



Party: Applicant
Witness: Anthony Victor Lomas
Statement No: 13
Exhibit: "AVL13"
Date: 7 October 2015

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 7942 of 2008

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

THIRTEENTH WITNESS STATEMENT

OF

ANTHONY VICTOR LOMAS

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

- 1 I am a Partner in the firm of PwC of the above address and am one of the joint administrators (the "**Joint Administrators**") of Lehman Brothers International (Europe) (in administration) ("**LBIE**"). I am authorised to make this witness statement on behalf of the Joint Administrators.
- 2 I make this witness statement in relation to the amended application for directions issued on 13 May 2015 (amending the original application issued on 12 June 2014) on behalf of the Joint Administrators pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986 (the "**Application**"). This witness statement is provided in support of the Joint Administrators' request for the Court to remove Issues 22 to 26 (inclusive) (the "**French Law Issues**") from the scope of the Application. Its purpose is to explain the background to

the French Law Issues and the Joint Administrators' reasons for seeking the Court's permission to remove the French Law Issues from the scope of the Application.

- 3 There is now produced and shown to me marked "**AVL13**" a paginated bundle of documents, to which I shall refer. Save where otherwise stated, page references in this witness statement are to the contents of this exhibit. Terms capitalised but not otherwise defined have the meaning given to them in the Application.
- 4 Save where otherwise stated, this witness statement is made from facts and matters that are within my own knowledge. The financial information in this witness statement has been collated by the staff working for the Joint Administrators on the LBIE administration. All monetary figures in this witness statement relating to Euro-denominated and US Dollar-denominated claims are expressed in their Sterling equivalent as at 15 September 2008.

Background to the French law claims

- 5 Tranche C of the Application was intended to address, *inter alia*, the French Law Issues, namely the true construction and effect of the contractual right to interest under four types of Master Agreements which are governed by French law: see Issues 22 to 26 (inclusive) of the Application. The four relevant types of Master Agreements under which LBIE creditors' French law governed claims are held are the AFB Master Agreement for Foreign Exchange and Derivatives Transactions (1994) (the "**AFB Master Agreement**"), the FBF Master Agreement Relating to Transactions on Forward Financial Instruments (2001) (the "**FBF Master Agreement**"), the AFTI Master Agreement for Loans of Securities (1997) (the "**AFTI Master Agreement**") and the AFTB Master Agreement for Repurchase Transactions (1994) (the "**AFTB Master Agreement**") (together, the "**French Law Master Agreements**", copies of which are exhibited at pages 1 to 100 of AVL13).
- 6 As at 23 September 2015, there were 50 claims that have been admitted for dividend in the LBIE estate which comprise, either in part or in full, a claim under at least one of the French Law Master Agreements (the "**French Law Claims**"). The Joint Administrators are not aware of any further non-admitted claims under the French Law Master Agreements existing in the LBIE estate. The French Law Claims represent approximately £234.1m (or approximately 1.9%) of the total value of admitted claims against LBIE (being approximately £12.2bn). The breakdown of the principal value of the French Law Claims is as follows:
 - 6.1 approximately £21.9m of the French Law Claims arise under the AFB Master Agreement;
 - 6.2 approximately £211m of the French Law Claims arise under the FBF Master Agreement;

- 6.3 approximately £0.9m of the French Law Claims arise under the AFTI Master Agreement; and
- 6.4 approximately £0.3m of the French Law Claims arise under the AFTB Master Agreement.
- 7** All French Law Claims designate Euros as the contractual currency, save for a single claim under the FBF Master Agreement with a value of approximately £0.6m which designates US Dollars as the contractual currency.
- 8** Based on claims and assignments notified to the Joint Administrators, the First to Fourth Respondents hold or have an interest in approximately 26% of the French Law Claims, with approximately £16.5m being held by the First to Third Respondents collectively (the “**Senior Creditor Group**”) and approximately £44.2m by the Fourth Respondent (“**Wentworth**”).

Procedural steps taken to date with respect to the French Law Issues

- 9** The Senior Creditor Group and Wentworth each served position papers covering (among other things) the French Law Issues on 19 September 2014 (with further position papers in reply on 31 October 2014). Pursuant to the order of Mr Justice David Richards at the case management conference held on 9 March 2015, the Senior Creditor Group and Wentworth each served, in July 2015, expert reports (including reply reports) in respect of the French Law Issues (together the “**French Law Expert Reports**”).
- 10** The Joint Administrators of LBIE gave notice to creditors of the French Law Expert Reports by: (i) publishing an update on the website for LBIE’s creditors on 13 August 2015 which provided links to those reports; and by (ii) sending an email to the LBIE Creditors’ Committee on 14 August 2015; and (iii) sending emails to every creditor of LBIE on 14 August 2015, in each case informing them that the reports had been published on the website. Copies of these notification documents are exhibited at pages 113 to 115 of AVL13.

French Law Claims arising under the AFB Master Agreement or FBF Master Agreement

- 11** Wentworth and the Senior Creditor Group engaged in correspondence between June and September 2015 about the Euro-denominated claims under the AFB and FBF Master Agreements, setting out their respective positions whilst noting that, in light of the limited economic impact of such arguments, they wished to seek to reach an agreed position in respect of the French Law Issues as they related to these two agreements.
- 12** On 11 September 2015, Wentworth confirmed that it and the Senior Creditor Group had reached an agreed position in respect of the French Law Issues, insofar as the issues concerned the Euro-denominated claims arising under the AFB Master Agreement and

FBF Master Agreement that had been admitted in the LBIE estate (the “**Agreed Position**”). A copy of the statement recording the Agreed Position is exhibited at pages 118 to 119 of AVL13.

