Asset Creditors were supportive of the draft Scheme. Therefore, pending the outcome of the jurisdiction appeal, work was commenced (in conjunction with our

advisers and a working group established by the Joint Administrators to provide them with a 'sounding board' as the draft Scheme was developed – the "**Scheme Working Group**") on exploring alternative solutions. A decision was ultimately taken to convert the draft Scheme into a voluntary, multilateral agreement (i.e. the CRA), the implementation of which would be subject to a pre-determined approval threshold (set at a very high level in order to minimise the risk of claims from non-participants).

27. As is set out in more detail in sections C and D below, the provisions of the CRA substantially replicated those of the draft Scheme. As with the draft Scheme, CRA signatories released (save for Client Money claims) all their proprietary and financial claims arising out of or in respect of financial contracts in return for new rights in respect of Trust Assets and a new unsecured financial claim. The mechanism by which claims were determined under the CRA was designed to bring finality (save in respect of Client Money claims) to the relationship between LBIE and the signatory. As with the draft Scheme, the CRA itself contained no distribution mechanism for unsecured claims – indeed, this was not necessary in order finally to determine and make distributions in respect of Trust Asset entitlements or to agree the unsecured claims of signatories. Rather, the CRA provided that signatories would have the right to prove in the Administration in respect of their new, agreed unsecured claim.

28. In addition to the features present in the proposed Scheme, the CRA was also designed to be capable of extension to creditors with purely unsecured claims (i.e. those with no claims to Trust Assets), subject to certain conditions.

29. In order to facilitate claim valuation (e.g. for the purposes of calculating votes in the Scheme or CRA) and to enable an account to be taken of all positions and claims arising between LBIE and a signatory (i.e. for set-off purposes), conversion into a single currency was necessary. The US dollar was chosen as the reference currency for administrative

convenience as it minimised the conversion exercise (the majority of Trust Asset claims being denominated in US dollars). It was not the case, neither did the Joint Administrators, as far as I am aware, ever suggest, that the CRA was developed or designed to provide any hedge for signatories with US dollar claims.

30. The final CRA proposal was submitted to creditors on 24 November 2009 and, shortly thereafter, on 2 December 2009, the Joint Administrators obtained an Order from the Court that we be permitted to make a distribution to LBIE's unsecured creditors (in respect of which I provide further details in paragraph 101 below). The effect of the 2 December 2009 Order was to bring into operation the Chapter 10 Rules governing the way in which debts would be valued and proved, including conversion of the amount of the debt into sterling as at the Date of Administration under Rule 2.86. Although the Joint Administrators had by this time decided that we would effect distributions to unsecured creditors in the Administration, we were still assessing the most appropriate mechanism (absent the CRA) for agreeing claims and determining their value (e.g. by means of a scheme or company voluntary arrangement or otherwise) and no firm decision had been made in that regard.

31. The CRA became effective on 29 December 2009.

32. The Joint Administrators developed the concept and provisions of the CRA in close collaboration with the Scheme Working Group (and its successor, the CRA Working Group) and held a number of meetings to ensure that Trust Asset Creditors and other potentially affected LBIE creditors were active participants in its development and communication (as had been the case with the draft Scheme). Regular website updates on the development of the draft Scheme and then the CRA were provided throughout 2009.

33. When considering the following sections of this witness statement, it may also be relevant to note the following in the context of construing the CRA:

The financial position of LBIE

33.1 As is outlined in detail in section D below, the Joint Administrators were unable to provide dividend projections over the course of 2009 and did not provide illustrative outcome estimates for unsecured creditors indicating a surplus until some three years later (in respect of which see paragraph 113 below).

33.2 For several years, the Joint Administrators have received the over-the-counter indicative price for ordinary unsecured claims against LBIE (traded privately (i.e. not on a public exchange) from specialist brokers who make a market in unsecured claims against insolvent companies). In mid-2009, the over-the-counter indicative prices were less than 25 per cent of par. Shortly after the CRA was acceded to, the indicative prices were less than 40 per cent of par, thus highlighting the market's then expectation that there would be a deficit for unsecured creditors in the Administration. It was not until some point in 2012 that the over-the-counter indicative prices suggested no discount to par. This is consistent with the observation in paragraph 33 of the Browning Witness Statement that, "*at the time the CRA was being proposed, the possibility of LBIE having sufficient assets to pay all of its provable debts in full was not in contemplation*".

The existence of Currency Conversion Claims

33.3 I understand that Currency Conversion Claims were first raised by a creditor in the context of the Waterfall I application in or around March 2013. Accordingly, Currency Conversion Claims are not specifically mentioned in any of the draft Scheme or CRA documentation, nor in any of the material through which those arrangements were presented to Trust Property Creditors, or in the Joint Administrators' first three six-monthly progress reports on the conduct of the Administration (the "**Progress Reports**"),

because they were not in the Joint Administrators' contemplation at the time the draft Scheme and CRA were developed.

(C) PRESENTLY RELEVANT CLAUSES OF THE CRA

34. The CRA is a complex agreement, which was proposed to eligible creditors on 24 November 2009 with the publication of a circular, which contained the full text of the agreement and various supporting materials (further details of which are provided in paragraph 97 below) (the "**CRA Circular**). A copy of the CRA Circular is at pages 4 to 289 of **SAP7**.

35. This witness statement is primarily concerned with the parts of the CRA that govern the determination of unsecured financial claims. Consequently the key clauses of the CRA that are relevant for present purposes are as follows:

Release of unsecured financial claims

35.1 In summary, Clauses 4.2 and 4.4 provide that signatories release all financial claims against LBIE whether in respect of or arising from Trust Assets held by or to the order of LBIE or from "**Financial Contracts**" (as defined in the CRA and referred to at paragraph 35.5 below) with LBIE (with certain exclusions, which are not presently relevant) in return for (among other things) a new and ascertained unsecured financial claim against LBIE.

35.2 In particular, Clause 4.2 (Claims released by Signatories) states:

"each Signatory shall waive and release the following Claims against the Released Parties...

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**")* (see page 121 of **SAP7**).

35.3 Clause 4.4.2 (Released Claims) states

"*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,

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

35.4 Claim is defined broadly as:

"*a claim in law or 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 claims or liability whatsoever..." (see page 241 of **SAP7**).

35.5 Financial Contract is defined as "*any bilateral or multilateral contract entered into before the Administration Date (whether evidenced in writing or not) relating to one or more transactions or positions of a financial nature ... including contracts for the delivery and/or custody of Assets, entered into between a Signatory and the Company...*" (see page 248 of **SAP7**).

35.6 Net Contractual Position is defined as "*the amount determined in accordance with Clause 24.2*" (i.e. effectively the aggregate of close-out sums calculated in relation to each underlying Financial Contract).

35.7 Clause 25.1 provides that a signatory's Net Contractual Position "*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**").*

35.8 An Ascertained Claim is defined as "*an ascertained, unsecured claim in the winding-up of the Company or any distribution of the Company's assets generally to its unsecured creditors.*"

Calculation of Net Contractual Position

35.9 Part 7 of the CRA (comprising Clauses 19 to 25) is the section which contains the detailed rules regarding the calculation of a signatory's Net Contractual Position and thus the value of its ascertained unsecured claim against LBIE. I do not propose to set out these provisions in this witness statement. However, three specific provisions are worth mentioning for present purposes.

35.10 Clause 24.1 (Conversion of Close-Out Amounts into US dollars) provides that '[t]*o the extent that a Close-Out Amount* [i.e. an amount calculated as payable under a Financial Contract following its termination] *is denominated in a currency other than US dollars, the Company shall convert such Close-Out Amount into US dollars using the Spot Rate as of the Relevant FX Conversion Time* [which, for these purposes, was close of business in London on the Administration Date]".

35.11 Clause 20.4.7 (Accrual of interest) states that "*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.*"

35.12 Similarly, Clause 25.1 (Net Financial Claim) provides, '[f]*or 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" (see page 157 of **SAP7**).

(D) FACTUAL BACKGROUND AND CONTEXT

Extent of consultation, collaboration and publication

36. The provisions of the CRA outlined above were settled over the course of 10 months by the Joint Administrators in extensive collaboration with the Scheme Working Group, which had its first meeting on 10 February 2009. When the draft Scheme was replaced with the CRA, the Scheme Working Group was renamed the CRA Working Group (together, the "**Working Groups**").

