IN THE HIGH COURT OF JUSTICE **NO. 7492 OF 2008 / CR-2008-000012**

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES **CR-2018-[•]**

COMPANIES COURT (ChD)

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

-and-

IN THE MATTER OF THE COMPANIES ACT 2006

WITNESS STATEMENT OF
RUSSELL DOWNS

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

INTRODUCTION

1 I am a licensed insolvency practitioner and a partner at PwC, a professional services firm at the above address. I am one of the joint administrators (the "**Administrators**") of Lehman Brothers International (Europe) (in administration) (the "**Company**"), which entered administration on 15 September 2008 (the "**Administration**").

2 My partners, Anthony Victor Lomas, Steven Anthony Pearson and Julian Guy Parr are the other Administrators of the Company. We were appointed as such by orders of the High Court of England and Wales (the "**Court**") dated 15 September 2008, 2 November 2011 and 22 March 2013. I was appointed as an Administrator on 2 November 2011. I am duly authorised to make this witness statement on behalf of the Company and the Administrators.

3 I make this witness statement in support of an application by the Administrators for directions as to the convening and conduct of meetings of the Company's "**Scheme Creditors**" (being substantially all persons with claims provable in the Administration in accordance with Rule

14.2 of the Insolvency (England and Wales) Rules 2016, whether already admitted and paid in full (except for entitlements to statutory interest) or yet to be proved or finally adjudicated upon) for the purposes of considering and, if thought fit, approving (with or without modifications) a scheme of arrangement proposed to be made under Part 26 of the Companies Act 2006 (the "**Scheme**"). I have previously made other witness statements in court proceedings relating to the Administration however this is my first in respect of the present matter for which I understand procedure dictates the Company is to issue a new claim form.

4 If (i) the Scheme is approved by the Scheme Creditors at the said meetings (the "**Scheme Meetings**") and sanctioned by the Court; and (ii) the order of the Court is delivered for registration, it is expected that the Scheme will become effective on 14 June 2018 or shortly thereafter (the "**Effective Date**").

5 There are now shown to me two paginated bundles of copy documents, marked "**Exhibit RD1**" and "**Exhibit RD2**", to which I refer in this witness statement. Refences to exhibits in this witness statement are in the form [tab/page] of RD1 or [page] of RD2. The Exhibits contain copies of:

5.1 the current draft of the Scheme, in substantially final form (tab 1 of RD1);

5.2 the current draft of the Explanatory Statement, in substantially final form (tab 2 of RD1);

5.3 the Practice Statement Letter dated 18 April 2018 ("**PSL**") (tab 3 of RD1);

5.4 the Update to the PSL dated 2 May 2018 ("**PSL Update**") (tab 4 of RD1);

5.5 various announcements and correspondence regarding the Scheme (Exhibit RD2), including:

(i) the Administrators' announcement regarding the Scheme made on 22 December 2017 (pages 1-4 of RD2);

(ii) the Administrators' announcement regarding the Scheme made on 29 March 2018 (page 5 of RD2);

(iii) the Administrators' announcement regarding the PSL made on 18 April 2018 (pages 6-7 of RD2);

(iv) a letter sent by the administrators of LB Holdings Intermediate 2 Limited (in administration) ("**LBHI2**") to the Administrators dated 25 April 2018 (page 8 of RD2); and

(v) selected communications involving the Administrators, the Company, the Scheme Creditors and their respective advisers in relation to the proposed Scheme (pages 9-65 of RD2).

6 For ease, where I discuss the Scheme and the background to it in this witness statement, I cross-refer to and adopt the language used in the Scheme, the Explanatory Statement and the PSL.

6.1 The PSL was uploaded to www.pwc.co.uk/services/business-recovery /administrations/lehman.html (the "**Website**") on 18 April 2018 and, on the same day, sent via email to those persons who the Administrators believe are or may be Scheme Creditors (to the extent that the Administrators are in possession of their email addresses). Hard copies were sent to such persons (to the extent that the Administrators are in possession of their postal addresses, but not their email addresses, and also in a limited number of other cases) on 19 April 2018. The PSL Update was uploaded to the Website on 2 May 2018 and sent via email on the same day. The Administrators propose to circulate hard copies following the filing of this witness statement to those persons to whom the PSL was sent in this manner.

6.2 Copies of the current draft Scheme and draft Explanatory Statement (in the form exhibited) will be placed on the Website in conjunction with the filing of this witness statement so that the Scheme Creditors can consider them in advance of the convening hearing.

7 The facts referred to in this witness statement are true to the best of my knowledge and belief. Except where I state that I am relying on information from others, the content of this witness statement is based on my own knowledge. Nothing in this witness statement is intended to or does waive privilege in respect of any matter to which I refer.

8 This witness statement is divided into the following sections:

A. Background to the Company

B. Administration and Surplus

C. Origins and development of the Scheme

D. Objectives and application of the Scheme

E. Key elements of the Scheme

F. Proposed classes

G. Voting

H. Other matters relating to Scheme Meetings

I. Timetable

J. Consequences of the Scheme

K. Why the Scheme serves the best interests of the Scheme Creditors and the broader estate

L. Jurisdiction

A. BACKGROUND TO THE COMPANY

Overview

9 In this section I provide a brief overview of the Company's background, together with that of its ultimate parent company (Lehman Brothers Holdings Inc. ("**LBHI**")) and the broader Lehman Brothers group of entities (the "**Lehman Group**"). The history of the Lehman Group is, of course, well known to the Court, however to the extent that further detail is required, additional information can be found at paragraph 1 of Appendix 4 of the Explanatory Statement (2/119 of RD1).

10 Prior to the commencement of the Administration, the Company was the principal trading company of the Lehman Group within Europe. I understand that it was originally incorporated on 10 September 1990, as a private limited company, before being re-registered on 21 December 1992 as an unlimited company under its current name. The Company's authorised share capital is US$18,100,000,000 divided into US$10,850,000,000 ordinary shares of US$1.00, US$150,000,000 preference shares of US$0.01, 2,000,000 5% redeemable preference shares of US$1,000 and 5,100,000 5% redeemable "Class B" preference shares of US$1,000, of which, at 23 April 2008, 6,273,114,000 ordinary shares of US$1.00, 2,000,000 5% redeemable preference shares of US$1,000 and 5,100,000 5% redeemable "Class B" preference shares of US$1,000 had been issued and were fully paid and the remainder were unissued. All issued shares are held by LBHI2 (Lehman Brothers Limited previously held a single share in the Company, but this was transferred to LBHI2 in 2017).

11 Since the commencement of the Administration, the secretary and directors of the Company have all resigned from their roles. All key decisions relating to the Company are now made by the Administrators. Anthony Victor Lomas and I are typically the Administrators with the greatest involvement in these decisions, while Steven Anthony Pearson and Julian Guy Parr have more limited day-to-day responsibilities and are consulted only on certain matters.

Administration

12 The events leading to the insolvency of the wider Lehman Group are described in more detail in paragraph 2 of Appendix 4 of the Explanatory Statement (2/119-120 of RD1). By way of summary, however, in 2008 the Lehman Group suffered from deterioration in investor and market confidence and was forced to seek major new investment to address the situation. Discussions regarding such investment were, unfortunately, unsuccessful.

13 LBHI managed substantially all the material cash resources of the Lehman Group centrally. On 14 September 2008, the directors of the Company sought assurances from LBHI that payments due to be made on 15 September 2008 on its behalf would in fact be made. At approximately 12.30 a.m. on 15 September 2008, the Company was informed by LBHI that it would no longer be able to make payments to or for the Company and other Lehman Group companies and that it was preparing to file for Chapter 11 bankruptcy protection in the United States.

14 Overnight, preparations were made by the directors, employees and advisers of a number of the Lehman Group companies in the UK (including the Company) for those companies to seek the protection of an administration order, on the basis that they would be unable to meet their liabilities as they fell due. At 7.56 a.m. on 15 September 2008, administration orders were made in respect of each of those companies.

B. ADMINISTRATION AND SURPLUS

Historical developments

15 The steps taken by the Administrators in the early stages of the Administration are also well known to the Court. However, to the extent required, additional detail is set out in paragraphs 3 to 6 of Appendix 4 of the Explanatory Statement (2/121-126 of RD1).

16 On 2 December 2009, the Administrators obtained a Court order to convert the Administration into a distributing administration, and a first interim dividend was paid on or around 26 November 2012. By way of three further interim dividends paid on or around 19 June 2013, 28 June 2013 and 21 November 2013 (and related 'catch-up' dividends), the Administrators were able to return the principal amount of all claims admitted in the Administration (the "**Admitted Claims**") (save for where payment could not be made because of a creditor's failure to provide required information).

17 Following the first interim dividend payment, the estimated financial outcome published in the Administrators' six-monthly progress report to creditors, dated 12 April 2013, showed, for the first time, an indicative outcome whereby a surplus could be available to unsecured creditors sufficient to enable a payment in respect of statutory interest entitlements (the "**Surplus**").

18 On 14 February 2013 we issued proceedings to determine certain issues relating to creditors' entitlements to such Surplus (the "**Waterfall I Proceedings**"). Further proceedings were subsequently issued in respect of other questions regarding such entitlements (referred to as the "**Waterfall II Proceedings**" and "**Waterfall III Proceedings**"). Collectively these are referred to as the "**Waterfall Proceedings**".