- 13** Wentworth’s letter confirming the Agreed Position was received by solicitors for the Joint Administrators at 7.16pm on Friday, 11 September 2015. The following business day, on Monday, 14 September 2015, the Joint Administrators gave notice to creditors of the Agreed Position in respect of the AFB Master Agreement and FBF Master Agreement by: (i) publishing an update on the website for LBIE’s creditors; (ii) sending an email to the LBIE Creditors’ Committee; and (iii) sending emails to every creditor of LBIE. Copies of these documents are exhibited at pages 125 to 128 of AVL13.
- 14** These notices:
- 14.1 recorded the Agreed Position in relation to the Euro-denominated claims arising under the AFB Master Agreement and the FBF Master Agreement;
 - 14.2 indicated that the Joint Administrators’ intention was to deal with the assessment of creditors’ claims to interest in respect of these claims in accordance with the Agreed Position;
 - 14.3 invited any creditor which disagreed with the Agreed Position (or a part of it) or wished to take issue with the Joint Administrators’ approach to the assessment of these claims to contact the Joint Administrators as soon as possible and in any event no later than 4pm on 7 October 2015; and
 - 14.4 indicated that the Joint Administrators’ intention was to seek the withdrawal of the French Law Issues from the Application.
- 15** The Senior Creditor Group (by letter of 4 September 2015) and Wentworth (by letter of 11 September 2015) have each confirmed to the Joint Administrators that they intend to be bound by the Agreed Position in respect of the admitted Euro-denominated French Law Claims that are held by them which arise under the AFB Master Agreement or FBF Master Agreement if, following the Joint Administrators’ notice to creditors, no creditor wishes to take issue with the Agreed Position, and the Joint Administrators conclude (taking into account the terms of the Agreed Position) that the Court should not be asked to determine the French Law Issues. The letters referred to are at pages 120 to 124 of AVL13.
- 16** As at the time of signing this witness statement (which is 23 days after the notice referred to at paragraph 13 above was posted on the website for LBIE creditors and after the expiry of the period during which comments were invited), no creditor of LBIE has communicated to the Joint Administrators, or their legal advisers Linklaters LLP, that it disagrees with the Agreed Position. Indeed, neither the Joint Administrators nor Linklaters LLP have received

any enquiries or other communications in relation to the notice posted on the website or the Agreed Position.

- 17** In light of: (a) the Agreed Position; (b) the proportion of French Law claims (i.e. 26%) which the First to Fourth Respondents hold or in which they have an economic interest; (c) the confirmations from the Senior Creditor Group and Wentworth referred to at paragraph 15 above; and (d) the absence of any other creditor having indicated an intention to take issue with the Agreed Position, the Joint Administrators are of the view that the Court should not be asked to determine the French Law Issues insofar as they concern the Euro-denominated claims arising under the AFB Master Agreement and the FBF Master Agreement.
- 18** There is one claim arising under the FBF Master Agreement which designates US Dollar as the contractual currency with a principal claim value of approximately £0.6m. The First to Fourth Respondents do not hold or have an interest in this claim. The Joint Administrators consider that it would be disproportionate to deal with issues concerning the construction and effect of the contractual right to interest under this agreement at the Tranche C trial, and consider instead that it would be preferable for the Joint Administrators to deal with this claim with the relevant creditor on an individual basis in the course of the LBIE administration to the extent that the relevant creditor seeks to assert that it has a right to receive statutory interest other than at the Judgments Act rate. The Senior Creditor Group and Wentworth have agreed in correspondence with this course of action. The correspondence recording the parties' views in this regard is included at pages 101 to 112 of AVL13.

French Law Claims arising under the AFTB Master Agreement and AFTI Master Agreement

- 19** In light of the fact that only five of the French Law Claims arise under the AFTB Master Agreement or the AFTI Master Agreement, with a collective value of approximately £1.2m (or approximately 0.01%) of the principal value of the total admitted claims against LBIE, the Senior Creditor Group, Wentworth and the Joint Administrators are also in agreement that it would be disproportionate to deal with issues concerning the construction and effect of the contractual right to interest under these agreements at the Tranche C trial, and consider instead that it would be preferable for the Joint Administrators to deal with these claims on a case by case basis with the creditors in respect of each of those claims. In fact, it may be the case that no creditor with admitted claims under the AFTB Master Agreement or the AFTI Master Agreement will seek to claim statutory interest on those claims at anything other than the Judgments Act rate. The correspondence recording the parties' views in this regard is included at pages 101 to 112 of AVL13.
- 20** The notification to creditors made by the Joint Administrators on 14 September 2015 referred to at paragraph 13 above in respect of the Agreed Position also notified creditors

of the agreement outlined at paragraph 19 above as to the proposed approach with respect to the AFTB Master Agreement and the AFTI Master Agreement, including the proposal to remove the questions relating to those agreements from the Application. As indicated at paragraph 16 above, neither the Joint Administrators nor Linklaters LLP have received any enquiries or other communications in relation to the notice.

Conclusion in respect of the French Law Issues

- 21** In the circumstances, the Joint Administrators respectfully ask the Court to remove the French Law Issues from the scope of the Application by giving permission to the Joint Administrators to amend the Amended Application Notice in the form attached at pages 129 to 144 of AVL13.

Claims pursuant to the German Master Agreement

- 22** I understand that it may assist the Court to know the value of the claims in connection with transactions under the German Master Agreement which is the subject of this Application.
- 23** As at 7 October 2015, there are 15 claims that have been admitted for dividend in the LBIE estate which comprise a claim under the German Master Agreement (the "**German Law Claims**"). The German Law Claims represent approximately £311m (or approximately 2.5%) of the total value of the admitted claims against LBIE (being approximately £12.2bn).

STATEMENT OF TRUTH

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

Dated 7 October 2015



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Anthony Victor Lomas

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