37. The Working Groups were comprised of representatives of the Joint Administrators and our advisers and representatives of each of the members of the creditors' committee formed in accordance with statutory requirements (the "**Creditors' Committee**"), which at the relevant time comprised:

    37.1 Lehman Brothers Holdings Inc (the ultimate parent company of the Lehman group), subsequently replaced by Lehman Commercial Paper Inc;

    37.2 Ramius Credit Opportunities Master Fund Limited ("**Ramius**");

    37.3 GLG European Long Short Fund ("**GLG**");

    37.4 Legal and General Pensions Limited; and

    37.5 Oceanwood Global Opportunities Master Fund.

    (together, the "**Creditor Representatives**")

38. Many of the people who were members of the Working Groups on behalf of the Creditor Representatives were legally trained.

39. A representative from the Financial Services Authority (as it then was) also attended meetings of the Working Groups (in accordance with their statutory entitlement under the Financial Services and Markets Act 2000) and certain LBIE employees supported the Working Groups from time to time.

40. I was a member of the Working Groups and chaired all of their meetings. Mary Nell Browning was a member of the Working Groups as a representative of GLG, together with two of her GLG colleagues, Alex San Miguel (General Counsel of GLG Partners LP) and Simon White (GLG Partners LP's Chief Operating Officer).

41. From February to November 2009, the Working Groups formally met on at least ten occasions, often for full-day discussions, and members also participated in a number of additional conference calls. During those meetings and conference calls, the Creditor Representatives actively participated in discussions and debates. I recall that those discussions would often involve detailed debate of many of the proposed provisions. As a general rule, each time we met or had a conference call, each of the Working Group members was provided with iterative draft documentation relating to the Scheme and CRA in respect of which they provided detailed comments and feedback.

42. The contribution of the Creditor Representatives to the draft Scheme and then CRA through their participation in the Working Groups was not only in respect of the key terms of the mechanism but also at a granular level with respect to the operation and effect of particular provisions. The Creditor Representatives also contributed to the way in which the structure and effect of the draft Scheme then the CRA was presented to Trust Asset Creditors and facilitated the communication of feedback from Trust Asset Creditors over the course of its development. The letter to eligible signatories that was included in the CRA Circular confirmed that the members of the CRA Working Group "*expressed their unanimous support*" for the CRA (see page 16 of **SAP7**).

43. In addition to the intensive collaboration with the Working Groups and the maintenance of query management systems for all Trust Asset Creditors, the Joint Administrators also regularly reported on the development of the draft Scheme and CRA through their Progress Reports, announcements and presentations on PwC's dedicated LBIE website (the "**Website**") and at meetings with certain members of two industry bodies, the Managed Funds Association ("**MFA**") and the Alternative Investment Management Association ("**AIMA**"), held in New York and London respectively. Both the MFA and AIMA are representative bodies for the global alternative investment industry. During the course of 2009, there were six separate meetings with certain members of the MFA and/or AIMA to discuss the terms of the draft Scheme and/or CRA. The Joint Administrators also held two further meetings with Trust Asset Creditors in December 2009, one in New York and one in London, to present the terms of the CRA after it had been launched.

44. Through these media, the Joint Administrators flagged for the Trust Asset Creditors the key provisions and effect of the draft Scheme, and subsequently the CRA, over the course of their development. I provide a detailed, chronological description of the Progress Reports, relevant Website updates and meetings with the MFA and AIMA members, supported by contemporaneous documents, as they relate to the provisions of the CRA relevant to the compromise of unsecured financial claims in paragraphs 45 to 113 below.

Chronology of events

45. The identification, management and return of Trust Assets was identified as a key priority of the Joint Administrators from the early stages of the Administration.

46. As noted in section B above, the issues in relation to Trust Assets were complex and multi-faceted, and a significant amount of time and resources were thus being deployed in dealing with Trust Assets. The process of engaging with Trust Asset Creditors, some of whom

communicated to us that they were in distress, was inevitably time-consuming.

47. By way of application dated 7 October 2008, the Joint Administrators sought directions from the Court on the development of appropriate procedures to be adopted to manage Trust Assets. The processes and procedures designed by the Joint Administrators to deal with claims to Trust Assets (the "**Trust Assets Procedures**") were approved by the Court and are set out in a schedule to the Trust Assets Order.

48. The Trust Assets Procedures were designed to ensure that Trust Asset claims were dealt with in a logical, efficient and fair manner which was consistent with the performance of the Joint Administrators' primary function of achieving a better result for LBIE's creditors as a whole than would be achieved on an immediate winding up. The Trust Assets Procedures ensured that there was a planned and organised system for dealing with the large number of Trust Asset claims.

49. The Joint Administrators published their proposals for achieving the purpose of the Administration on 28 October 2008. Under the Proposals, the Joint Administrators indicated that they would identify and return Trust Assets in accordance with the Trust Assets Procedures (see Proposal (ii) at page 2 of **SAP7**). The Proposals also indicated that the Joint Administrators might "at their discretion" make an application to court for permission to make distributions to unsecured creditors under Paragraph 65(3) Sch. B1 of the Act (see Proposal (v) at page 2 of **SAP7**). Proposal (viii) (see pages 2 to 3 of **SAP7**) indicated that a number of different "exit route" strategies were being contemplated.

50. As regards currency, proposal (xi) had initially indicated that funds would, as a general matter, be maintained in US dollars and that dividends would be paid in US dollars in the chosen exit route from the Administration. However, the response to this from creditors participating in the initial creditors' meeting held on 14 November 2008 made it clear that there was no consensus regarding the appropriate currency strategy

for the Administration. Accordingly, Proposal (xi) (see page 3 of **SAP7**) was modified as follows:

"The Administrators will maintain all funds in the estate in the currencies in which such assets have been realised. The Administrators' strategy as regards the selection of an appropriate currency for maintaining estate funds, pending determination and implementation of the appropriate "exit route" will be determined in consultation with the creditors' committee".

51. The Proposals were approved with this one modification at the initial creditors' meeting. The meeting also voted to form the Creditors' Committee and the first meeting of the Creditors' Committee took place on 3 December 2008.

52. At the Creditors' Committee meeting on 22 January 2009, the Joint Administrators tabled and discussed in general terms their intention to seek to explore the possibility of promoting a scheme in respect of Trust Assets. With the agreement of the Creditors' Committee, the Joint Administrators established the Scheme Working Group.

53. As mentioned above, the Scheme Working Group had its first meeting on 10 February 2009.

54. On 25 February 2009, the Joint Administrators issued an application seeking confirmation that the Joint Administrators be at liberty to promote a scheme of arrangement to deal with Trust Assets. That application was accompanied by Pearson 2, a copy of which was posted on the Website. In that witness statement, I summarised the work that had been undertaken by the Joint Administrators in relation to Trust Assets and the potential options for dealing with Trust Assets. I also provided detail regarding the difficult environment in which LBIE, acting by the Joint Administrators, was seeking to return Trust Assets and the significant challenges connected with returning Trust Assets (see for example paragraphs 18, 39 to 42, 69 and 73 to 75).

55. In Pearson 2, I also indicated that the Joint Administrators were minded to explore a framework to deal with the resolution of those uncertainties through a scheme of arrangement. I explained the rationale for implementing a scheme and flagged that this would not be as an "exit strategy" to bring the Administration to an end. An update dated 26 February 2009 regarding the application was posted on the Website (a copy of which is at pages 290 to 291 of **SAP7**).

56. On 26 February 2009, the Scheme Working Group held its second meeting, at which there was a lengthy discussion as to the scope of the proposed Scheme, in particular, as regards whether it should be primarily "procedural" (i.e. imposing a bar date for Trust Asset claims but not otherwise impacting upon Trust Asset Creditors' contractual or legal rights) or "substantive" (i.e. impacting or varying contractual or other legal rights). As is clear from the witness statement of David Ereira dated 12 March 2009 ("**Ereira 1**"), which was filed in support of the scheme application by way of supplement to Pearson 2, the views of the Scheme Working Group were aligned with those of the Joint Administrators that it would be preferable to "*consider a scheme that deals as comprehensively as possible with all issues necessary to be dealt with in order to enable the Administrators to make a rapid distribution of* [Trust Assets]" (see paragraph 8 of Ereira 1). As is also reflected in Ereira 1 (see, in particular, paragraphs 8 and 9), the Scheme Working Group and Creditors' Committee were aware and supportive of the inclusion of substantive compromises in the draft Scheme.