19 Additional information concerning the Waterfall Proceedings is set out in the Explanatory Statement in paragraph 7 of Appendix 4 (2/126-141 of RD1) and in the PSL in paragraphs

3.1 to 3.13 (3/4-5 of RD1). As at the date of this statement, the Waterfall I Proceedings and Waterfall III Proceedings have drawn to a conclusion. The Waterfall II Proceedings consist of multiple parts (referred to as Tranche A, Tranche B and Tranche C), and of these only the Tranche B proceedings have been concluded, with the others ongoing. The issues remaining in these proceedings include:

19.1 how dividends paid in the Administration are to be applied to sums owed (the Court of Appeal has upheld the decision that dividends paid are first applied to paying down the principal amount of a creditor's provable claim(s) before being applied to interest entitlements, rejecting the position set out in the case of *Bower v Marris*) (*Tranche A*); and

19.2 whether the default interest provisions in ISDA Master Agreements referring to parties' "cost of funding" should be interpreted as allowing those parties to recover any costs of equity funding (a question which the Court has answered in the negative) (*Tranche C*).

20 I am advised that, were the remaining Waterfall II Proceedings to run their course, it is likely that they would not be finally determined until 2020 at the earliest.

21 In addition to the Waterfall Proceedings, the Company's subordinated creditor, Wentworth Sons Sub-Debt S.à r.l. (the "**Subordinated Creditor**"), has taken steps to challenge the Administrators' decision to admit what is presently the largest Admitted Claim in the Administration (the "**Olivant Application**"). Information relating to the Olivant Application is set out in the Explanatory Statement at paragraph 9 of Appendix 4 (2/142-143 of RD1).

22 Further proceedings have also been brought in relation to a request by the Subordinated Creditor that the Company be placed into liquidation prior to the payment of statutory interest (the "**Lacuna Application**"). This is significant because the Company's creditors would not be able to recover unpaid statutory interest in a liquidation. Further details regarding the Lacuna Application are set out in the Explanatory Statement at paragraph 8 of Appendix 4 (2/141-142 of RD1) and in the PSL in paragraphs 4.1 to 4.3 (3/ 6-7 of RD1).

Surplus

23 As described in paragraph 27.1 of Part I of the Explanatory Statement (2/28 of RD1), if the Scheme becomes effective the Administrators will, as soon as reasonably practicable, determine the High Case Scheme Distribution, Net Available Funds and Adequate Reserves (each as defined in the Scheme), and thereafter publish a statement on the Website which informs Scheme Creditors as to whether the Company has sufficient funds to pay the distributions of statutory interest proposed under the Scheme (in full, in part, or not at all). The content of the statement, and the timing of its issuance, will depend on a number of factors, including the value of any new claims received before the Bar Date (as defined in

paragraph 35.4 below) and the number and asserted quantum of any certifications received pursuant to the certification process described at paragraphs 40 to 42 below.

24 As matters presently stand the funds in the House Estate (as defined in the Scheme) amount to £6.589 billion. After reserving for prior ranking claims (in particular expense claims and proofs which have been lodged but not yet admitted or rejected), the funds potentially available to meet statutory interest entitlements amount to £6.065 billion. The value of statutory interest relating to 8% Interest Claims and Specified Interest Claims (such terms as defined in paragraphs 49.1 and 49.2 below) (including a value by reference to the lodged value where the proof of debt has not yet been admitted or rejected) is £3.181 billion; the value of statutory interest relating to the Higher Rate Claims (as defined in paragraph 49.3(a) below) of those Scheme Creditors who are party to the Lock-Up Agreement (as defined at paragraph 29 below) (plus the 2.5% settlement premium afforded to those Scheme Creditors under the Scheme) is £1.589 billion; and the value of Statutory Interest (and any applicable 2.5% settlement premiums) relating to the Higher Rate Claims of non-locked up Scheme Creditors calculated in accordance with the Scheme ranges from £353 million to £1.039 billion (assuming statutory interest at 8% (with a 2.5% settlement premium payable) on the low-case and 15% on the high-case). Accordingly, on the basis of the above, the total payments in respect of statutory interest and any applicable settlement premiums would be expected to be between £5.123 billion and £5.809 billion and, if the Scheme becomes effective, the Surplus would be sufficient to pay statutory interest entitlements in full.

25 That said, and as noted above, there is the possibility of new claims being submitted prior to the Bar Date, which could have an impact on the issuance of the statement. In particular, the Administrators are aware of the possibility of a claim or claims being lodged by certain German state authorities arising out of alleged tax-motivated "cum/ex" transactions undertaken pre-Administration, although no proofs of debt have yet been submitted. The Public Prosecutor's Office in Cologne (*Staatsanwaltschaft Köln*) has instigated investigations into a large number of banks and financial institutions, including the Company, in relation to alleged "cum/ex" trading. Its investigation into the Company could result in an administrative fine or penalty being levied against the Company, which figure could include an element calculated by reference to the Company's profits in relation to the alleged activity. It is also possible that certain personnel who participated in "cum/ex" trading (including former employees of the Company) could be the subject of investigation, prosecution and/or other proceedings by the Public Prosecutor's Office. There is also the possibility of a claim being submitted by the German Federal Tax Authority (*Bundeszentralamt für Steuern*) for recovery of withholding tax reclaimed in relation to alleged "cum/ex" transactions. Given that the investigation is at an early stage, the Administrators are not currently in a position to provide further detail about the likely outcome of such investigation or likely quantum of liability. The Administrators are actively seeking to engage with the relevant German authorities in order to obtain further clarity as soon as possible, including as regards the level

of reserves that should be maintained in respect of any claims that might be lodged. Depending on the progress of these discussions, it may be necessary to seek directions from the Court (as provided for in clause 4.3 of the Scheme (1/32 of RD1) and described in paragraph 14 of Part II of the Explanatory Statement) regarding the appropriate course of action in respect of these potential claims (2/53-54 of RD1).

C. ORIGINS AND DEVELOPMENT OF THE SCHEME

26 Owing to the time and costs incurred to date (and still to be incurred) in pursuing the Waterfall Proceedings, the Lacuna Application and the Olivant Application, and noting that, for some time now, the Administrators have projected that the Surplus will be sufficiently large to enable payment in full of statutory interest entitlements, I and the other Administrators have come to believe that the interests of the Company's creditors would be best served by reaching an agreement concerning entitlements to the Surplus. This remains our view notwithstanding the fact that certain elements of the Waterfall Proceedings have now been concluded. Accordingly, in late 2017 we began negotiations with the Company's largest creditors, namely the 'Senior Creditor Group' or 'SCG' and the 'Wentworth Group', as to whether they might be open to reaching a consensual solution regarding the Surplus. These negotiations followed on from earlier negotiations which had failed to result in a consensus.

27 The SCG consists of a number of creditors (including, among others, Burlington Loan Management Limited, CVI GVF (Lux) Master S.à r.l. and Hutchinson Investors LLC) that hold Admitted Claims ranking *pari passu* with the other ordinary unsecured claims. The Wentworth Group consists of (i) creditors (including, among others, Wentworth Sons Senior Claims S.à r.l., LBHI, certain entities managed or controlled by King Street Capital Management, L.P. and certain entities managed or controlled by Elliott Management Corporation) that hold Admitted Claims that rank *pari passu* with the other ordinary unsecured claims; and (ii) the Subordinated Creditor, whose claim (the "**Subordinated Debt**") is valued at £1.24 billion (excluding interest). Together, the SCG and the Wentworth Group are the main participants in the remaining Waterfall Proceedings (while the Subordinated Creditor is also party to the Olivant Application and Lacuna Application). They also hold c.78% by value of Admitted Claims (c.40% in the case of the SCG and c.38% in the case of the Wentworth Group), giving each of them the ability to block any attempted consensual resolution.

28 Indeed, in 2014 and then again in 2017, commercial terms for a settlement were presented to creditors by the Administrators. In each instance, the support of the Wentworth Group and/or the SCG was not forthcoming. Accordingly, neither proposal was developed further. We therefore made it clear that when the discussions resumed in late 2017, we would not present any proposal to the wider creditor pool unless it had the support of the Wentworth Group and the SCG. We did so to give other creditors reassurance after earlier false starts that the principal creditor groups were backing any proposal we presented. Two Scheme

Creditors have raised a concern that they were not included in these discussions (pages 9-13 and 44-45 of RD2). As explained to those creditors, the Administrators cannot consult with every creditor at every stage when exploring the possibility of reaching a consensual resolution and in the circumstances the Administrators believe it was entirely appropriate and sensible to enter into discussions with the Wentworth Group and the SCG only.

29 Ultimately, the Company, the SCG and the Wentworth Group were able to agree the terms of a proposed consensual resolution in respect of creditors' entitlements to the Surplus. Such terms were set out in a term sheet that was scheduled to a Lock-Up Agreement entered into between, amongst others, the Company, the SCG and the Wentworth Group dated 22 December 2017 (the "**Lock-Up Agreement**"), and these terms now form the basis for the Scheme. In addition to agreeing to take all reasonable steps to support the implementation of the proposed arrangement, the Company, the SCG and the Wentworth Group also agreed to stay Tranche A of the Waterfall II Proceedings, the Lacuna Application and the Olivant Application in order to facilitate its implementation. Tranche C of the Waterfall Proceedings has not been stayed, however the next hearing (which is scheduled to be before the Court of Appeal) is not due to take place until July 2018, by which time it is hoped that the Scheme will have been approved and sanctioned (in which case the appeals will be withdrawn) or it will have been rejected (in which case the appeals should proceed).

