

IN THE HIGH COURT OF JUSTICE

NO. 7492 OF 2008 / CR-2008-000012

BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES

CR-2018-003713

COMPANIES COURT (ChD)

**IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (in
administration)**

-and-

IN THE MATTER OF THE COMPANIES ACT 2006

**SECOND WITNESS STATEMENT OF
RUSSELL DOWNS**

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

- 1** I make this witness statement to update the court on certain matters since submitting my first witness statement dated 2 May 2018 (my "**First Witness Statement**"). Capitalised terms in this witness statement have the same meaning as in my First Witness Statement.

Scheme Correspondence

- 2** At paragraph 86 - 92 of my First Witness Statement I referred to certain correspondence with Scheme Creditors who had raised points relating to class composition. I understand from Linklaters LLP that both Clifford Chance (on behalf of Deutsche Bank) and Sidley Austin LLP (on behalf of Marble Ridge Special Situations Fund LP) have indicated that they have instructed Counsel to attend the Convening Hearing and make submissions in this regard. I also understand that Linklaters LLP has included within the supplemental bundle filed for the Convening Hearing the further correspondence with those parties, including a letter to Clifford Chance dated 8 May 2018 and related correspondence with the Wentworth Group, SCG and the Shareholder. I also understand that late yesterday CRC Credit Fund, Ltd, being

the creditor referred to at 91.1 of my First Witness Statement, has filed a skeleton argument and will appear at the Convening Hearing.

3 The Scheme Creditor referred to at paragraph 90 of my First Witness Statement has today written to the Administrators to indicate that they support Deutsche Bank AG's position in relation to the participation of the Wentworth Group in the class composition and has asked that their letter be put before the Court. I understand this has been included in the supplemental bundle for the Convening Hearing.

4 Since publishing the PSL I and the LBIE administration team have been in contact with various creditors to gather feedback in relation to the Scheme. We attempted to contact approximately 90 Scheme Creditors (regardless of claim size) out of an approximate population of nearly 270 (excluding those Scheme Creditors owned or controlled by a party to the Lock-up Agreement). We were able to get feedback from around 48 creditors as follows:

4.1 Approximately 40 Scheme Creditors offered a range of positive feedback ranging from support for the proposal to consideration of how to vote in favour, the value of claims ranged from just under £2,000 (8% and Specified Interest Claims) to £110m (with £44m relating to the Higher Rate Claims and £66m to the 8% and Specified Interest Claims).

(i) By way of example, a Scheme Creditor (which the Administrators understand is not held or controlled by a party to the Lock-Up Agreement) holding 0.9% of all Admitted Claims (and 4.8% of Admitted Claims not held or controlled by a party to the Lock-Up Agreement) has also indicated their support for the Scheme. This Scheme Creditor holds 0.9% of 8% Interest and Specified Interest Claims and 1.0% of the Higher Rate Claims as a percentage of the total Admitted Claims (or 4.4% of 8% Interest and Specified Interest Claims not held or controlled by a party to the Lock-Up Agreement, and 5.6% of Higher Rate Claims not held or controlled by a party to the Lock-Up Agreement).

(ii) Two other Scheme Creditors under common control (which the Administrators understand are not held or controlled by a party to the Lock-Up Agreement) holding 0.9% of all Admitted Claims (and 4.7% of Admitted Claims not held or controlled by a party to the Lock-Up Agreement) has also indicated their support for the Scheme. This Scheme Creditor holds 0.6% of 8% Interest and Specified Interest Claims and 1.3% of the Higher Rate Claims as a percentage of the total Admitted Claims (or 3.2% of 8% Interest and Specified Interest Claims not held or controlled by a party to the Lock-Up Agreement, and 7.6% of Higher Rate Claims not held or controlled by a party to the Lock-Up Agreement).

4.2 The 40 or so expressions or indications of support received (from creditors other than those party to the Lock-Up Agreement) represents approximately 4.0% of the Admitted Claims and 21.7% of the Admitted Claims not held or controlled by a party to the Lock-Up Agreement (being 17.9% of 8% Interest Claims and Specified Interest Claims and 29.1% of Higher Rate Claims respectively).