57. On 3 and 5 March 2009, the Joint Administrators held separate meetings with certain members of the MFA and AIMA (in New York and London respectively) to present to them some of the options being considered and to obtain feedback from Trust Asset Creditors on the proposed Scheme. A copy of the slides presented at these meetings (the same slides being utilised for both meetings) is at pages 292 to 325 of **SAP7** and I note that they include the following relevant comments:

57.1 The bilateral asset return process that had been introduced by the Joint Administrators at the outset was stated to lack finality (see slide 14, page 305 of **SAP7**).

57.2 The proposed Scheme was acknowledged to involve compromise of both "*LBIE's and creditors' rights*" and to be a contractual compromise which would release LBIE from claims (see slides 15, 16 and 17, pages 306 to 308 of **SAP7**).

57.3 The Joint Administrators noted that a compromise of LBIE's and Trust Asset Creditors' rights was essential to speed up the process (see slide 15, page 306 of **SAP7**).

57.4 The types of claims compromised by the proposed Scheme explicitly included "[a]*ll consequential loss claims*" (see slide 23, page 314 of **SAP7**).

57.5 MFA/AIMA members were encouraged to provide their input on the proposed Scheme (see slide 33, page 324 of **SAP7**).

57.6 Both a "basic scheme" (i.e. a "procedural scheme") and a "substantive scheme" were referenced in the slides. In relation to the basic scheme it was noted that it was readily achievable, but that it would not "*materially expedite the return of client property*" (see slide 19, page 310 of **SAP7**). The substantive scheme was said to "*modify existing contractual arrangements with clients*", have real benefits and provide a more rapid solution for clients (see slides 20 and 21, pages 311 and 312 of **SAP7**).

58. At the meeting of the Scheme Working Group on 10 March 2009, the provisions of the "substantive" scheme were further developed.

59. On 16 March 2009, following a hearing, the Court made the requested Order, confirming that the Joint Administrators be at liberty to promote a scheme of arrangement to deal with Trust Assets. A copy of this Order, together with other relevant accompanying material, including Pearson 2

and Ereira 1, and an update dated 23 March 2009, was posted on the Website. A copy of the Website update dated 23 March 2009 is at pages 326 to 327 of **SAP7** respectively.

60. The Joint Administrators also outlined the reasons for and key terms of the proposed Scheme in their first Progress Report for the period 15 September 2008 to 14 March 2009 published on 14 April 2009 (the "**First Progress Report**"), a copy of which is at pages 328 to 420 of **SAP7**. This outline explained that a scheme "*is a contractual compromise between LBIE and its affected creditors*" the objective of which "*is to materially speed up the return of* [Trust Assets] *to clients through, inter alia, the imposition of a bar date for submitting final claims*" (see page 34 of the First Progress Report at page 363 of **SAP7**). It went on to include reference to the following aspects of the proposed Scheme (among others): (i) that it would ensure that no future claims arise against LBIE for assets distributed under the Scheme, (ii) that it would provide finality of dealings for Trust Asset Creditors both as regards trust and unsecured claims, and (iii) that it would likely require compromise by clients and LBIE if it is to be effective. It was also noted that the "*feasibility and parameters of the proposed Scheme are currently being explored and developed with the assistance of a representative group of clients, a formal working group consisting of members of the Creditors' Committee who are assisting with exploring elements of the scheme and their application*".

61. At this early stage of the Administration and given the limited visibility we had on the value of unsecured claims against LBIE and on the recoverable value of its assets, the Joint Administrators reported that we were unable to provide any form of dividend estimate or indication as to the timing of any future dividend (see page 5/334 of **SAP7**) at that time. It was also noted that limited resources were being deployed to agree unsecured claims at that stage and that, over the coming months, the Joint Administrators intended to explore the alternative mechanisms available for making distributions to unsecured creditors (see page 6/335 of **SAP7**).

62. The First Progress Report also contained some limited data on the LBIE estate's financial position, which illustrated the inherent uncertainty of the financial outcome of the Administration (see pages 4 and 5/333 and 334 of **SAP7**). It was expressly noted that LBIE's Statement of Affairs (being the statement in the form prescribed by the Insolvency Act 1986 - the "**SoA**") remained in draft form and that although the First Progress Report included material extracts from information provided in the draft SoA for illustrative purposes, the "*extracts are not comprehensive and no reliance should be placed upon them in forming any view of the dividend prospects for unsecured creditors*" (see page 75/404 of **SAP7**). The First Progress Report also noted that there was likely to be a shortfall to unsecured creditors (see page 5/334 of **SAP7**).

63. Three further meetings of the Scheme Working Group were held on 16 April, 14 May and 17 June 2009 to progress the proposed Scheme.

64. On 26 June 2009, the Joint Administrators circulated a letter (a pro forma copy of which is at pages 421 to 424 of **SAP7**) to clients who, from LBIE's records, appeared to have claims to Trust Assets. This letter provided some further information about the proposed Scheme, including as regards voting values. The letter opened by stating that "*the current mechanism in place to return client assets by individual bilateral negotiation is a lengthy process, is onerous on clients and is failing to bring finality to dealings between them and LBIE.*" The letter went on to highlight (among other things) that the proposed Scheme would "*define Scheme creditors' trust and unsecured claims*" and "*ensure no future claims may be made against LBIE for assets distributed under the Scheme*". For the purpose of calculating voting rights only, 30 June 2009 was stated to be the valuation date for assets and open positions. It was necessary to have a voting reference value for the purpose of calculating whether the threshold for approving the proposed Scheme was met.

65. On 14 July 2009, the Joint Administrators made an application to the High Court seeking clarification as to whether the Court would have jurisdiction to sanction the proposed Scheme and a direction that the

Joint Administrators be at liberty to apply to the Court for directions to convene a meeting of Scheme Creditors (the "**Jurisdiction Application**"). In the context of that application, various documents were produced, including a witness statement from David Ereira ("**Ereira 2**"), a briefing note and a short-form version of an explanatory statement for the draft Scheme (the "**Mini-ES**"). Copies of these documents were posted on the Website, together with an update dated 15 July 2009 (itself updated on 21 July 2009) that provided an overview of the Jurisdiction Application. Copies of the briefing note, Mini-ES and Website update are at pages 425 to 429, 430 to 515 and 516 to 518 of **SAP7** respectively.

66. Ereira 2 provided an update on progress in relation to the development of the proposed Scheme. Mr Ereira relayed that:

'[s]*ince the date of Ereira 1, there have been several further meetings of the Working Group, all of which I attended. There have also been conference calls and exchanges of written comments and information. The structure and content of the proposed Scheme have been discussed in detail. The Working Group is strongly supportive of a scheme that deals comprehensively with all issues relevant to a creditor's relationship with LBIE (and not just its proprietary claims) in order to enable the Administrators to make a rapid distribution of assets to Scheme Creditors. The Working Group has also been extensively consulted on the terms of the Scheme and is unanimously supportive of the proposed Scheme*" (see paragraph 88 of Ereira 2).

67. Mr Ereira went on to state (at paragraph 94) that the objectives of the proposed Scheme were (amongst other things) (i) "*to compromise and agree all of the claims…of Scheme creditors*", and (ii) "*to determine, quantify and crystallise the value of unsecured claims of Scheme Creditors.*" He went on to state (at paragraph 113) that Trust Asset Creditors would release all claims against LBIE and/or the Joint Administrators in respect of or arising out of Trust Assets or Financial Contracts and that these would be replaced with certain "New Claims". These New Claims were to include "*the right to have their Net*

Contractual Position...determined on the basis set out in the Scheme" and "*an ascertained, unsecured claim in LBIE's winding-up...such amount as is determined under the Scheme*". He summarised the position by stating that:

'[t]*he result of the Scheme will be that each Scheme Creditor receives (to the extent applicable in any given case) (i) a distribution of Distributable Trust Property; and (ii) agreement as to any net unsecured claim it has against LBIE. Any and all other claims against LBIE will be compromised and both LBIE and the Scheme Creditors will achieve certainty as regards their positions*" (see paragraph 114 of Ereira 2).