30 As disclosed in the PSL, no fees, payments (other than the payments to be made pursuant to the terms of the Scheme) or other inducements have been, or will be, paid or otherwise made by the Company to the SCG or the Wentworth Group pursuant to the terms of the Lock-Up Agreement or the Scheme. However, late in the evening on 25 April 2018, the Administrators were sent a letter by LBHI2's administrators indicating that Wentworth Sons Senior Claims S.à r.l., the Subordinated Creditor and certain of the Scheme Creditors that form the SCG had entered into a separate settlement arrangement in parallel with the Lock-Up Agreement, which provided that (amongst other things) the SCG would receive from those Wentworth Group parties the sum of £35 million, by way of a "consent fee" in the event the Scheme becomes effective (the "**Arrangement**"). The Administrators had not previously been aware of the Arrangement. On the evening of 29 April 2018, the Administrators received a copy of the agreement that gives effect to the Arrangement. A copy of the letter from LBHI2's administrators is at page 8 of RD2.

31 The Administrators have considered the effect of the Arrangement and, having taken legal advice, have concluded that it would be appropriate for the SCG to vote at a separate Scheme Meeting from other Scheme Creditors and therefore form a separate class of creditors. In so doing, the Administrators seek to avoid: (i) an argument as to whether the consent fee results in the SCG having sufficiently dissimilar rights to other Scheme Creditors that it is impossible for them to consult together with a view to their common interest; and (ii) any delay which might be caused by a Scheme Creditor wishing to make that argument and to have the convening hearing adjourned to afford it further time to do so. The Administrators

also concluded that the PSL Update should be issued reflecting this change. A copy of the PSL Update is at Tab 4 of RD1. As noted above, the PSL Update has been posted on the Website.

32 Having gained binding support from the SCG and the Wentworth Group, and having concluded that the Scheme represents a fair outcome for all Scheme Creditors, the Administrators consider it appropriate to propose the Scheme to all Scheme Creditors and recommend that they support its implementation. The Administrators' conclusion in this regard has not been affected by their becoming aware of the Arrangement, noting the significant benefits that all Scheme Creditors will receive if the Scheme is implemented.

33 It would be a chilling prospect if Scheme Creditors were faced with further considerable delay in receiving statutory interest and it would be extremely disappointing if this Scheme did not go through.

D. OBJECTIVES AND APPLICATION OF THE SCHEME

Overview

34 The Scheme and Explanatory Statement should be read for a full understanding of the Scheme's proposed terms and effect. I set out below the aspects which are likely to be of relevance to the application in support of which this witness statement is made.

35 The primary purpose of the Scheme (as set out in paragraph 3.4 of Part I of the Explanatory Statement (2/12 of RD1)) is to provide a framework for the consensual determination of creditor entitlements to the Surplus, so as to facilitate an expedited payment to Scheme Creditors in respect of their statutory interest entitlements. This will be effected by:

35.1 bringing to an end: (i) the Waterfall II Proceedings; (ii) the Lacuna Application; and (iii) the Olivant Application;

35.2 barring challenges by Scheme Creditors to the validity or quantum of any Admitted Claim that was admitted prior to the Record Date (as defined in the Scheme), which will fall shortly prior to the Scheme Meetings;

35.3 in relation to claims arising under certain types of agreement (including 1992 and 2002 ISDA Master Agreements) pursuant to which there may be an entitlement to interest at a rate higher than the statutory minimum, providing a process for:

(i) the certification of such claims; and

(ii) the resolution of any issues arising from such certification by means of reference to an independent, expert adjudicator (the "**Adjudicator**");

35.4 releasing the Company from any further claims by Scheme Creditors through the introduction of a bar date (the "**Bar Date**") for the submission of provable claims, non-provable claims and (subject to certain exceptions) expense claims; and

35.5 providing a framework for the making of payments to Scheme Creditors in respect of their entitlement to statutory interest (in line with the existing judgments in the Waterfall Proceedings), as set out in the Scheme.

Ending the Waterfall Proceedings, Lacuna Application and Olivant Application

36 For the reasons explained above in paragraphs 26 and 35, the Scheme envisages that the Olivant Application, the Lacuna Application and the ongoing appeals in Tranche A and Tranche C of the Waterfall II Proceedings be brought to an end.

37 Further information in this regard is provided in the Explanatory Statement at paragraphs 7.2, 7.4, 8 and 9 of Appendix 4 (2/129-143 of RD1) and paragraph 15 of Part III (2/84-88 of RD1).

Barring challenges by Scheme Creditors

38 Barring challenges by Scheme Creditors to the validity or quantum of any proof admitted prior to the Record Date provides certainty for Scheme Creditors by avoiding the risk of the validity or quantum of their Admitted Claims being challenged, which could impact upon the level of reserves and distributions.

Scheme Creditors and the Certification regime

39 The Scheme recognises four different types of Scheme Creditor, namely:

39.1 Scheme Creditors (other than the Subordinated Creditor) with claims that cannot give rise to a contractual rate of interest greater than 8% simple (referred to in the Scheme as "**8% Creditors**");

39.2 Scheme Creditors with claims under contracts that entitle them to a specified fixed or floating rate of interest that results in an entitlement to statutory interest greater than 8% simple (referred to in the Scheme as "**Specified Interest Creditors**" – LBHI is currently the only known example through its ownership of a claim brought in relation to a contract titled 'Master Agreement Concerning Gensaki Transactions of Bonds, Etc.');

39.3 Scheme Creditors who hold claims under 1992 or 2002 ISDA Master Agreements, or certain French Master Agreements (as defined in the Scheme), which give rise to a right to statutory interest calculated by reference to costs specific to the party concerned as opposed to a specified fixed or floating interest rate (referred to in the Scheme as "**Higher Rate Creditors**"); and

39.4 the Subordinated Creditor, whose claim is described at paragraph 27 above.

40 Calculating the statutory interest entitlements of Scheme Creditors who are 8% Creditors and/or Specified Interest Creditors is relatively straightforward: such Scheme Creditors will receive payments of statutory interest in respect of their relevant claims calculated by reference to an 8% simple rate or their specified contractual interest rate (if higher). The position in relation to Higher Rate Creditors by contrast is more complicated, and so the certification regime has been developed to provide a mechanism for determining such creditors' statutory interest entitlements. Under the certification regime, Higher Rate Creditors will have the opportunity to certify for the rate(s) and amount of interest to which they believe they are entitled (as explained at paragraph 49.3(b) below). If Higher Rate Creditors are content not to certify however, then in consideration for that, a settlement payment (as discussed in paragraph 49.3(a) below) will be made to them and their statutory interest entitlement will be calculated and paid on the basis of a simple 8% interest rate.

41 If a Higher Rate Creditor opts to submit certifications in respect of their Higher Rate Claims, the Company will review such certifications and determine whether to accept them, reject them, make a counteroffer or request additional information. Further information regarding this process can be found at clause 11 of the Scheme (1/36-38 of RD1). The Company must have regard to the Relevant Principles (as discussed in paragraph 49.1 below when determining which course of action to take. To the extent that disputes arise in relation to the determination of a Higher Rate Creditor's certification, the Scheme provides for such matters to be resolved by the Adjudicator.

42 In terms of timing, Higher Rate Creditors will be required to choose whether or not to certify at the same time as they vote on the Scheme (which they may do either by submitting a form of proxy (as referred to at paragraph 98 below) or, by attending the appropriate Scheme Meeting in person). Where a Higher Rate Creditor elects to submit a certification, the certification itself must be submitted prior to the Effective Date (being the date on which a copy of the Court order sanctioning the Scheme is delivered to the Registrar of Companies). The Administrators do not consider it necessary to provide Higher Rate Creditors with additional time, as they will have had a copy of the (close to) final form Scheme and Explanatory Statement for several weeks prior to the Effective Date, and will no doubt have given a great deal of thought to the decision as to whether to elect to certify prior to voting on the Scheme at the Scheme Meeting (which is envisaged to take place on 5 June 2018).

43 The Scheme requires that Higher Rate Creditors choosing to certify must state in their certification both the rates and amount of interest to which they believe they are entitled (as opposed to just the rate). The Administrators believe that such a requirement is justified on the basis that it will allow for a comparison between the amounts of interest arrived at by applying the statutory rate of 8% simple on the one hand and the contractual rate(s) on the

other hand so as to establish which is the higher rate for the purposes of Rule 14.23 of the Insolvency (England and Wales) Rules 2016.

Bar Date

44 The imposition of the Bar Date is key to establishing the universe of creditors entitled to share in the Surplus and providing certainty and finality in that regard – which itself then facilitates the payment of statutory interest to those who have proved their claims prior to the Bar Date (where the proofs are admitted, whether before or after the Bar Date). In the absence of the Bar Date, Scheme Creditors would be exposed to the risk of new claims being received which (if of sufficient quantum) could decrease the amount payable to them.

45 The Bar Date is proposed to be the Effective Date of the Scheme. If the Scheme becomes effective, all claims (other than certain claims not affected by the Scheme and certain future or contingent expense claims) will need to have been proved for (or in the case of non-provable and expense claims, notified to the Company) by this date. Creditors failing to do this will lose any entitlement to assert such claims. Further details regarding the Bar Date and its effect are set out in paragraph 14 of Part I to the Explanatory Statement (2/21 of RD1).

46 The Administrators consider that there is no need to set the Bar Date at a later date because the Company went into administration almost 10 years ago and the Administrators first invited creditors to prove for their claims as long ago as 4 December 2009. Creditors were first notified of the intention to impose a bar date in the Administrators' announcement regarding the Scheme made on 22 December 2017, a copy of which is at pages 1-4 of RD2. Further information about the Bar Date was also included in the PSL.

