

Applicants
Russell Downs
Sixteenth Statement
Exhibit "RD-16"
12 October 2018

No. 7942 of 2008 / CR-2008-000012

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

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

-and-

IN THE MATTER OF THE INSOLVENCY ACT 1986

-and-

IN THE MATTER OF THE TRUSTEE ACT 1925

SIXTEENTH WITNESS STATEMENT
OF
RUSSELL DOWNS

I, Russell Downs, of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT,
say as follows.

(A) Introduction

- 1 I am a licensed insolvency practitioner and a partner of PricewaterhouseCoopers LLP
("PwC"), a professional services firm of the above address. On 15 September 2008, Lehman
Brothers International (Europe) ("LBIE") entered into administration by order of the High
Court, Chancery Division of England and Wales made under paragraph 13 of Schedule B1

of the Insolvency Act 1986 (the “Act”). Julian Guy Parr, Edward John MacNamara and Gillian Eleanor Bruce, and I are currently the joint administrators of LBIE (together the “**Joint Administrators**”). In the Schedule to this witness statement I have set out the current and former Joint Administrators and the dates on which they were appointed and, where applicable, retired as Joint Administrators. References in this witness statement to “the Joint Administrators” and “we” and “us” are references to the individuals who have been in office as applicable from time to time. I am duly authorised to make this witness statement on behalf of LBIE and the other Joint Administrators.

- 2 There is now produced and shown to me and exhibited to this witness statement a paginated bundle of documents marked “RD-16”. References to page numbers in this witness statement are to the pages of Exhibit RD-16 unless otherwise stated.
- 3 Where the source of my information or belief of facts stated in this witness statement is not indicated, the contents of this witness statement are derived from facts and matters which are within my own knowledge. I have learned these facts and matters either (i) as a result of the work undertaken by me as one of the Joint Administrators, (ii) because they have been provided to me either by my partners and colleagues at PwC involved with the administration of LBIE, or by the employees of LBIE who were available to the Joint Administrators at the time that the work was undertaken, or (iii) as a result of the process which I describe in paragraph 4 below.
- 4 As a result of the size and complexity of LBIE’s administration the Joint Administrators have historically been required to allocate amongst ourselves the day-to-day management of the various areas of the administration. The allocation of responsibilities amongst the Joint Administrators has evolved throughout the duration of LBIE’s administration and is regularly reassessed as required. Accordingly, the involvement of the various Joint Administrators in the processes described in this witness statement has changed from time to time. Whilst I give this witness statement as the Joint Administrator with responsibility for the conduct of this application, in this witness statement I draw, as necessary, on information provided to me by my fellow Joint Administrators and LBIE and PwC staff working on the administration of LBIE. In particular my fellow Joint Administrator, Julian Guy Parr, has had conduct of the

day-to-day management of the client money estate for much of its history and has reviewed and approved the contents of this witness statement.

- 5** This is my sixteenth statement in these proceedings but the first in relation to this application. I make this statement in support of the application for:

- (i) directions for the last date by which clients may make client money claims to LBIE, and as to the assumptions on which the Joint Administrators may rely in closing the client money estate; and
- (ii) related orders under section 1157 of the *Companies Act* 2006 to excuse the Joint Administrators in respect of any liability which might be occasioned by LBIE's reliance on the directions referred to in paragraph (i) above,

(the "**Application**").

- 6** The contents of this witness statement are set out as follows:

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- 7 Unless the context otherwise requires, all figures in this witness statement have been calculated as at 31 August 2018. For presentational purposes I have rounded numbers expressed in US dollars to the nearest whole dollar and numbers expressed in euros to the nearest whole euro.

(B) Background

- 8 The rules in the Client Assets Sourcebook section of the Financial Conduct Authority Handbook (the "**CASS Rules**") (as applicable to LBIE) govern client money matters. The Joint Administrators previously issued an application on 1 May 2009 seeking directions from the Court concerning LBIE's obligations in relation to the handling of client money received prior to the time of administration (the "**Client Money Application**"). Mr Justice Briggs handed down judgment on the Client Money Application on 15 December 2009 and 20 January 2010. Four parties appealed and judgment on the appeals was handed down by the Court of Appeal on 2 August 2010. The decision of the Court of Appeal was also the subject of appeals to the Supreme Court. Judgment on those appeals was handed down on 29 February 2012. In summary, the Supreme Court found that:

- (i) the statutory client money trust arose from the moment LBIE received client money;
- (ii) the "pool" of client money (the "**CMP**") included all client money in any account of LBIE into which client money was paid; and
- (iii) client money should be distributed to those for whom client money should have been segregated by LBIE (the "**Claims Basis**"), as opposed to only those for whom money was in fact segregated (the "**Contributions Basis**").