68. The content of Ereira 2 was also reflected in the briefing note and Mini-ES. By way of example, paragraph 9 of the briefing note (headed "The compromise by Scheme Creditors") (page 428 of **SAP7**) explained that Scheme Creditors would release all claims against LBIE (save for certain limited exceptions that are not relevant here) and that in return they would receive:

"*the right to have their claims and entitlements determined on the basis set out in the Scheme and to an unsecured claim against LBIE (to be dealt with in LBIE's general distributions to unsecured creditors in due course) for the value of any shortfall in assets allocated to them or if the net contractual position shows that LBIE is a net debtor to them.*"

69. The briefing note also flagged that:

'[t]*he Scheme is not intended to be a comprehensive solution to all matters arising from the insolvency of LBIE. Other processes in the insolvency of LBIE (which may include distributions, further schemes of arrangement or court processes or determinations) will be taken forward to deal with other property and unsecured claims and these may not be fully resolved or developed at the time that the Scheme is approved or sanctioned*' (see the "Background" section at page 1, page 425 of **SAP7**).

70. Similarly, the Mini-ES noted (at paragraph 4, page 432 of **SAP7**) that the objectives of the proposed Scheme included, "*to compromise and agree all of the claims, other than Excluded Claims* [which do not include any relevant claims for present purposes] *of Scheme Creditors*" and "*to determine, quantify and crystallise the value of unsecured claims of Scheme Creditors.*"

71. The structure of the compromise was explained to be by means of a release of existing claims in exchange for a defined set of new claims. Greater detail on this exchange was provided in section 20 of the Mini-ES. In particular, section 20.1 explained that "Released Claims" included all claims (save for Excluded Claims which do not include any relevant claims for present purposes) in respect of Trust Assets and/or in respect of any Financial Contract (see page 18/448 of **SAP7**). Clause 20.7 of the Mini-ES then provided that all Scheme Creditors would have their Released Claims exchanged for the following:

> "*the right to have their Net Contractual Position, Allocations and Distributions determined on the basis set out in the Scheme;*
>
> ...
>
> *the right to claim as a new obligation of LBIE in accordance with the Scheme its Net Financial Claim; and*
>
> *an ascertained, unsecured claim in LBIE's winding-up or any other distribution of LBIE's assets generally to its unsecured creditors (the* ***Ascertained Claim****) for such amount as is determined under the Scheme*".

72. Clause 20.10 goes on to state that "[i]*n the winding-up or any distribution in administration of LBIE, which will take place outside the Scheme, LBIE may, in accordance with applicable insolvency law, be entitled to set off against a Scheme Creditor's Ascertained Claims any amounts due from that Scheme Creditor to LBIE thereby potentially reducing the value of that Scheme Creditor's Ascertained Claims*".

73. The Mini-ES contained two provisions in relation to interest. Clause 9.8.7 stated that "*no interest will accrue on any unpaid liability of LBIE from the Administration Date, save to the extent that such interest would accrue under Rule 2.88 of the Insolvency Rules*" (page 439 of **SAP7**). Similarly, clause 34.4 stated '[n]*o interest will accrue on any Net Financial Claim, save to the extent provided in Rule 2.88 of the Insolvency Rules*" (page 457 of **SAP7**).

74. Both the Mini-ES and the briefing note indicated that the proposed Scheme would operate in US dollars, with all relevant calculations and valuations to be made in US dollars and that any amount expressed to be in a different currency would be converted to US dollars (see pages 7 and 30 of the Mini-ES,437 and 460 of **SAP7**, and paragraph 11 of the briefing note, page 428 of **SAP7**).

75. The decision to have the currency of the proposed Scheme (and thereafter the CRA) as US dollars was based on the Joint Administrators' understanding that the vast majority of the claims for Trust Assets were in respect of securities denominated in US dollars. As noted above, the valuation and agreement of unsecured financial claims was a necessary element of the return of Trust Assets and, in order to calculate a net balance owing between LBIE and Scheme Creditors, it was necessary for all sums to be converted into a single reference currency.

76. The hearing of the Jurisdiction Application took place on 29 and 30 July 2009 and GLG Partners LP, as representatives of the Scheme Working Group, made representations in support of that application. As reflected in paragraph 48 of the judgment handed down on 21 August 2009 (as to which, see further below), GLG indicated in its written submissions that:

"*GLG is strongly supportive of a scheme that deals comprehensively with issues affecting the relationship between LBIE and those with trust claims to property in LBIE's custody*" (see paragraph 3).

77. Further meetings were held with certain members of the MFA and AIMA on 5 and 7 August 2009 respectively at which the key elements of the

proposed Scheme were discussed. A copy of the slides that were presented at those meetings (the same slides being utilised for both meetings) is at pages 519 to 556 of **SAP7**. Consistent with previous communications, these slides describe the proposed Scheme as involving compromise (see for example slides 4, 20 and 38 at pages 522, 538 and 556 of **SAP7**, respectively). They also confirm that the Scheme had the unanimous recommendation of the Creditors' Committee (see slide 38 at page 556 of **SAP7**).

78. A series of questions and answers, dated 5 and 7 August 2009, arising out of those meetings were posted on the Website (see pages 557 to 571 of **SAP7**). In the response to question 59 of this posting, it was stated that "*Scheme Creditors also benefit from the Scheme by settling their entire positions vis-a-vis LBIE and potentially receiving back assets in a more efficient manner than would otherwise be possible.*"

79. In respect of dividends it was stated (see response 61) that "[i]*t is not possible to give any indication of the likely dividend at this stage*" and (see response 64) that "[i]*t is not yet possible to indicate anticipated timing on distributions in respect of unsecured claims. In due course the Administrators will come forward with proposals on this which is likely to follow the approval of the Scheme.*"

80. On 21 August 2009, the Court held that it would not have the necessary jurisdiction to sanction the proposed Scheme. The Joint Administrators posted a Website update of the same date (a copy of which is at pages 572 to 573 of **SAP7**) indicating that we were considering whether the structure of the Scheme could be modified so as to address the issues highlighted by the ruling. A further update dated 25 August 2009 (a copy of which is at pages 574 to 578 of **SAP7**), including a link to the full judgment, was posted on the Website.

81. The Joint Administrators filed an appeal against that decision on 10 September 2009 but, pending the outcome of the appeal (and as flagged in our August Website updates referred to above and subsequently in our

update dated 14 September 2009 (a copy of which is at pages 579 to 580 of **SAP7**), we commenced exploring alternative mechanisms to the proposed Scheme with the Scheme Working Group.

82. On the same date as the appeal was lodged, i.e. 10 September 2009, a meeting took place with the Scheme Working Group to discuss (amongst other things) the possible alternatives to the proposed Scheme, one of which was a consensual, multi-lateral, contractual solution the provisions of which would be substantially the same as those of the draft Scheme, i.e. the CRA. A further update dated 14 September 2009 was published on the Website.

83. Based on our analysis, discussions with our advisers and collaboration with the Scheme Working Group, the Joint Administrators formed the view that the most viable alternative to the proposed Scheme was the CRA. As explained in paragraph 26 above, we were aware from feedback from Trust Asset Creditors that the proposed Scheme had significant support from them. We published on the Website an update dated 5 October 2009 to this effect, together with a timeline and an explanation of how the development of the CRA would interact with the appeal process, a copy of which is at pages 581 to 588 of **SAP7**.

84. That Website update indicated that the proposed Scheme remained the Joint Administrators' preferred solution but that alternatives were being explored in parallel. The concept of the CRA was introduced and it was indicated that it "*would have substantially the same provisions as the draft Scheme, including a bar date, and deal with all aspects of determining the value of a creditor's net equity, the allocation and the distribution of trust property that are dealt with under the draft Scheme.*" The update further indicated that, while the CRA would not itself require court sanction, in addition to the CRA, the Joint Administrators also envisaged making one or more applications to court to assist them in administering Trust Assets, including an application for a bar date on the submission of Trust Asset claims.

85. A Scheme Working Group meeting was held during the afternoon of 7 October 2009 at which the CRA and bar date application were discussed.

86. The CRA and other options were presented at meetings with certain members of the MFA and AIMA on 8 and 9 October 2009. A Website update of the same dates, including a link to copies of the slides used at the presentations, was posted on the Website. Copies of the Website update and slides presented at those meetings (the same slides being utilised for both meetings) are at pages 589 to 624 of **SAP7**. The CRA is described in those slides as a "[c]*ontractually binding agreement incorporating substantially all terms of proposed Scheme"* the effect of which would be (among other things) to *"determine financial position payable between LBIE and Clients"* and the '[p]*rovision of releases to signatory clients and LBIE*" (see slide 14 on page 604 of **SAP7**). It was also noted that the CRA intended to "*provide mutual releases to all signatories*" (see slide 15 on page 605 of **SAP7**).