Providing a framework for the making of payments to Scheme Creditors

47 Facilitating the payment of distributions to Scheme Creditors is ultimately the central purpose of the Scheme. The long running nature of the Administration and associated litigation has meant that Scheme Creditors have, to date, been required to wait a significant period of time to receive payments in respect of their statutory interest entitlements. Were the Scheme to be implemented however, the process for determining statutory interest entitlements would be expedited and Scheme Creditors could thus expect to receive payments in respect of their entitlements considerably sooner than would otherwise be the case.

48 Further details in respect of the process for the payment of distributions to Scheme Creditors under the Scheme are provided at paragraphs 53 to 55 below.

E. KEY ELEMENTS OF THE SCHEME

Entitlements to interest

49 The Scheme provides for distributions to Scheme Creditors that are consistent with the existing judgments in the Waterfall Proceedings. The precise mechanism for calculating statutory interest under the Scheme however depends on the type of Scheme Creditor in question.

49.1 Claims belonging to 8% Creditors (referred to in the Scheme as "**8% Interest Claims**") will attract a payment arrived at by applying a simple rate of 8% interest per annum, calculated for the period(s) from the date of Administration to the date(s) when the principal amount(s) of each claim was paid in full. The calculation will be conducted in accordance with the applicable "**Relevant Principles**", as explained further at paragraph 50 below. Further information regarding the calculation of the payment due in respect of the 8% Interest Claims is set out in paragraphs 7 and 9 of Part I of the Explanatory Statement (2/15-16 of RD1).

49.2 Claims belonging to Specified Interest Creditors (referred to in the Scheme as "**Specified Interest Claims**") will attract a payment arrived at by applying a rate of interest corresponding to the rate of interest specified in the contract under which their claim arises, calculated for the period(s) from the date of Administration to the date(s) when the principal amount(s) of each Specified Interest Claim was paid in full. Again, the calculation will be conducted in accordance with the applicable Relevant Principles. Further information regarding the calculation of the payment due in respect of such claims is, again, set out in paragraphs 8 and 9 of Part I of the Explanatory Statement (2/15-16 of RD1).

49.3 Higher Rate Creditors will (as described in paragraph 10 of Part I of the Explanatory Statement (2/16-18 of RD1)) choose either to:

(a) receive a payment in full and final settlement of their statutory interest entitlements arrived at by applying a simple rate of 8% per annum (calculated in the same manner as for 8% Interest Claims as described at paragraph 49.1 above), together with an additional settlement payment equal to 2.5% of the value of their claims (referred to in the Scheme as "**Higher Rate Claims**") in consideration for not choosing the Certification Option detailed below (and so sparing the Company the time and expense associated with dealing with certifications and, accordingly, enabling the Administrators to make distributions to Scheme Creditors within a shorter timeframe), (the "**Settlement Payment Option**"); or

(b) submit a certification for the rate(s) and amount of interest applicable to their Higher Rate Claims (the "**Certification Option**"). Such certification must

specify the rate(s) and amount of interest that the Higher Rate Creditor considers should apply to their Higher Rate Claim, calculated in accordance with the applicable Relevant Principles. Where a holder of a Higher Rate Claim chooses the Certification Option, it will receive a payment in respect of its statutory interest entitlement(s) consistent with one of the following:

(i) the rate(s) and amount of interest specified in its certification, where such rate(s) and amount is agreed to by the Company or where (in the absence of an agreement between the parties) that rate(s) and amount is approved by the Adjudicator pursuant to the Dispute Resolution Procedure (as described below);

(ii) the rate(s) and amount proposed by the Company by way of counteroffer (see further paragraph 41 above), where such rate(s) and amount is agreed to by the relevant Higher Rate Creditor or where (in the absence of an agreement) the relevant rate(s) and amount is approved by the Adjudicator pursuant to the Dispute Resolution Procedure; or

(iii) the statutory minimum rate (being 8%) in circumstances where a certification is rejected by the Company and such rejection is not appealed pursuant to the dispute resolution provisions of the Scheme.

50 The Relevant Principles referred to above are as follows:

50.1 where a Higher Rate Claim is derived from an ISDA Master Agreement, the principles of the judgment of the Court in Tranche C, as set out in the declarations made by Hildyard J in an Order dated 12 December 2016 following his judgment (summarised in paragraph 11.2 of Part II of the Explanatory Statement) (2/48-49 of RD1);

50.2 where a Higher Rate Claim arises from an AFB Master Agreement or a FBF French Master Agreement (as defined in the Scheme), the AFB/FBF Agreed Position (as defined in the Scheme and summarised in paragraph 11.3 of Part II of the Explanatory Statement) (2/49-50 of RD1);

50.3 in respect of all 8% Interest Claims, Specified Interest Claims and Higher Rate Claims, the judgments in Tranche A which are applicable to the calculation of statutory interest (summarised in paragraph 11.4 of Part II of the Explanatory Statement) (2/50-51 of RD1); and

50.4 for the purposes of calculating the amount of statutory interest payable in respect of (i) Specified Interest Claims, or (ii) Higher Rate Claims in respect of which the holder has elected to certify, where the applicable contract provides for a compound rate of interest, the principle that interest shall continue to compound in accordance with

the contractual rate until the payment of a final dividend in respect of the applicable claim. This principle, although not specifically addressed in the Tranche A decision, reflects what the Administrators consider to be the correct interpretation of that judgment.

51 In relation to payments to Higher Rate Creditors, it should be noted that:

51.1 Pursuant to the Lock-Up Agreement, the Wentworth Group and the SCG have agreed to accept the Settlement Payment Option in respect of all of their Higher Rate Claims.

51.2 Any other Higher Rate Creditor which does not elect for either the Settlement Payment Option or the Certification Option within the deadline specified in the Scheme will also be deemed to have chosen the Settlement Payment Option.

51.3 Higher Rate Claims that are controlled by the same party must all be subject to the same election (i.e. a Higher Rate Creditor will not be able to choose the Settlement Payment Option in respect of some of the Higher Rate Claims that it controls and the Certification Option for others). This requirement is consistent with the proposal that the additional 2.5% payment be made in consideration for Higher Rate Creditors sparing the Company the time and expense associated with dealing with certifications, i.e. a Scheme Creditor should not be entitled to receive such a payment while continuing to put the Company to the time and expense of dealing with certifications in respect of other Higher Rate Claims that it owns. The requirement does not apply in respect of Higher Rate Claims which, although legally owned by the same Higher Rate Creditor, are not all controlled by that person (for instance because of sub-participations or similar arrangements). This is because imposing this requirement in such circumstances would effectively prevent any election from being made where the persons controlling the underlying claims were not in agreement.

51.4 Certain requirements in terms of form and content must be met for a certification to be valid. These are described in paragraph 8 of Part II of the Explanatory Statement (2/37-39 of RD1).

52 No payment in respect of statutory interest will initially be made in respect of the Subordinated Debt. Such payment will only be made once (i) the principal amount of the Subordinated Debt (including any pre-administration interest) has been paid in full, and (ii) all possible claims that rank in priority to the Subordinated Debt are either paid, or reserved for, in full.

Distributions to Scheme Creditors

53 In respect of 8% Interest Claims and Specified Interest Claims, payment is expected to be made within 20 business days of the Administrators having determined that there are sufficient funds available. Payments in respect of Higher Rate Claims where the relevant Higher Rate Creditors have chosen the Settlement Payment Option are also expected to be made within 20 business days of the Administrators having determined that there are sufficient funds available. Further information regarding the timing of such payments is set out in Part III of the Scheme (1/34-35 of RD1).

54 Payments to the holders of Higher Rate Claims who elect for the Certification Option are expected to be made within 20 business days of the applicable certification being determined (subject to the availability of funds). Further information regarding the timing of such payment is set out in Part IV of the Scheme (1/36-39 of RD1).

55 The mechanics relating to payments to the Subordinated Creditor are discussed in further detail in paragraph 18.2 of Part II of the Explanatory Statement (2/60-61 of RD1) and clause 32 of the Scheme (1/59-60 of RD1).

56 One Scheme Creditor has raised a concern that Higher Rate Creditors who have chosen the Certification Option will only be paid after their entitlement has been determined (pages 9-13 of RD2). That Scheme Creditor suggested that there is no reason why, where 8% is the minimum rate they will receive in any event (as noted in paragraph 63 below), they should not receive a payment reflecting this upfront (at the same time as Higher Rate Creditors who have chosen the Settlement Payment Option) pending resolution of their certification. In the Administrators' view, however, this concern overlooks the key advantage that certifying Higher Rate Creditors will still receive their statutory interest far sooner than they would but for the Scheme and any delay to receipt of their entitlement will be minor. This is because the dispute resolution procedure is designed to be expedient and streamlined. Payment in two instalments would in itself increase the costs involved with such a process. Further, the process would not be as straightforward as the Scheme Creditor suggests given that, pursuant to the Scheme, the Company is entitled to deduct an amount payable in respect of its and the Administrators' costs in relation to any appeal from an appellant Higher Rate Creditor's entitlement to any distribution in the event that the Adjudicator finds in favour of the Company. It may also increase the burden of compliance with the Company's obligations as regards withholding tax (which are not straightforward given the position in relation to withholding tax as described in paragraph 22 of Part II and paragraph 10 of Appendix 4 of the Explanatory Statement (2/62-65 and 2/143-144 of RD1 respectively).

Conditions to payment of distributions

57 The Company will not be required to pay any distribution to a Scheme Creditor until the Company has received satisfactory settlement instructions and KYC information. At the

expiration of 12 months from the Effective Date, a Scheme Creditor who fails to provide the Company with the required information will be deemed to have waived its right to receive the unpaid amount of any distribution if such distribution is below a *de minimis* value threshold of £1m.