- 9 Further and in addition to the Client Money Application, in May 2011 we issued a separate application for directions to enable us to identify any client money and its traceable proceeds received or held by LBIE (the "**Tracing Application**"). The Tracing Application raised a

number of complex issues regarding the correct principles to be applied in respect of identifying client money held in LBIE's house accounts. Further, given the large volume of payments made to and from LBIE's house accounts on a daily basis, it was anticipated that collating and preparing the necessary evidence would be time-consuming and expensive. In the event, Briggs J adjourned the Tracing Application pending the outcome of the appeals to the Supreme Court in relation to the Client Money Application. For the reasons set out in paragraph 78 below, the Joint Administrators no longer consider it necessary or appropriate to seek to identify any traceable client money proceeds.

- 10 On 5 September 2016, the Joint Administrators issued an application for directions to resolve a number of issues which arose in relation to claims that Barclays Capital Inc. ("**Barclays**") had made against LBIE and/or the CMP. Barclays had acquired these claims by purchasing Lehman Brothers Inc's exchange-traded derivatives ("**ETD**") business in September 2008. Wentworth Sons Sub-Debt S.a.r.l. ("**Wentworth**") became a party to the application following a case management conference in November 2016. Amongst other things, the application sought a determination of whether Barclays had a client money claim. If it did have such a claim, it was potentially in an amount exceeding US\$1 billion. Resolution of this issue was accordingly material to progressing the client money estate. A trial of the initial legal issues had been listed in April 2018 but LBIE, Barclays and Wentworth entered into a settlement deed on 24 April 2018 and the application was dismissed by an Order agreed between the parties on the same date.
- 11 At the start of 2018 LBIE's unsecured estate had a value of approximately £6.6 billion. In order to make progress in the resolution of that estate the Joint Administrators proposed a scheme of arrangement (the "**Scheme**") following consultation with LBIE's creditors. After a series of meetings, LBIE's creditors approved the Scheme and it was sanctioned by an Order of Mr Justice Hildyard dated 18 June 2018. Under the terms of the Scheme, LBIE has been able to pay unsecured creditors' statutory interest entitlements in full and, in return, Scheme creditors released LBIE from further claims and agreed to bring the longstanding "Waterfall" proceedings to an end. The terms of the Scheme preclude further unsecured claims being advanced against LBIE.

- 12 It is against this backdrop that we have turned our minds to a final resolution of the client money estate. Section (D) of this statement contains details of the efforts which the Joint Administrators have made (i) to identify clients with client money entitlements, (ii) to agree those client money entitlements with them and (iii) to make interim distributions of the client money estate. In summary, we made extensive efforts to advance the process of identifying and agreeing client money entitlements even before the Supreme Court handed down its judgment in the Client Money Application in February 2012. Once the Client Money Application was determined by the Supreme Court, we identified clients with client money entitlements (and the amounts of those entitlements) on the basis of the Supreme Court judgments and continued the process of agreeing/settling those entitlements with clients. We were also able to make interim distributions of client money of 23.2% in 2013, a further 25% in 2014 and the remaining 51.8% earlier this year.
- 13 The purpose of the Application is to seek from the court the ability to impose a final date by which any outstanding client money claimants must claim so that we may (i) distribute unpaid client money, together with interest and gains on open positions, to clients in accordance with their entitlements; (ii) assuming that the direction sought from the Financial Conduct Authority ("FCA") is given in the form of the Proposed CASS Waiver (as defined and discussed in paragraphs 98 and 99 below), reserve for, and ultimately pay to the Insolvency Service (subject to a *de minimis* exclusion), monies in respect of clients with entitlements whom we are unable to pay; and (iii) distribute the surplus to LBIE's house estate for distribution to its subordinated creditors.
- 14 We have published notice of the Application on PwC's website (**pages 351-353**) and intend, shortly after the date of this witness statement, to notify all known client money beneficiaries for whom the Joint Administrators have contact details (other than the 18 Dissolved Clients, see section (E) below, and the client that has donated its CME to charity) about the Application (see sections (C), (D) and (F) below as regards the basis for the Joint Administrators' understanding of who these beneficiaries are). The Application has also been the subject of discussions with the FCA who are in the process of considering LBIE's

application for the Proposed CASS Waiver, as defined and discussed in paragraphs 98 and 99 below.