87. On 14 October 2009, the Joint Administrators published their second Progress Report, for the period 15 March 2009 to 14 September 2009 (the "**Second Progress Report**"). The Second Progress Report (a copy of which is at pages 625 to 690 of **SAP7**), reiterated that the CRA was being developed in parallel with pursuing the Scheme appeal. It stated that the terms of the CRA were substantially the same as those in the proposed Scheme and also noted that its framework was:

"in the process of being refined and shared with affected clients...Meetings were held with industry bodies during early October 2009, to share the structure and to take soundings. The output of those meetings has been fed into the process" (see page 31/655 of **SAP7**).

88. Section 4.5 of the Second Progress Report provided information about the Joint Administrators' thinking at that time as regards future distributions to unsecured creditors. The document indicated '[i]*t is our intention to materially progress the framework for distributing realisations to creditors over coming months*" and that our "*view is that a scheme of*

arrangement is likely to be the most efficient and suitable mechanism to distribute funds to unsecured creditors" (see page 24/648 of **SAP7**). The document went on to indicate that it was envisaged that significant elements of the draft Scheme could be incorporated into any unsecured scheme in due course (see page 24/648 of **SAP7**).

89. The introductory letter to the Second Progress Report also brought to the attention of the reader that it contained no estimate of likely dividends on the basis that material uncertainties continued to exist concerning the timing and realisable value of assets and eventual levels of creditors' claims, such that any estimate would likely be materially misleading (see page 1/627 of **SAP7**). The Second Progress Report noted that the Joint Administrators were hoping to provide some indication of the potential range of dividend levels in the next Progress Report (see page 8/633 of **SAP7**).

90. The Joint Administrators' appeal from the High Court's jurisdiction decision was heard on 26 October 2009 and GLG Partners LP, as representatives of the Scheme Working Group, filed written submissions in support of the appeal. Those submissions (a copy of which is at pages 691 to 697 of **SAP7**) included the following statement:

"*while it is true that the proposed scheme affects (among other things) proprietary rights of claimants to trust property, this should be seen as merely one aspect of a scheme which addresses the overall financial position between LBIE and certain of its creditors.*"

91. The submissions went on to state that the draft Scheme's *"purpose is to enable the financial position between LBIE and those creditors (including the extent to which LBIE holds securities on trust for those creditors) to be determined finally and expeditiously, so that the trust assets can be returned to those entitled to them."*

92. We provided a Website update, dated 26 October 2009, in relation to the appeal hearing, together with a link to David Ereira's third witness statement. A copy of this update is at pages 698 to 699 of **SAP7**.

93. The CRA Working Group met on 5 November 2009 to enable the Joint Administrators to update the other members of the CRA Working Group in relation to the Scheme jurisdiction appeal, provide a summary of the material commercial points of the CRA and discuss a first draft of the documentation for the CRA.

94. The High Court's decision regarding jurisdiction was upheld by the Court of Appeal on 6 November 2009. Although the Joint Administrators made an application for permission to appeal to the Supreme Court, this was ultimately not pursued and from that point in time the Joint Administrators took the CRA forward as the sole alternative to the ongoing but progressively more difficult bilateral return process.

95. The Joint Administrators' Website update, dated 6 November 2009 (a copy of which is at pages 700 to 701 of **SAP7**), advised of the outcome of the appeal and noted that pending its outcome the Joint Administrators had been working with the Creditors' Committee to develop a credible alternative, the provisions of which would be substantially the same as those contained in the proposed Scheme and which would be formally launched in a circular in the ensuing weeks.

96. Throughout the course of November 2009, successive drafts of the CRA documentation were circulated to members of the CRA Working Group and feedback was received from the Creditor Representatives on those iterative drafts, including during lengthy conference calls and meetings (for example on 19 November 2009) and ad hoc interaction on a daily basis.

97. The CRA was proposed to eligible creditors on 24 November 2009 with the publication of the CRA Circular (which comprised (i) a letter from the Joint Administrators (the "**CRA Letter**") (which itself enclosed a brief summary of the background to the CRA and a short Readers' Guide); (ii)

a summary of the principal provisions and effect of the CRA; and (iii) the full text of the CRA itself). A copy of the CRA Circular is at pages 4 to 289 of **SAP7**. The CRA Letter stated that the *"objective of the* [CRA] *is to establish standard methods for the termination and valuation of Financial Contracts and to expedite the process of asset distribution in order to bring finality to Signatories in respect of these positions*" (page 12 of **SAP7**) and noted that one of the advantages of accepting the offer was that it was expected to "*provide finality and certainty regarding the financial position between Signatories and the Company*" (page 14 of **SAP7**).

98. The Joint Administrators also published on the Website an update dated 24 November 2009 in respect of the CRA, a copy of which is at page 702 to 704 of **SAP7**. The Website indicated that the CRA allows parties "*to compromise and agree claims relating to trust assets and financial contracts. While the principal focus of the* [CRA] *is to facilitate the return of trust assets to those parties with ownership claims, the* [CRA] *also contains mechanisms to determine the claims of those parties with purely unsecured financial claims*" (page 702 of **SAP7**).

99. The fact that the CRA involved a release of all pre-existing claims in exchange for a new, unsecured claim against LBIE was clearly highlighted in the following parts of the CRA Circular:

99.1 In the CRA Letter: "*The* [CRA] *establishes a mechanism for the termination and close-out of all Financial Contracts between a Signatory and the Company. The claims or liabilities under each such contract are netted off under the* [CRA] *to determine a single net claim against or liability to the Company. In the event that the net figure is a claim against the Company, this will be an ascertained unsecured claim against the Company for the purposes of any future distribution from the general estate of the Company*" (page I-4/14 of **SAP7**).

99.2 In the summary of provisions in the Readers' Guide: "*one of the main purposes of the* [CRA] *from the Company's perspective is to obtain a release from the Signatories to claims they might otherwise have against the Company and the Administrators, including any claims for consequential damages. The* [CRA] *includes this release... In exchange for the release being provided by Signatories, the Signatories receive new claims against the Company*" (page I-19/29 of **SAP7**).

99.3 In the summary of the principal provisions: "*The purpose of the* [CRA] *is to allow the Company and Signatories to compromise and agree all claims of the Signatories relating to Trust Assets and Financial Contracts, other than certain specified Excluded Claims* [none of which are presently relevant but which include, for example, Client Money claims]*...in exchange for mechanisms to:...(iv) determine, quantify and crystallise the value of unsecured claims (including any ... Net Financial Claim) of all signatories; (v) determine the Net Financial Liability and Net Financial Claim of all Signatories...*" (page II-1/page 43 of **SAP7**).

100. The CRA Letter also noted the bases on which the Joint Administrators considered the CRA to be in the best interest of the creditors of LBIE as a whole, for example:

100.1 "*The* [CRA] *sets out structured procedures for the return of Trust Assets. In some circumstances, these procedures may compromise certain contractual rights of Signatories; for example, rights to potential consequential losses (if any). It is not possible to predict how the application of these procedures may affect individual Signatories at this stage because of the highly fact-dependent nature of an individual's circumstances. It is within this context that the Administrators believe the* [CRA] *is in the overall interests of creditors as a whole*" (page I-3/13 of **SAP7**).

100.2 "*In seeking to achieve an effective multilateral solution to the determination of Signatories' positions, the implementation of the* [CRA] *will progress the Administration of the Company, enabling further advances to be made in the management of the unsecured estate. For this and other reasons outlined in this letter, the Administrators are also of the opinion that the* [CRA] *is in the best interests of the creditors of the Company as a whole*" (page I-4/14 of **SAP7**).

101. On 2 December 2009, the Joint Administrators obtained an order from the Honourable Mr Justice Briggs that we be permitted to make a distribution to LBIE's unsecured creditors and post a notice in an approved form to this effect (the "**Distribution Order**"). The Joint Administrators duly posted that notice on 4 December 2009 (the "**Notice of Distribution**") and published an update dated 10 December 2009 in respect of this development on the Website.