58 For claims above the *de minimis* value threshold, if the holder of such claims does not provide the required information to allow for the payment of distributions within 12 months from the Effective Date, the Administrators will seek Court directions pursuant to paragraph 63 of Schedule B1 to the Insolvency Act 1986.

59 I note that sums due in respect of UK withholding tax may be deducted from distributions made, and that this has been brought to the attention of the Scheme Creditors. Further explanation as to the process by which distributions will be paid under the Scheme and the provisions relating to such distributions is provided in paragraphs 7 to 10 of Part I of the Explanatory Statement (2/15-18 of RD1) and Part V of the Scheme (1/40-45 of RD1).

Dispute Resolution Procedure

60 The Adjudicator in the Dispute Resolution Procedure referred to at paragraph 49.3(b) above will be appointed by the Company to resolve disputes in relation to certifications made by Higher Rate Creditors. The Company will use reasonable endeavours to appoint (in order of priority) Sir Bernard Rix, Michael Brindle QC or Tim Howe QC as Adjudicator. If such individuals are not able to accept the appointment, then another suitably qualified candidate (such as another former judge or English law qualified QC) will be appointed by the Company (having consulted with the Subordinated Creditor as regards the selection of alternative individuals) in accordance with paragraph 10.3 of Part II to the Explanatory Statement (2/ 43 of RD1). The role of the Subordinated Creditor in this and other respects is discussed at paragraphs 70 to 72.

61 In reaching his or her decision, the Adjudicator will consider, without an oral hearing, the material submitted by the Company and the relevant Higher Rate Creditor. For the avoidance of doubt, in doing so the Adjudicator will act as an expert and not an arbitrator. The Adjudicator may (but is not obliged to) appoint a support team to assist his or her review of the materials presented. Neither the Adjudicator nor the support team will be permitted to make their own factual investigations.

62 In accordance with the terms of the Scheme, the Adjudicator must (save in certain very limited circumstances – for instance where he or she concludes that there has been a mathematical or numerical error in either party's submission, in which case he or she may correct it) either uphold the case of the appellant Higher Rate Creditor in its entirety or uphold the Company's case in its entirety. The Administrators consider this to be a suitable approach on the basis that (i) it allows for the certification process to be dealt with quickly and efficiently and (ii) it encourages all parties to propose figures that are reasonable in the

first instance, rather than figures that are speculative and submitted on the basis that the Adjudicator will seek to find a 'middle ground'.

63 In terms of determining which party's submission to accept, the Adjudicator will uphold the Company's case (corrected as necessary for any mathematical or numerical errors, as discussed above) if he or she is satisfied on the balance of probabilities that the Company has demonstrated that the certification of the appellant Higher Rate Creditor has been made in bad faith, irrationally or other than in accordance with the Relevant Principles. If the Company does not satisfy this burden of proof, then the Adjudicator must uphold the appellant Higher Rate Creditor's case (corrected as necessary for any numerical errors, as discussed above). In all cases, a Higher Rate Creditor's determined rate of interest will not be less than a simple rate of 8% per annum.

64 Any decision by the Adjudicator will be final and binding on the Company, the Administrators, the appellant Higher Rate Creditor and all other parties to the Scheme. The decision of the Adjudicator can only be revisited in very limited circumstances (such as where a clerical error, miscalculation or mistake has been made by the Adjudicator and such an issue is brought to the Adjudicator's attention within 10 business days of the decision being issued). The Adjudicator will not be obliged to give reasons in relation to any decision reached on the basis that the process is intended to be expedient and requiring that reasons be given would slow the process down.

65 If the Adjudicator finds in favour of the appellant Higher Rate Creditor then the Company will bear, as an expense of the Administration (i) its own costs, (ii) the reasonable legal costs of the appellant Higher Rate Creditor incurred in connection with the Dispute Resolution Procedure (on an indemnity basis) and (iii) the fees, costs and expenses (inclusive of any VAT) of the Adjudicator and his or her support team. If the Adjudicator finds in favour of the Company, then the appellant Higher Rate Creditor will bear (i) its own costs, (ii) the reasonable legal costs of the Company incurred in connection with the Dispute Resolution Procedure (on an indemnity basis) and (iii) the fees, costs and expenses (inclusive of any VAT) of the Adjudicator and his or her support team.

66 The timetable associated with the Dispute Resolution Procedure is a relatively compressed one, however this is a necessary feature of the process given the desire to avoid delay and ensure that Scheme Creditors receive payments in respect of their statutory interest entitlements promptly.

67 The full terms of the Dispute Resolution Procedure are set out in Part VI of the Scheme (1/46-54 of RD1), with associated description in paragraph 10 of Part II of the Explanatory Statement (2/42-47 of RD1).

Releases

68 The Scheme provides for certain releases to be given by all Scheme Creditors. Further information in respect of these releases is provided at paragraph 16 of Part II of the Explanatory Statement (2/56-58 of RD1) and Part VII of the Scheme (1/55-56 of RD1). The main releases provided for are:

68.1 a full release of all rights in respect of the Waterfall Proceedings, the Olivant Application, the Lacuna Application and any Other Proceedings (as defined in the Scheme), together with their subject matter (including any right to seek to put the Company into liquidation before statutory interest has been paid in full or otherwise provided for);

68.2 a full release of all rights or claims against the Company (with the exception of those claims notified to the Company prior to the Bar Date and certain other Retained Claims (as defined in the Scheme));

68.3 a full release of all rights to require any future liquidator to bring contributory proceedings pursuant to section 74 or section 165 of the Insolvency Act 1986 (in acknowledgment of the Surplus, and so as to provide finality as regards the scope of the assets to be distributed);

68.4 a full release by all Scheme Creditors of any right to bring actions or disputes in the future in respect of: (i) their Admitted Claims; and (ii) the Admitted Claims of any other Scheme Creditor that were admitted by the Administrators prior to the Record Date; and

68.5 a full release (insofar as the law allows) of any right to appeal first instance decisions (subject to certain exceptions) of any court of competent jurisdiction which relate to an exercise of the Administrators' powers or functions after the Effective Date, including an application by the Administrators to the Court for directions or an appeal by a creditor to the Court against the Administrators' decision in relation to a proof of debt. Both I and the other Administrators consider that this release would help promote the efficient conclusion of the Administration.

69 In addition each Scheme Creditor will provide a full release of:

69.1 any claim that they may have against the Administrators, their firm and their advisers and certain other connected parties, where the claim arises from actions taken between the commencement of the Administration and the Bar Date and in respect of which the relevant person would have an indemnity or similar claim against the Company; and

69.2 any claim that they may have against the Administrators, their firm, the parties to the Lock-Up Agreement and their respective advisers and certain other connected parties,

where the claim arises from actions taken on or after 1 November 2017 with respect to the promotion or implementation of the Scheme (but not including (i) claims for breach of a term of the Scheme or (ii) certain claims between parties to the Lock-Up Agreement).

Role of the Subordinated Creditor

70 As stated at paragraph 5.9 of the PSL (3/8 of RD1), in the course of negotiations leading to the development of the Scheme, the Wentworth Group stated that they would only support the Scheme if it provided for the Subordinated Creditor to have rights to influence the determination of matters likely to impact its ultimate recovery in respect of the Subordinated Debt.

71 In light of this, the Scheme provides that the Company must engage with the Subordinated Creditor in relation to various matters, including:

71.1 the acceptance (or otherwise) of certifications submitted by Higher Rate Creditors (the Company must consult with the Subordinated Creditor in deciding whether or not to accept a certification, although sole discretion as to whether or not to accept any certification ultimately rests with the Company);

71.2 setting the level of any counteroffer made to a certifying Higher Rate Creditor as referred to at paragraphs 41 and 49.3(b)(ii) above (the Company must consult with the Subordinated Creditor to determine the level of counteroffer and, if agreement cannot be reached, make a counteroffer at the level proposed by the Subordinated Creditor (although the Company is under no obligation to make a counteroffer and any such counteroffer can be rejected by the certifying Higher Rate Creditor and the matter appealed pursuant to the Dispute Resolution Procedure));

71.3 the selection of an alternative Adjudicator in the event that none of the three named individuals are able to accept the appointment (the Subordinated Creditor's role is described at paragraph 60 above, although for the avoidance of doubt the final decision as to the selection of the Adjudicator rests with the Company if agreement cannot be reached and the terms of the Adjudicator's appointment are a matter for the Company in its sole discretion);

71.4 the submission of the Company's case in relation to any appeal pursuant to the Dispute Resolution Procedure (however the Company shall have the final decision in respect of the Company's case); and

71.5 the approval of the Administrators' remuneration if and when it becomes clear that there are sufficient funds for a payment to be made in respect of the Subordinated Debt.

72 In addition to the above, the Subordinated Creditor may have disclosed to it confidential information exchanged between the Company and a Certifying Creditor during the Consultation Period (as defined in the Scheme) or relating to any appeal pursuant to the dispute resolution procedure (as explained further at clause 24 of the Scheme (1/48-51 of RD1)). The Subordinated Creditor is under an obligation to keep such material confidential in accordance with clause 27 of the Scheme (1/53-54 of RD1).

73 Having considered the matter carefully (noting (i) the potential economic impact upon the Subordinated Creditor; and (ii) the fact that, if the Scheme did not accommodate the requirements of the Subordinated Creditor, the Wentworth Group would not support it), the Administrators are content to afford such rights to the Subordinated Creditor as part of the overall set of compromises reached.