(C) Who has a claim in the client money estate?

15 As at the time of appointment of the Joint Administrators on 15 September 2008 (which, in the CASS Rules, is referred to as the "primary pooling event" ("**PPE**")) we believed, on the basis of LBIE's books and records, that LBIE had up to 22,000 counterparties (as set out in our first progress report dated 14 April 2009, **page 11**). As a result of the work done by the Joint Administrators, which is described in section (D) below, we now believe that 1,320 of these counterparties had a right to share in the CMP as at the PPE (which, in the CASS Rules, is referred to as a "client money entitlement" or "**CME**"). However, for the reasons explained below there are, as at the date of this witness statement, only 117 clients (including Laurifer) with CMEs remaining, and LBIE has so far not made any payments to 102 of those 117 clients.

16 The 1,320 CMEs fall into the following categories.

- (i) 781 CMEs which have been assigned to a special purpose vehicle called Laurifer Limited ("**Laurifer**") established by LBIE in the circumstances summarised in paragraph 17 below. Laurifer itself is the one remaining client which holds these 781 CMEs.
- (ii) 423 CMEs which have been waived.
- (iii) 116 CMEs which have neither been waived nor assigned to Laurifer. Within this category there are the following sub-categories:
 - (a) CMEs of the 22 "**Payable Clients**", being those clients, excluding Laurifer, who still retain their CMEs and to whom LBIE has made payments or to whom we expect LBIE shortly to be able to make payments. LBIE has paid 100c/\$ to seven of the Payable Clients as at the date of this witness statement;

- (b) CMEs of 18 Dissolved Clients (as defined in paragraph 45 below) whose CMEs have become *bona vacantia* and will be paid to the relevant governmental agencies in the relevant countries;
- (c) the CME of one client who has instructed the Joint Administrators to pay its CME to charity; and
- (d) 75 CMEs where the Joint Administrators believe that we have identified a client entitled to client money but have not been able to make payments to them in respect of that CME (the “**Unresponsive Clients**”).

17 Accordingly, the vast majority of CMEs are now held by Laurifer. Laurifer is a special purpose vehicle incorporated in Jersey in 2009 and has been used by LBIE to facilitate the process of enabling client money clients to assign CMEs for the benefit of LBIE. Laurifer is managed by a Jersey professional services firm, and its shares are held on charitable trust. As detailed below, the Joint Administrators have entered into a variety of agreements with clients which include the assignment by the clients of their CMEs to Laurifer. Where the client was a debtor of LBIE the assignment was by way of part payment of that debt. Where the client was a creditor, their decision to assign their CME generally reflected the fact that clients were keen to pursue their ordinary unsecured claims (instead of client money) which LBIE was able to pay in full and in respect of which statutory interest was also payable.

18 Laurifer and LBIE entered into a Benefit Transfer Agreement on 23 February 2010, whereby LBIE has agreed to pay certain fees and expenses to Laurifer and, in exchange, Laurifer has agreed to transfer to LBIE all amounts which Laurifer recovers in respect of CMEs assigned to it.

19 Historically, two of LBIE’s major affiliates (Lehman Brothers Inc. (“**LBI**”) and Lehman Brothers Finance AG (“**LBF**”)) have asserted that LBIE should have segregated significant sums of client money for them, but it did not do so. Barclays acquired certain of LBI’s businesses shortly after the collapse of the Lehman Brothers group. Following extensive litigation in the US it was agreed, between LBI and Barclays, that Barclays had acquired certain assets in relation to LBI’s ETD business. As I said in paragraph 10 above, the Joint

Administrators issued an application to determine (amongst other things) whether Barclays was, by its acquisition of LBI's ETD business, entitled to claim against the CMP and that application was settled in April 2018.