102. Both the Notice of Distribution and the Website update (copies of which are at pages 705 to 707 of **SAP7**) made clear that, in due course, the Joint Administrators intended to make a distribution to unsecured creditors by way of payment of a dividend. The Website update also made express reference to the fact that,

'[t]*he giving of the notice referred to above brings into effect the provisions of Chapter 10 of the Insolvency Rules, including those relating to set-off and those pursuant to which unsecured creditors may prove for their debts.*"

103. The Joint Administrators held meetings with Trust Asset Creditors in New York and London on 7 and 11 December 2009 respectively. The purpose of the meetings was to explain the CRA proposal, discuss the provisions and answer any questions, as well as to solicit acceptance of it. Copies of the slides presented at the meeting in London on 11 December are at pages 708 to 759 of **SAP7** (the content of those slides being substantially the same as that presented at the New York meeting).

104. The slides provided the context in which the CRA had been developed and would be implemented (see slides 6 to 11, pages 713 to 718 of **SAP7**). Slide 10 (page 717 of **SAP7**) sets out in diagrammatic form the scope of the CRA, from which it can be seen that the determination and agreement of unsecured creditor claims, but not the payment itself of distributions to unsecured creditors, is within the scope of the CRA. Slide 11 (page 718 of **SAP7**) sets out that the CRA provides a "[d]*efined methodology for valuation of assets and claims, quantifying totality of client relationship* [and] *allocating assets and shortfalls.*"

105. The Net Contractual Position was highlighted using the following language on slide 16 (page 723 of **SAP7**):

"*Totality of financial position of client*

Netting of claims against LBIE with any liabilities of the client

Open contract automatically terminated at month-end of sign-up

Valuation of Close-Out Amounts at Termination Date

Defective termination notices may be deemed effective

Determination of Close-Out Amount (in USD rate at Administration Date):

- *Determining Party*
- *Contractual Valuation Methodology*
- *Agreed Valuation Methodology*
- *Fallback Valuation Methodology"*

106. On the slide entitled "Benefits to Signatories" (slide 48, page 755 of **SAP7**) it was stated that the CRA '[p]*rovides finality and certainty on all positions*".

107. The presentation concluded with a slide that stated that "*CRA allows agreement of all elements of a Signatory's position and relationship with LBIE*" (slide 52, page 759 of **SAP7**).

108. The necessary acceptance threshold for the CRA was reached on 29 December 2009 and it became effective on that date. Minor modifications were made to the CRA on 29 December 2009, 15 March 2010, 27 January 2011 and 8 December 2011, none of which are presently relevant.

109. On 14 April 2010, the Joint Administrators published their third Progress Report, for the period 15 September 2009 to 14 March 2010 (the "**Third Progress Report**") (a copy of which is at pages 760 to 859 of **SAP7**). The Third Progress Report stated that the Notice of Distribution had been issued (see page 5/766 of **SAP7**) and that "*LBIE is now able to agree claims and make distributions to creditors in accordance with the* [Distribution Order]" (see page 10/771 of **SAP7**). It also indicated that the Joint Administrators believed it was possible to accelerate the claim admission and asset distribution process and had identified a number of mechanisms to effect this, which we were exploring at that stage (see page 36/797 of **SAP7**).

110. The Third Progress Report also noted at various points that very material uncertainties continued to exist that would impact on any interim or final dividends payable and that therefore it continued to be inappropriate to provide an indicative dividend estimate (see pages 1 and 7/762 and 768 of **SAP7**). By way of example, the "Important Notice" at the beginning of the Third Progress Report (see page 1/762 of **SAP7**) stated that due to the material uncertainties noted above, "[t]*he Administrators therefore wish to caution creditors from using any data in this report to estimate the value of their claim or any likely dividend ranges as any such assessments are potentially materially misleading.*"

111. The Important Notice also stated that:

"*While amounts included in this report are stated in US Dollars a very material proportion of the assets and liabilities are in currencies other than US Dollars. The restatement of assets realised in currencies other than US Dollars and the distribution of assets and payment of costs in currencies other than US Dollars inhibits comparison with our earlier reports.*"

112. Page 11 of the Third Progress Report (page 772 of **SAP7**) stated under the heading "Reporting Currency" that:

"In future reports, all financial information including claim amounts, payments, realisations and valuations, will be in Pounds Sterling ("Sterling"). This reflects Rule 2.86 of the Insolvency Rules, which requires claims to be proved in Sterling."

113. It was not until 12 April 2013, with the publication of the Joint Administrators' ninth Progress Report, for the period from 15 September 2012 to 14 March 2013, (the "**Ninth Progress Report**"), a copy of which is at pages 860 to 907 of **SAP7**, that the Joint Administrators provided illustrative outcome estimates for unsecured creditors indicating a surplus (see page 9/870 of **SAP7**).

(E) RESPONSE TO THE BROWNING WITNESS STATEMENT

Introduction

114. In the Browning Witness Statement, Ms Browning has made a number of observations on the effect of certain provisions of the CRA. These observations are based on her interpretation of the way in which the CRA was developed and intended to operate. In Section D above, I provide a detailed factual account of the evolution of the CRA by reference to communications made by the Joint Administrators (whether via Website updates, Progress Reports, presentations, witness statements or other court filings) during the relevant period.

115. As is apparent from the content of section D above, Ms Browning's observations on the following matters are inconsistent with the factual account provided by me: (i) the scope of the releases, including as regards potentially valuable rights; (ii) the currency of the CRA; (iii) the timeframe for considering the CRA; and (iv) the participation by unsecured creditors in the CRA. I provide further comments on each of these matters in the following paragraphs.

Scope of releases

116. Ms Browning suggests in a number of places in her statement (see, for example, paragraphs 5, 26, 27, 30, 32, 36, 38, 39, 41, 42, 43, 46 and 47) that:

116.1 in none of the communications (whether written or verbal) between LBIE/the Joint Administrators and Trust Asset Creditors and other potentially affected creditors was it made clear that the effect of the CRA was that signatories would be giving up potentially valuable rights, including "*entitlements to ancillary economics*" (see paragraph 42 of the Browning Witness Statement"); and

116.2 it was Ms Browning's understanding (i) that the "*underlying economic terms*" of the Financial Contracts were preserved "*to the extent possible and insofar as consistent with the purpose of the CRA*" (see paragraph 43 of the Browning Witness Statement"); and (ii) that "*the necessary and incidental consequences*" of any modification of contractual rights would be preserved (see paragraph 27 of the Browning Witness Statement).

117. As described above (see, for example, paragraphs 56, 60, 67, 68, 70, 71, 77, 78, 97, 106 and 107), the draft Scheme and then CRA was consistently described by or on behalf of the Joint Administrators as (i) a compromise; and (ii) an arrangement which sought as far as possible to achieve finality as regards the relationship between LBIE/the Joint

Administrators and Trust Asset Creditors. GLG itself (whom Ms Browning represented at the Working Groups) recognised this point at the time the proposed Scheme was being developed, as its submissions in support of the Joint Administrators' appeal referred to the fact that the Scheme was to bring finality to the financial position between LBIE and Trust Asset Creditors (see paragraphs 90 and 91 above).

118. The draft Scheme and CRA documentation contained broad release language and a broad definition of those "Claims" being released, including claims in law or in equity of whatsoever nature and claims for "*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*". The language used was not limited by reference to the concept of provable claims. The documentation was structured (and consistently described as being structured) as a release of old claims in exchange for a set of specified new claims. The broad release language and the exchange structure were both present from an early stage of the development of the draft Scheme (and thus from the outset of the CRA) and have remained consistent throughout.

119. The structure and terms of the CRA provided that signatories would be giving up a number of valuable and/or potentially valuable rights, and/or accepting a liability that they otherwise might not have. By way of example:

    119.1 signatories agreed to pay interest on any net financial liability owed to LBIE (see clause 25.2 of the CRA at page 157 of **SAP7**);

    119.2 signatories were charged a set fee (a "Costs Amount") ranging from 0.75% to 2% of the value of the Trust Assets being returned (see Part 11 of the CRA at pages 185 to 208 of **SAP7**); and

    119.3 the CRA contained a number of overarching valuation methodologies, e.g. as regards the date for valuing Trust Assets and open contracts, which were in many cases different from the

otherwise applicable contractual provisions (e.g. rehypothecated securities were valued as at 12 September 2008).