Chapter 15 Order

74 The Company intends to seek an order from the US Bankruptcy Court which, among other things, recognises the Scheme as a foreign main proceeding under Chapter 15 of the US Bankruptcy Code, enforces the order sanctioning the Scheme within the territorial jurisdiction of the United States and prevents Scheme Creditors from commencing or continuing any action or proceeding in the United States against the Company or its assets located within the territorial jurisdiction of the United States that is inconsistent with the Scheme.

75 The Administrators consider this to be a prudent course of action given that there are a number of US domiciled Scheme Creditors with claims under contracts governed by US law, and the Company has certain assets within the United States. However, given the Company's status as an England and Wales domiciled entity and the fact that the Company's assets are predominantly located within the United Kingdom, the Administrators do not consider obtaining such recognition to be essential and, accordingly, the effectiveness of the Scheme will not be conditional on the receipt of the Chapter 15 Order. I confirm that the Administrators (on behalf of the Company) have appointed me to act as the Company's foreign representative on any petition brought by the Company before the United States Bankruptcy Court for an order recognising the Scheme as a "foreign main proceeding" under Chapter 15 of the U.S. Bankruptcy Code and granting related relief.

F. PROPOSED CLASSES

Administrators' proposals

76 For the purposes of organising the Scheme Meetings, the Company considers that the Scheme Creditors should be divided into four classes:

76.1 8% Creditors and Specified Interest Creditors (excluding the SCG);

76.2 Higher Rate Creditors (excluding the SCG);

76.3 the SCG; and

76.4 the Subordinated Creditor.

77 In reaching such a determination, the Administrators have sought external legal advice and concluded that the rights of the 8% Creditors and Specified Interest Creditors (other than members of the SCG) are the same as each other or not so dissimilar as to make it impossible for them to consult together with a view to their common interest; while the rights of the Higher Rate Creditors (again, excluding members of the SCG) are similarly aligned. The Administrators' reasoning in this regard is that, in addition to the rights of the Scheme Creditors within each class being compromised in materially the same way, the benefits and disadvantages for 8% Creditors and Specified Interest Creditors (other than members of the SCG) are generally comparable to each other's, while those of any one Higher Rate Creditor are similarly comparable to those of other Higher Rate Creditors (again, in each case, excluding SCG members).

78 Initially it was envisaged that members of the SCG would vote in the same classes as other 8% Creditors and Specified Interest Creditors (on the one hand) and Higher Rate Creditors (on the other). Following the disclosure of the Arrangement to the Administrators on 25 April 2018, however, the Administrators concluded that it would be appropriate for the SCG to vote at a separate Scheme Meeting from other Scheme Creditors and therefore form a separate, fourth class of creditors. As noted above, in so doing, the Administrators seek to avoid: (i) an argument as to whether the consent fee results in the SCG having sufficiently dissimilar rights to other Scheme Creditors that it is impossible for them to consult together with a view to their common interest; and (ii) any delay which might be caused by a Scheme Creditor wishing to make that argument and to have the convening hearing adjourned.

79 On the basis that the Lock-Up Agreement provides for a legally binding commitment for the SCG to support the Scheme, the Administrators do not consider it necessary for separate Scheme Meetings to be held in respect of the 8% Claims and Specified Interest Claims held by the SCG and Higher Rate Claims held by the SCG.

80 Where an 8% Claim, Specified Interest Claim or Higher Rate Claim is legally held by a Scheme Creditor that does not form part of the SCG, the legal holder of the claim will vote at the Scheme Meeting relevant to that claim with other Scheme Creditors, even if a Scheme Creditor that forms part of the SCG and is a party to the Lock-Up Agreement has an interest in the claim (such as rights under a sub-participation agreement). This reflects:

80.1 that the composition of classes of Scheme Creditors is based on creditors' respective legal rights and that legal owners of claims who are not part of the SCG will not receive the consent fee;

80.2 that the Company is unable to determine the extent or existence of beneficial or contractual interests that may have been granted by the legal holder of a claim in favour of third parties; and

80.3 (I am advised) existing judicial authority. Moreover, in any case, the Administrators understand that the majority of the claims in which the SCG has an interest are legally held by a Scheme Creditor that forms part of the SCG.

81 In respect of 8% Creditors and Specified Interest Creditors as a whole, the Administrators consider the benefits of the Scheme to be:

81.1 facilitation of likely earlier payments of statutory interest entitlements;

81.2 avoidance of the risk of their entitlements becoming worthless in the event that they are not paid prior to the Company going into liquidation;

81.3 certainty that interest on all claims provable in the Administration will be calculated from the date of the commencement of the Administration;

81.4 avoidance of the risk of the validity or quantum of their Admitted Claims being challenged; and

81.5 reduced risk of there being insufficient funds to make a full payment of their entitlement to interest.

82 The main disadvantage for such Scheme Creditors is, in the opinion of the Administrators, that they would lose the prospect of higher payments in respect of statutory interest that might be obtained in the event that the Court of Appeal judgment in Tranche A of the Waterfall II Proceedings were overturned, such that the rule in *Bower v Marris* were to apply.

83 Higher Rate Creditors, in the opinion of the Administrators, would experience all of the benefits referred to at paragraph 80 above while also benefitting from the Settlement Payment Option. They would also face similar downsides, with the addition of:

83.1 the loss of the right to have any disputes regarding certifications or the calculation of statutory interest entitlements determined by the Court; and

83.2 the loss of the chance that a higher court might overturn the Court judgment in respect of Tranche C of the Waterfall II Proceedings, which might result in Higher Rate Creditors being able to claim a greater amount of statutory interest.

84 The Administrators' reasoning with regard to the advantages and disadvantages of the Scheme for the 8% Creditors, Specified Interest Creditors and Higher Rate Creditors as a whole is set out in further detail in the PSL at paragraph 10 (3/15-20 of RD1).

85 Having considered the matter carefully, the Administrators have also concluded that the Subordinated Creditor should occupy a separate class. The Administrators have reached

this conclusion on the basis that the Subordinated Creditor cannot consult with the other classes of Scheme Creditor on the basis that its and their rights and the way in which they will be compromised by the Scheme are not sufficiently similar. The Subordinated Creditor will, therefore, vote at a meeting convened solely for it.

Correspondence with Scheme Creditors

86 In addition to the above, when determining the class boundaries, the Administrators also considered points that were raised by Scheme Creditors in relation to classes following the announcement of the Administrators' intention to propose a Scheme.

87 One Scheme Creditor wrote to the Administrators in January 2018 with various queries (see the letter dated 25 January 2018 at pages 9-13 of RD2). These queries concerned whether: (i) Higher Rate Creditors with ISDA Master Agreements should be in a different class from other Higher Rate Creditors; (ii) Higher Rate Creditors with English law ISDA Master Agreements should be in a different class from those with New York law ISDA Master Agreements; (iii) the SCG and the Wentworth Group should form a separate class as a result of their commitment to support the Scheme; and (iv) financial institutions subject to regulatory capital requirements should form a separate class from other Higher Rate Creditors.

88 Ultimately, I and the other Administrators concluded that the rights of all Higher Rate Creditors are being compromised in materially the same way under the Scheme (as explained at paragraph 11.3 of the PSL (3/20-21 of RD1)). Accordingly, I and the other Administrators do not consider there to be any need to modify the proposed classes in response to the concerns raised. A copy of the Administrators' response to the 25 January 2018 letter is at pages 14-30 of RD2.

89 In subsequent letters dated 13 April 2018 and 1 May 2018 the same Scheme Creditor also queried whether some or all of the members of the SCG should form a separate class on the basis that the economic interest in the proof of the debt which is the subject of the Olivant Application (which will be brought to an end if the Scheme is approved) is held by a participant in that group. Copies of the relevant letters are at pages 31-37 and 38-43 of RD2. The Administrators considered this point and determined that the conclusion of the Olivant Application increases certainty for all Scheme Creditors and is intertwined with the release referred to at paragraph 68.4 above (which applies to all Scheme Creditors). That said, in light of recent disclosure of the Arrangement, and as noted above, the Administrators' view is that it is appropriate for the SCG to be placed in a separate class.

90 A further Scheme Creditor wrote to the Administrators on 5 February 2018 to query whether the proposed settlement payment of 2.5% discriminates against certain creditors on the basis that it does not take account of the characteristics of the underlying claim such as the time for which the principal amount of the debt was outstanding, with the consequence that

it disadvantages those creditors whose claims were outstanding for longer. While it is unclear whether the Scheme Creditor in question considered this to give rise to a class issue, the Administrators considered this possibility nonetheless. Ultimately, I and the other Administrators concluded that it does not give rise to a class issue on the basis that the rights of all Higher Rate Creditors are being compromised in materially the same way. Our reasoning is outlined in more detail at paragraph 11.9 of the PSL (3/22 of RD1). A copy of the relevant correspondence, including the Administrators' response to this creditor, is at pages 44-45 and 46-59 of RD2.

91 Following the publication of the PSL, the Administrators have received the following correspondence regarding the Scheme:

91.1 One Scheme Creditor wrote to express concern regarding the role of the Subordinated Creditor and the nature of the rights granted to them under the Scheme. Again it is unclear whether the Scheme Creditor in question considered this to give rise to a class issue, however the Administrators considered the issue regardless, and will be responding to the Creditor to inform it that the Administrators remain of the view that the rights afforded to the Subordinated Creditor are fair and reasonable (as stated in paragraph 5.18 of the PSL (3/9 of RD1)) for the reasons outlined in paragraph 73 above. A copy of the email from this creditor is at page 60 of RD2.