- 4.3 None of the Scheme Creditors contacted offered any immediate or strong opposition to the proposal set out in the documentation.
- 4.4 Eight Scheme Creditors suggested that they were not yet able to form a view of their intentions at that stage.
- 4.5 The Administrators also understand that the Creditors Committee Supports the Scheme.

Wentworth Group

- 5 I understand that a question has been raised as to the role of the different entities within the the Wentworth Group. By way of clarification, the Administrators understand that the Wentworth Group includes: (i) the Subordinated Creditor (which holds the Sub-Debt); (ii) Wentworth Sons Senior Claims S.à r.l.; (iii) Lehman Brothers Holdings Inc; and (iv) a number of investment funds controlled by King Street and Elliott. The entities referred to in (ii) to (iv) above hold approximately 38% of all Admitted Claims (the "**Wentworth Senior Creditors**"). The Subordinated Creditor is a member of the Wentworth Group but is not a Wentworth Senior Creditor, and does not hold any claims apart from the Sub-Debt. The Administrators understand that the shareholder of LBIE (LBHI2) also has an economic interest in the Wentworth Group.

Changes to the Scheme Documents

- 6 Since submitting my First Witness Statement a small number of amendments have been made to the Scheme Documents as can be seen in the comparisons documents included in the supplemental bundle for the hearing. The changes are shown either through underlining or strike through text. The changes to the Scheme are as follows:
 - 6.1 The definition of Record Date has been amended in the Scheme Documents to clarify that this is set for 5pm on 24 May.
 - 6.2 We have added a new Clause 17.9 to the Scheme Document to clarify that the Company is entitled to pay Scheme Distributions in accordance with a Scheme Party's Settlement Instructions. This wording is intended to protect the Company in the event that a Scheme Party's Settlement Instructions include settlement account details of a third party.
 - 6.3 Clause 42.1 of the Scheme Document has been expanded so that (in summary) LBIE cannot agree modifications to the Scheme that have a material adverse effect on the rights of the Shareholder, without the Shareholder's consent. This was a requirement of the Shareholder in order to agree the Shareholder Undertaking.
 - 6.4 Clause 43 of the Scheme Document has been modified to clarify that the Administrators cannot move the Bar Date after the Scheme has been sanctioned.
- 7 The changes to the Explan are as follows:
 - 7.1 The definition of "SCG" has been amended in the Explanatory Statement so that such term is used to describe the entities listed in a new Appendix 8 to the Explanatory Statement.
 - 7.2 As referred to above, a new Appendix 8 has been added to the Explanatory Statement, which lists all of the entities that are referred to by use of the defined term "SCG".

- 7.3** Minor consequential amendments have been made to the following paragraphs of the Explanatory Statement as a result of the change to the defined term "SCG":
- 7.3.1 Paragraph 4.4 of Part I;
 - 7.3.2 Paragraph 23.1 of Part I;
 - 7.3.3 Paragraph 23.2.3 of Part I; and
 - 7.3.4 Paragraph 23.4 of Part I.
- 7.4** Paragraph 15.3 of Part II and paragraph 13.7 of Part III have been amended to more accurately reflect the definition of "SSI Deadline" in the Scheme.
- 7.5** Paragraph 26 of Part II has been amended to reflect the change to the Scheme referred to at paragraph 6.3 above.
- 7.6** Paragraph 4 of Part III has been amended to include wording that more accurately reflects how Scheme Creditors may lodge a Form of Proxy.
- 7.7** Paragraph 7 of Part III has been amended to more accurately reflect the proposed process in relation to Split-Holdings Requests.
- 7.8** The definition of Record Date has been amended to reflect the corresponding change made to the Scheme (see paragraph 6.1 above).

8 No changes to class composition have been made,

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



RUSSELL DOWNS

Dated the 8 day of May 2018

Claimants
R Downs
First Witness Statement
8 May 2018

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RUSSELL DOWNS

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