120. As is the way with any compromise, there was an element of give and take in the various provisions and it was up to each Trust Asset Creditor to assess whether, in the round, this was an arrangement it wished to enter into. As the *quid pro quo* for releasing valuable rights, signatories obtained a number of benefits, such as the right to collateralise any Net Financial Liability with, *inter alia*, any admitted pre-Administration Client Money claims and/or claims to assets that were sub-custodied with LBI (both of which involved very complex issues that would otherwise take considerable time to resolve). Collateralisation enabled the early return of assets and the reduction of any interest accrual on any liabilities.

121. Ms Browning refers to "incidental consequences" and "ancillary economics". As indicated above, the CRA was designed to be an all encompassing agreement as regards all elements of signatories' claims against LBIE (save for certain limited exceptions, e.g. as regards Client Money entitlements).

122. The potentially valuable rights to which Ms Browning refers include Currency Conversion Claims (i.e. non-provable claims arising as a result of exchange rate fluctuations). As noted in paragraph 33.3 above, the Court first determined that this type of claim exists (in principle at least) in the Waterfall I judgment which was handed down on 14 March 2014. In 2009 (at the time the proposed Scheme and then the CRA was being developed and promoted), there was no contemplation of or discussion regarding this type of non-provable claim (or indeed non-provable claims more generally). Equally, there were no provisions in the CRA that required signatories to return any currency gain that had accrued to them in circumstances where a claim was denominated in a currency which weakened against sterling. In addition, it was not until several years after the development of the CRA (i.e. in the Ninth Progress Report) that the Joint Administrators provided illustrative outcome estimates for unsecured creditors indicating a surplus and thus we had no notion (even

if such a claim could have entered our contemplation) that such a claim could have a value. It follows, therefore, that there was no specific provision to deal with any release of possible Currency Conversion Claims in the CRA documentation nor was any reference made to such a release in the course of its development and promotion.

Currency

123. In the section of the Browning Witness Statement commencing at paragraph 12, Ms Browning observes that the Joint Administrators initially considered maintaining the LBIE estate in US dollars and ultimately paying dividends in US dollars. It is correct to say that prior to the 14 November 2008 creditors' meeting it had been contemplated that funds available for unsecured creditors would be held primarily in US dollars and that, subject to the terms of an eventual scheme of arrangement or company voluntary arrangement, a distribution could be made in US dollars.

124. As indicated above, this aspect of the proposals for achieving the purpose of the administration, which was put to the general body of creditors at the initial meeting of creditors held on 14 November 2008, became the subject of some discussion and it became clear that there was also significant support for operating the Administration in Euros as opposed to US dollars. As a result of there being no clear majority of votes, the amended proposal referred to in paragraph 15 of the Browning Witness Statement was put to the meeting and was approved.

125. Thereafter, and subject to the ongoing discussions with the Creditors' Committee, the Joint Administrators held asset realisations in multiple currencies until LBIE converted to a distributing Administration in December 2009, following which significant foreign currency amounts began to be converted to sterling. However, I understand from my fellow Joint Administrator, Mr Lomas that, following the decision of the Court of Appeal in respect of Client Money handed down on 2 August 2010, this activity was suspended until there was no continuing and realistic

prospect of there being any material Client Money tracing rights into the House estate.

126. I further understand from Mr Lomas that, once such confirmation was available, all residual foreign currency amounts were also converted to sterling, leaving only Client Money denominated in its original currency. Creditors were notified of these developments by means of the Progress Reports (see, for example, page 10 of the Joint Administrators' fourth Progress Report for the period 15 March 2010 to 14 September 2010 dated 14 October 2010, a copy of which is at pages 908 to 991 of **SAP7**; page 6 of the Joint Administrators' seventh Progress Report for the period from 15 September 2011 to 14 March 2012 dated 12 April 2012, a copy of which is at pages 992 to 1048 of **SAP7**; page 6 of the Joint Administrators' eighth Progress Report for the period from 15 March 2012 to 14 September 2012 dated 12 October 2012, a copy of which is at pages 1049 to 1100 of **SAP7**; and page 7 of the Ninth Progress Report, a copy of which is at pages 860 to 907 of **SAP7**).

127. Ms Browning is correct in her observation (at paragraph 14 of the Browning Witness Statement) that, when the Joint Administrators first wrote to creditors asking them to provide (through an online portal) details of their claims, they were required to do so in US dollars. A copy of the letter is at pages 1101 to 1108 of **SAP7**. The letter expressly noted that the submission of a creditor's unsecured claim was solely for voting purposes at the creditors' meeting on 14 November 2008. The instructions for the submission of counterparty claims also indicated that the database would in due course be reopened and expanded to collect more detailed data in relation to creditors' claims. In due course, an expanded CRA-specific database within the online portal was launched and creditors were permitted to submit claims in their original currencies (or in sterling).

128. Although it is correct to say that the Joint Administrators' approach to currency management has developed over the course of the Administration, following the 14 November 2008 initial creditors' meeting,

at no point, as far as I am aware, was it suggested by the Joint Administrators that Trust Asset Creditors were being given a right to receive a dividend distribution in US dollars in respect of their unsecured claims (as is suggested by Ms Browning in paragraph 21 of the Browning Witness Statement). As explained above, although the CRA created new liabilities to creditors calculated in US dollars, in relation to unsecured claims it was a valuation and agreement mechanism only and did not itself effect distributions to unsecured creditors. Accordingly, the new US dollar claim arising under the CRA would, in due course and like any other foreign currency denominated unsecured claim against LBIE, have to be converted into sterling in accordance with Rule 2.86 for the purpose of ranking for dividend and receiving a distribution. The calculation of entitlements in US dollars and the currency of distribution payments are two separate matters. There is nothing inconsistent in determining entitlements in US dollars and then effecting distributions in sterling through the Administration.

129. Further, in paragraphs 21 and 44 of the Browning Witness Statement, Ms Browning appears to suggest that the conversion of sums to US dollars was to provide a hedge for CRA signatories with original US dollar claims. As noted in paragraph 29 above, the reason a single reference currency was necessary was for voting, valuation and set-off purposes. US dollars were chosen as that reference currency for administrative convenience. Conversion into US dollars under the CRA did not provide a hedge for signatories and, as far as I am aware, it was never suggested that it would do so.

The timeframe for considering the CRA

130. In paragraph 32 of the Browning Witness Statement, Ms Browning comments that Trust Asset Creditors had a "very tight timeframe" to consider the CRA and decide whether to accede to it. Whilst it is correct that the period between the formal launch of the CRA and the date of accession was relatively short, i.e. five weeks, as should be clear from the detailed chronology provided in section D above, there were

numerous communications, meetings and updates between the Joint Administrators and Trust Asset Creditors throughout the course of the development of the proposed Scheme, then the CRA. The material provisions were clearly set out in the Mini-ES in July 2009. Thus, both the details and key features of the CRA had been widely and extensively disseminated over the course of 2009. Trust Asset Creditors (including GLG) were instrumental in its development. Trust Asset Creditors were not in any way caught off guard or pressurised into a decision – they had significant notice and opportunity for questions and answers.

Participation by unsecured creditors

131. In paragraph 40 of the Browning Witness Statement, Ms Browning indicates that she understood the CRA to include mechanisms to determine the claims of signatories with "purely unsecured claims" so as to deal with a situation where a signatory ended up (applying the valuation mechanisms in the CRA) being a net debtor. Whilst it is true that the Joint Administrators were concerned to reach a binding agreement with net debtors regarding the value of LBIE's claim, the provisions apply equally to all unsecured claimants (i.e. both debtors and creditors) participating in the CRA.

132. As indicated above, there was significant benefit (to both LBIE/the Joint Administrators and creditors) in progressing the unsecured claims valuation and agreement process and this was a feature that had been present from the early development of the proposed Scheme.

Miscellaneous

133. The surplus entitlement proposal referred to in paragraph 10 of the Browning Witness Statement, which was developed in the early part of 2014, was not something with which I was directly involved. Nevertheless, I am informed by my co-Joint Administrators that it is not accurate to say that this proposal is presently on hold. In fact, these proceedings have been initiated directly as a result of the fact that the

various commercial compromises contained within that proposal were not able to garner sufficient support from creditors.