91.2 Another Scheme Creditor wrote recently, on 27 April 2018, to raise various queries regarding the Scheme. It is unclear whether the complaints raised go to class issues but I have sought to consider them nonetheless. On the basis of our understanding of their letter the Administrators have again concluded that the rights of the Higher Rate Creditors (of which this Scheme Creditor is one) are being compromised in the same way and no class issue arises. A copy of letter from this creditor is at pages 61-65 of RD2.

91.3 Various Scheme Creditors have made contact expressing their support for the Scheme.

91.4 Various Scheme Creditors have raised ad hoc queries relating to the procedure and mechanics of the Scheme that do not go to class issues.

92 The Administrators are in the process of preparing responses to the Scheme Creditors at 6.1 and 6.2 and will update the Court with those responses in advance of or at the Convening Hearing.

G. VOTING

Overview

93 It is proposed that four meetings, one for each of the classes referred to at paragraph 76 above, be convened for the purposes of considering and, if the Scheme Creditors think fit, approving the Scheme. Scheme Creditors whose claims fall into both (i) the 8% Creditor and Specified Interest Creditor (excluding members of the SCG) class and (ii) the Higher Rate Creditor (excluding members of the SCG) class will be able to vote in respect of their 8% Interest Claims and/or Specified Interest Claims at the meeting convened for 8% Creditors and Specified Interest Creditors (excluding SCG members) and in respect of their Higher Rate Claims at the meeting convened for Higher Rate Creditors (excluding SCG members).

Voting rights

94 Each Scheme Creditor with one or more Admitted Claims will be allocated voting rights as set out in their UCC4s, as further described in paragraphs 100 to 103 below. Having considered the issue carefully, I and the other Administrators consider that such Scheme Creditors with Admitted Claims should be allocated voting rights:

94.1 in respect of admitted 8% Interest Claims and Higher Rate Claims, by applying a simple rate of 8% per annum to the value of such claims, calculated for the period(s) from the date of the Administration to the date(s) when the principal amount(s) of each claim was paid in full; and

94.2 in respect of admitted Specified Interest Claims, by applying the rate stipulated in the relevant contracts to the value of such claims, calculated for the period(s) from the date of Administration to the date(s) when the principal amount(s) of each Specified Interest Claim was paid in full.

95 Scheme Creditors with claims relating to proofs which have not yet been finally adjudicated upon ("**Undetermined Provable Claims**"), including the Subordinated Creditor, will receive a Voting Rights Letter (as defined in the Explanatory Statement) which will set out the Administrators' determination of their Voting Rights. Having considered the issue carefully, I and the other Administrators consider that such Scheme Creditors should be allocated voting rights:

95.1 in respect of Undetermined Provable Claims, by estimating the value of each such claim and applying a simple rate of 8% per annum to this amount, calculated for the period from the Administration Date to the date of the Scheme Meetings, save that where the value allocated is £1 the voting rights ascribed to that Undetermined Provable Claim will be £1 only; and

95.2 in respect of the Subordinated Debt, in accordance with the principal amount of such claim.

96 In all cases, the rates in question should be applied taking into account any reduction to the principal amount of any claim outstanding from time to time owing to interim dividends received by the relevant creditor.

97 Where Higher Rate Creditors consider that they are entitled to interest at a rate greater than 8%, they will be able to request voting rights greater than those calculated by the process set out above by notifying the Company of the rate(s) of interest that they consider to apply to their Higher Rate Claims and the amount of interest derived from such rate(s). The chairman of the relevant Scheme Meeting shall have discretion as to whether to allow a Higher Rate Creditor to vote in the amount stated, or at such other level as may be appropriate, with the decisions taken in respect of such requests set out in the report which the chairman will prepare after the meetings. Any determination of a Higher Rate Creditor's voting rights will in no way be determinative or binding on that Higher Rate Creditor or the Company as regards the adjudication of any certification submitted by that Higher Rate Creditor in due course. For the avoidance of doubt, any Higher Rate Creditor who submits such a request for greater voting rights will remain entitled to elect either for the Settlement Payment Option or the Certification Option in respect of its Higher Rate Claims.

98 Scheme Creditors will not need to attend the Scheme Meetings in person (although they may do so) and will be able to appoint the chairman or another person as a proxy to vote on their behalf. Such Scheme Creditors should indicate who they wish to appoint and how they would like to instruct them to vote by submitting a form of proxy (which the Administrators envisage will be made available to Scheme Creditors shortly) in accordance with the timetable at paragraph 107 below. Scheme Creditors who hold claims that are beneficially owned by multiple parties may apply to split their voting rights for the various claims they hold so that they are able to vote in accordance with voting instructions received from those parties.

99 Further information on how Scheme Creditors will be able to vote at the proposed Scheme Meetings is set out in the Explanatory Statement at paragraphs 21, 22 and 23 of Part I (2/24-25 of RD1) and, separately, at paragraph 4 of Part III (2/73-74 of RD1).

UCC challenges

100 The majority of Admitted Claims were admitted by the Administrators pursuant to "claims determination deeds", whereby the Company would offer a creditor a single value representing the Company's determination of the creditor's claim(s) against the Company, taking account of the positions under all master agreements and other trading arrangements between the Company and the relevant creditor. One Admitted Claim may therefore be made up of multiple underlying components and, in order to make payments from the Surplus, it is necessary for the Administrators to identify and quantify the separate components of such Admitted Claims based on the rates at which they are entitled to Statutory Interest, i.e.

whether they are (i) 8% Interest Claims; (ii) Specified Interest Claims; or (iii) Higher Rate Claims.

101 Having carried out an exercise to seek to determine the disaggregation of Admitted Claims, in October 2015 the Company issued the first unsecured claim certificates ("UCC1s") to all creditors with Admitted Claims, which set out the Administrators' views on the disaggregation of such creditors' claims and invited feedback from them to the extent they disagreed with such disaggregation. Taking on board feedback from creditors, the second unsecured claim certificates ("UCC2s") were issued in May/June 2016. However, given that the status of the law as regards entitlements to the Surplus materially changed following the issuance of the UCC2s, in October 2017 (and for certain creditors December 2017) the Company issued the third unsecured claim certificates ("UCC3s"). When the Scheme was first announced on 22 December 2017, the Administrators confirmed to creditors that the details contained in their UCC3s would be used to determine the constitution of classes of creditors under the Scheme, calculate creditors' voting rights in respect of the Scheme and ultimately calculate creditors' entitlements to the Surplus, and would be definitive in each of these regards. Creditors were also requested to confirm their agreement to the information set out in their UCC3s, or otherwise raise any dispute in respect of any element of their UCC3s, by no later than 19 January 2018.

102 Using the information set out in the UCC3s, the Administrators are in the process of compiling the fourth unsecured claim certificates ("**UCC4s**") which set out, in respect of Scheme Creditors with Admitted Claims, among other things: (i) their voting rights; the disaggregation of their Admitted Claims between any combination of 8% Interest Claims, Specified Interest Claims and/or Higher Rate Claims (as applicable); and (iii) their potential payments pursuant to the Scheme. These will be sent to Scheme Creditors shortly after the convening hearing.

103 Where a Scheme Creditor disagrees with the disaggregation of their claims in their UCC4, they may challenge such disaggregation. Such a challenge will however have no bearing on their voting rights at the Scheme Meetings, and any challenges must be notified to the Company prior to the Bar Date. Where a challenge is brought, the Scheme Creditor and the Company will negotiate in good faith in order to resolve the matter by agreement. If the matter has not been resolved by agreement within 20 business days of the Effective Date, either the Company or the relevant Scheme Creditor may commence proceedings seeking the determination of the matter by the Court.

H. OTHER MATTERS RELATING TO SCHEME MEETINGS

104 It is proposed that the Scheme Meetings be held in London on 5 June 2018 and that they take place sequentially (with the first Scheme Meeting commencing at 10:00 a.m. or

thereabouts and each subsequent meeting taking place once the preceding one has concluded).

105 Unless for any reason I am unable to do so, I will act as chairman of all four Scheme Meetings. In the event that I am unable to do so, it is proposed that one of the other Administrators should be appointed as chairman.

106 The Administrators first informed Scheme Creditors of the Scheme by way of an announcement on the Website dated 22 December 2017 (pages 1-4 of RD2) and provided updated announcements via the Website on 29 March 2018 and 18 April 2018 (pages 5-7 of RD2) as well as in connection with the circulation of the PSL Update. Taking these announcements into account, together with the provision of the PSL (which gives details of the anticipated dates for the Scheme Meetings) and draft Scheme and Explanatory Statement referred to at paragraphs 6.1 and 6.2 above, I believe that Scheme Creditors have been adequately informed of the Scheme and its anticipated timetable. Notwithstanding this, to ensure that information as to the date and location of the Scheme Meetings is communicated to all those who may be affected by the Scheme, the Administrators propose to advertise details of the Scheme Meetings in the press. Such advertisements will also direct readers to the Website for further information regarding the Scheme generally. The Administrators intend, separately, to publish advertisements if and when the Scheme becomes effective, as noted in paragraph 17.3 of Part I of the Explanatory Statement (2/22 of RD1).