STATEMENT OF TRUTH

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

Dated 27 January 2015

Steven Anthony Pearson

Party: Applicant
Witness: Steven Anthony Pearson
Statement No: 7
Exhibit: "SAP7"
Date: 27 January 2015

SCHEDULE 1

CHRONOLOGICAL SUMMARY OF KEY EVENTS CONCERNING THE RETURN OF TRUST ASSETS

Note: Terms not defined in this chronological summary have the meaning given to them in the seventh witness statement of Steven Anthony Pearson dated 27 January 2015.

Date	Event
15/09/2008	LBIE enters into administration.
06/10/2008	First witness statement of Steven Pearson which discusses the identification and treatment of Trust Assets.
07/10/2008	Joint Administrators are directed to prioritise the return of Trust Assets by giving effect to the processes set out in the Trust Assets Order pending creditor approval of the Joint Administrators' proposals for achieving the purpose of administration.
13/10/2008	Trust Property Committee and its subgroup, the Hardship and Prioritisation Committee, established to oversee the return of Trust Assets
06/11/2008	Website update *LBIE Creditors Update 06/11/2008*, setting out the Joint Administrators' proposals for achieving the purpose of administration and giving notice of the initial creditors' meeting.
14/11/2008	Initial creditors' meeting; creditors resolve to approve the Proposals and appoint Creditors' Committee.
20/11/2008	Website update *Creditors Update (LBIE) – 20/11/2008*, setting out the Proposals.
03/12/2008	Creditors' Committee has its first meeting.
22/01/2009	Creditors' Committee meeting; Joint Administrators table and discuss their intention to seek to explore the possibility of promoting a scheme in respect of Trust Assets.
22/01/2009	With the agreement of the Creditors' Committee, the Joint Administrators establish the Scheme Working Group.
10/02/2009	Scheme Working Group has its first meeting.
25/02/2009	Application filed that the Joint Administrators be at liberty to propose a Scheme. Second witness statement of Steven

	Pearson filed in support of the application.
26/02/2009	Scheme Working Group meeting.
26/02/2009	Website update *Client Money and Assets Update – 26/02/2009*, providing a summary of the application filed on 25 February 2009.
03/03/2009	Meeting in New York with certain members of the MFA at which the Scheme is promoted.
05/03/2009	Meeting in London with certain members of the AIMA at which the Scheme is promoted.
10/03/2009	Scheme Working Group meeting.
12/03/2009	First witness statement of David Ereira filed in support of the application filed on 25 February 2009.
16/03/2009	Order that the Joint Administrators be at liberty to propose a Scheme.
23/03/2009	Website update *Client Money and Assets Update – 23/03/2009*, providing a summary in relation to the order made by the Court on 16 March 2009.
14/04/2009	First Progress Report published.
16/04/2009	Scheme Working Group meeting.
14/05/2009	Scheme Working Group meeting.
17/06/2009	Scheme Working Group meeting.
26/06/2009	Letter sent to Trust Asset Creditors outlining the key details of the Scheme. The letter was also published on the Website.
08/07/2009	LBIE statement of affairs published.
14/07/2009	Application to the High Court made regarding the Court's jurisdiction to sanction the Scheme (the "**Jurisdiction Application**"). Second witness statement of David Eriera filed in support.
15/07/2009	Website update *Frequently Asked Questions for Scheme of Arrangement – 15 July 2009.*
15/07/2009	Website update *Client Money & Assets Update – Scheme of Arrangement – Jurisdiction Application – 15/07/2009* (updated 21/07/2009), including links to various documents outlining the key terms of the Scheme and an overview of the Jurisdiction Application.
29/07/2009 and	Hearing in respect of the Jurisdiction Application. Skeleton

30/07/2009	argument filed in support of the application by GLG.
30/07/2009	Website update *Client money & assets update – Scheme of Arrangement – Jurisdiction Hearing – 29 and 30 July.*
05/08/2009	Meeting in New York with certain members of the MFA at which an update on the Scheme is presented.
07/08/2009	Meeting in London with certain members of the AIMA at which an update on the Scheme is presented.
07/08/2009	Website update *Client money & assets update – Scheme of Arrangement – Presentation to Members of MFA and AIMA – 5 and 7 August 2009*, including a link to slides used at the MFA and AIMA presentations.
18/08/2009	Website update *Client money & assets update – Scheme of Arrangement – MFA and AIMA Presentation, 5 and 7 August 2009: Q&As – 18/08/2009.*
21/08/2009	High Court judgment that it does not have the necessary jurisdiction to sanction the Scheme (the "**Jurisdiction Judgment**").
21/08/2009	Website update *Client money & assets update – Scheme of Arrangement – Jurisdiction Hearing Judgement – 21/08/2009*, providing a press update in relation to the Jurisdiction Judgment.
25/08/2009	Website update *Client money & assets update – Scheme of Arrangement – Scheme Jurisdiction Judgement: Overview and Q&A – 25/08/2009.*
08/09/2009	Website update *Client Money & Client Assets Update – Client Information Portal – 08/09/2009* published, noting that the client information portal had been launched.
10/09/2009	Joint Administrators file an appeal against the Jurisdiction Judgment (the "**Jurisdiction Appeal**").
10/09/2009	Scheme Working Group meeting.
14/09/2009	Website update *Client money & assets update – Scheme of Arrangement – Jurisdiction Judgement Appeal – 14/09/09*, stating that the Joint Administrators were exploring alternative mechanisms to the Scheme pending the outcome of the Jurisdiction Appeal.
05/10/2009	Website update *Client Assets Update – Strategy for Return of Client Assets – 05/10/09*, introducing the concept of a contractually based alternative to the Scheme, pending the

	outcome of the Jurisdiction Appeal.
07/10/2009	CRA Working Group meeting.
08/10/2009	Meeting in New York with certain members of the MFA at which the CRA and other options are presented.
09/10/2009	Meeting in London with certain members of the AIMA at which the CRA and other options are presented.
09/10/2009	Website update *Client Asset Update – Joint Administrators' Presentation to Members of MFA and AIMA 8 and 9 October 2009*, including a link to the slides used at the MFA and AIMA presentations.
14/10/2009	Second Progress Report published.
21/10/2009	Third witness statement of David Ereira is filed in relation to the Jurisdiction Appeal.
26/10/2009	Jurisdiction Appeal hearing. GLG file skeleton argument in support of the appeal.
28/10/2009	Website update *Client Assets Update – Scheme of Arrangement – Court of Appeal Jurisdiction Hearing on 26 October 2009 – 28 October 2009.*
05/11/2009	CRA Working Group meeting.
06/11/2009	Court of Appeal judgment upholding the Jurisdiction Judgment.
06/11/2009	Website update *Client Assets Update – Scheme of Arrangement – Court of Appeal Jurisdiction Judgement – 6 November 2009.*
19/11/2009	CRA Working Group meeting.
24/11/2009	CRA proposed to eligible creditors with the publication of the circular.
24/11/2009	Website update *Client Assets Update – Publication of Circular and Claim Resolution Agreement – 24 November 2009.*
24/11/2009	Website update *Client Assets Update – Client Information Portal – Updated Position and Balance Statement – 24/11/2009.*
26/11/2009	Application made to the High Court to establish a basis on which the Joint Administrators can proceed to distribute Trust Assets after a bar date.
27/11/2009	Website update *Client Assets Update – Bar Date Application – 27 November 2009 Updated 11/12/09.*

02/12/2009	Order from the Court that the Joint Administrators be permitted to make a distribution to LBIE's unsecured creditors.
04/12/2009	Notice of Distribution published.
04/12/2009	Website update *Creditor update – Notice of Proposed Distribution – 4 December 2009.*
7/12/2009	Meeting with Trust Asset Creditors held in New York.
11/12/2009	Meeting with Trust Asset Creditors held in London.
15/12/2009	High Court confirms bar date for client asset claims as 19 March 2010.
15/12/2009	Website update *Client Assets Update – Bar Date Sanctioned – 15 December 2009.*
29/12/2009	Website update *General notification of the Effective Date (in relation to TA Offerees) – 29/12/2009.*

Party: Applicant
Witness: Steven Anthony Pearson
Statement No: 7
Exhibit: "SAP7"
Date: 27 January 2015

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

SEVENTH WITNESS STATEMENT

OF

STEVEN ANTHONY PEARSON

Linklaters LLP
One Silk Street
London EC2Y 8HQ

Tel: (44-20) 7456 2000
Fax: (44-20) 7456 2222
Solicitors for the Claimant
Ref: Tony Bugg/Euan Clarke/Jared Oyston