I. TIMETABLE

107 The proposed timetable for the implementation of the Scheme is as follows.

107.1 On 10 May 2018, all known Scheme Creditors will be provided with the Scheme and Explanatory Statement, together with forms of proxy and documentation (specifically UCC4s in the case of Admitted Claims and Voting Rights Letters in respect of Undetermined Provable Claims) setting out the Company's determination of their voting rights (with Scheme Creditors who have not submitted a proof of debt by 10 May 2018, but who do so by 5.00 pm on 24 May 2018, receiving such documentation as soon as reasonably practicable thereafter);

107.2 By 5.00 pm on 24 May 2018:

(i) Higher Rate Creditors who consider that they are entitled to interest at a rate greater than 8% may request voting rights greater than those set out in the documentation provided to them in accordance with paragraph 97 above.

(ii) Scheme Creditors who hold more than one Admitted Claim but do not control all such claims may request that the Administrators split their voting rights in accordance with paragraph 98 above.

107.3 By 5.00 pm on 4 June 2018, Scheme Creditors wishing to vote but not intending to attend the Scheme Meeting(s) in person must submit their completed forms of proxy (together with their confirmation of whether they wish to choose the Settlement Payment Option or the Certification Option in the case of Higher Rate Creditors (as referred to in paragraph 42 above)) unless such forms of proxy are to be submitted at the relevant Scheme Meeting(s) by hand.

107.4 The Scheme Meetings will be held on 5 June 2018.

107.5 Subject to approval by the requisite majority of the Scheme Creditors at the Scheme Meetings, there will be a further Court hearing on 13 June 2018 to determine whether the Scheme should be sanctioned.

107.6 In advance of such hearing, the Company will file with the Court a copy of a report by the chairman of the Scheme Meetings.

107.7 If the Scheme is sanctioned by the Court, it is anticipated that the Scheme will become effective shortly thereafter.

107.8 Pursuant to paragraphs 42 and 103 above respectively, all certifications must be submitted, and challenges in respect of the disaggregation of claims in a Scheme Creditor's UCC4 brought, prior to the Effective Date.

108 The Administrators believe that the proposed timetable is reasonable and allows Scheme Creditors sufficient time to consider the terms of the Scheme, vote and carry out other necessary steps.

109 While it is noted that there will be a gap between the deadlines falling on 24 May 2018 and the Scheme Meetings, the Administrators believe that this is required given the work that will need to be completed within this time period. This includes (i) issuing new certificates setting out voting rights in response to requests by Scheme Creditors to split their votes; and (ii) processing requests submitted by Higher Rate Creditors seeking enhanced voting rights.

J. CONSEQUENCES OF THE SCHEME

110 If the Scheme is approved by the Scheme Creditors, in addition to the making of distributions in respect of statutory interest entitlements of 8% Creditors, Specified Interest Creditors and Higher Rate Creditors and (potentially) a payment to the Subordinated Creditor, the Scheme may also make way for potential payments to LBHI2 in its capacity as the Company's shareholder (although these would only be made to the extent that all possible claims that rank in priority are either paid, or reserved for, in full and that such distributions comply with the relevant provisions of the Insolvency Act 1986 and the Companies Act 2006).

111 Further information regarding potential payments to LBHI2, together with the circumstances in which such payments will be made, is set out in paragraph 18.3 of Part II of the Explanatory Statement (2/61 of RD1) and clause 33 of the Scheme (1/60 of RD1).

112 It is expected that the Company will remain in administration after the Scheme is effective and that the Administrators will effect the distributions under the Scheme. To the extent that the Company goes into liquidation however (contrary to the Administrators' current expectation and intention), it is intended that the provisions of the Scheme should prevail to the extent that the law allows and that any amounts payable in respect of distributions under the Scheme should not be reduced or otherwise affected.

K. WHY THE SCHEME SERVES THE BEST INTERESTS OF THE SCHEME CREDITORS AND THE BROADER ESTATE

113 Overall, the Administrators consider that the Scheme represents a desirable outcome for all Scheme Creditors on the basis that it is, as noted above, expected to:

113.1 facilitate earlier payments of statutory interest entitlements;

113.2 avoid the risk of Scheme Creditors' entitlements becoming worthless in the event that they are not paid prior to the Company going into liquidation;

113.3 provide certainty that interest on all claims provable in the Administration will be calculated from the date of the commencement of the Administration;

113.4 provide a streamlined process for determining disputed certifications and statutory interest entitlements;

113.5 avoid the risk of the validity or quantum of their Admitted Claims being challenged; and

113.6 reduce the risk of there being insufficient funds to make a full payment of their entitlement to interest.

114 Further information regarding the advantages of the Scheme is set out in paragraph 24 of Part I of the Explanatory Statement (2/25-26 of RD1)

115 If the Scheme is not approved, the Administrators consider that this will have several disadvantages for Scheme Creditors. These disadvantages are set out in paragraph 26 of Part I of the Explanatory Statement (2/27-28 of RD1), however in essence the main concerns are that:

115.1 uncertainty regarding Scheme Creditors' entitlements to statutory interest would remain such that no material distributions could be made in respect of statutory interest

115.2 the continuation of the Waterfall II Proceedings, Lacuna Application and Olivant Application would result in additional costs for the Administration and delay the making of distributions from the Surplus;

115.3 some Scheme Creditors' claims might be challenged or reduced;

115.4 were the Company to enter into liquidation, Scheme Creditors' rights to unpaid statutory interest would be lost; and

115.5 due to the lack of a bar date, Scheme Creditors would be exposed to the risk of new claims being received which (if of sufficient quantum) could decrease the amount payable to Scheme Creditors with Admitted Claims.

116 With these advantages and disadvantages in mind, the Administrators believe that it is appropriate to recommend that the Scheme Creditors approve the Scheme.

117 The Administrators firmly believe that with four years of Waterfall-related litigation behind us and the prospect of several more years of litigation for all Surplus-related litigation to be determined, a consensual resolution to creditor entitlements in the form of the Scheme is in the best interests of all Scheme Creditors.

L. JURISDICTION

General

118 I am advised and believe that, since the Company is incorporated in England and Wales and the arrangements to be implemented by the Scheme represent a genuine compromise intended to benefit Scheme Creditors, the Court has jurisdiction to order the convening of the Scheme Meetings and the sanctioning of the Scheme pursuant to Part 26 of the Companies Act 2006. For completeness however, the Administrators have sought advice in relation to certain matters which we were informed may give rise to jurisdictional concerns. These matters are discussed in paragraphs 119 to 121 below. Ultimately, I and the other Administrators have been advised that these matters should not prevent the Court from ordering the convening of the Scheme Meetings or the sanctioning of the Scheme.

Regulation (EU) No. 1215/2012

119 The Administrators note that Regulation (EU) No. 1215/2012 (the "**Regulation**") potentially applies to the present proceedings and is therefore relevant to the issue of whether the Court has jurisdiction to sanction the Scheme. To the extent it does apply, legal advice received by the Administrators indicates that, pursuant to the Regulation, the court does have jurisdiction for the following reasons:

119.1 In the first instance, Article 8 of the Regulation provides that "*A person domiciled in a Member State may ... be sued ... (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims*

are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings". There are currently 39 Scheme Creditors (out of a total of 348) that are domiciled in England and Wales (representing 11% of all Scheme Creditors by number and 5% by value of admitted claims). The Court accordingly *prima facie* has jurisdiction to sanction the Scheme in respect of all Scheme Creditors on the basis of Article 8.

119.2 To the extent there are Scheme Creditors *vis-à-vis* whom Article 8 does not confer jurisdiction on the Court to sanction the Scheme (which I understand may include (i) former employees of the Company domiciled in another European Union member state ("**Relevant Employees**"), and (ii) Scheme Creditors with claims under contracts with exclusive jurisdiction clauses in favour of the courts of another European Union member state ("**Relevant Jurisdiction Clause Creditors**")), I am advised that the Administrators can rely on Article 26(1) of the Regulation. This provides that "*a court of a Member State before which a defendant enters an appearance shall have jurisdiction*". Relevant Employees or Relevant Jurisdiction Clause Creditors who have lodged a proof of debt in the Administration have, I understand, as a matter of law, submitted to the jurisdiction of the Court, and thereby "entered an appearance" within the meaning of Article 26(1).

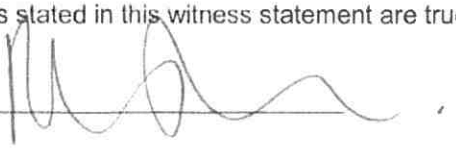
120 For the avoidance of doubt, Relevant Employees or Relevant Jurisdiction Clause Creditors who have not lodged a proof of debt in the Administration will fall outside the definition of "Scheme Creditor", and will not be bound by the Scheme. The Administrators consider that it is unlikely that there are any substantial creditors falling within this category.

Issue raised by Scheme Creditor

121 In a letter dated 13 April 2018, a Scheme Creditor suggested that the benefits under the Scheme are not material and that the Scheme lacks any "true give and take". The Administrators strongly disagree for all the reasons set out at paragraphs 10.5 to 10.7 of the PSL (3/16-17 of RD1). The Scheme plainly involves a compromise between the Company and each class of the Scheme Creditors, the principal benefit of which is to facilitate the early distribution of the Surplus.

122 Whilst it is not clear whether this is the case, to the extent that the Scheme Creditor in question was intending to assert that the Scheme does not constitute a "*compromise or arrangement*" within Part 26 of the Companies Act, I am advised that this is wrong for the reasons that will be set out in our response to that creditor.

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



RUSSELL DOWNS

Dated the 2 day of May 2018

Claimants

R Downs

First Witness Statement

Exhibits RD1 to RD2

2 May 2018

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF
ENGLAND AND WALES
COMPANIES COURT (ChD)

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

-and-

IN THE MATTER OF THE COMPANIES ACT 2006

WITNESS STATEMENT OF

RUSSELL DOWNS

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