20 As part of wide-ranging settlements with LBI, Barclays and LBF, any CMEs to which they may have been entitled were assigned to Laurifer. There was some doubt as regards whether these purported CMEs were valid claims given the involvement of LBIE's major affiliates, particularly LBI, in the lack of segregation of funds in respect of positions held by LBIE for them. Had they been valid and continued to be asserted against LBIE, the CMEs assigned to Laurifer by LBF, LBI and Barclays would have dwarfed the CME of any other client money beneficiary and caused a client money shortfall. However, having discussed the position with the Joint Administrators, Laurifer waived any such client money claims by a deed dated 30 July 2018, thereby avoiding the potentially complex resolution of those uncertain CMEs, in circumstances where the economic benefit of the CMEs belonged to LBIE itself in any event.

21 I set out a summary of the current position regarding the categories of CMEs that have to date been identified by us in the table below.

Category of CMEs	Number of CMEs	Value of CMEs (US\$)	% of total by value
CMEs assigned to Laurifer	781	1,427,176,448	99.0703%
Potential CMEs of LBI/LBF assigned to Laurifer and waived	2	0 (allegedly formerly 2,452,718,424)	N/A
Other waived CMEs	418	0 (formerly 134,233,059)	N/A
Payable Clients	26 ¹	7,165,662	0.4974%

¹ Including, to the extent that they have been paid, and for the purposes of this table only, four clients who subsequently waived or assigned their CMEs.

Category of CMEs	Number of CMEs	Value of CMEs (US\$)	% of total by value
Dissolved Clients	18	3,739,603	0.2596%
CME donated to charity	1	8,142	0.0006%
Unresponsive Clients	75	2,479,232	0.1721%
Total		1,440,569,087	100%

- 22 In the table below I set out a summary of the means by which Laurifer's 781 CMEs have been assigned to it. I provide more background on the various client money proposals in paragraphs 29 to 31 below.

Laurifer's CMEs	Number of CMEs	Value of CMEs (US\$)
CMEs assigned to Laurifer in bilateral negotiations generally	476	1,337,198,818
CMEs assigned to Laurifer in the First CM Proposal (as defined in paragraph 29 below)	230	1,438,575
CMEs assigned to Laurifer in the Second CM Proposal (as defined in paragraph 31 below)	54	86,433,668
CMEs assigned to Laurifer in the Extended Second CM Proposal (as defined in paragraph 31 below)	12	748,240
CMEs assigned to Laurifer in the Third CM Proposal (as defined in paragraph 31 below)	9	1,357,147
Total CMEs assigned to Laurifer	781	1,427,176,448

(D) How did LBIE establish the population of client money claimants and how has it dealt with those claimants?

- 23** Shortly after LBIE went into administration, the Joint Administrators set up (i) a dedicated client money page on the PwC website, in order to communicate with client money claimants, and (ii) a dedicated email mailbox in order to deal with clients' client money queries. Since the PPE there has been extensive and fulsome communication with client money claimants, both through the website and by way of direct communications, as explained below. There is a full suite of updates posted to the dedicated client money page, as well as certain relevant updates posted on other parts of the LBIE section of PwC's website, at **pages 171-353**.
- 24** LBIE's books and records regarding client money entitlements have largely been very reliable, at least as regards those non-affiliate clients in respect of whom client money was segregated. As described below, additional work was required following the Client Money Application as it was determined that clients and affiliates in respect of whom client money should have been segregated (but was not) were also entitled to client money. However given the extensive work carried out over a ten year period on this high-profile insolvency, the Joint Administrators have a high level of confidence that we have identified all client money claimants.
- 25** On 10 October 2008 we posted an update on the website to give clients some general information about the procedure which we intended to follow when distributing client money and assets (**pages 171-175**). In the course of October 2008 we wrote to all clients who we understood to have had a CME and requested further information about their potential CMEs. In this witness statement I use the term "**Known Clients**" to refer to the fluctuating group of clients who we have understood from time-to-time to have a CME based on LBIE's books and records, communications with clients, our understanding of the law and the judgments of the Courts. Likewise, unless the contrary appears, when I refer to Known Clients' CMEs I mean those CMEs as we have understood them from time-to-time based on the same factors. Copies of the forms of letters sent to institutional clients and private investment clients in October 2008 are at **pages 1-2** and **3-5** respectively. We posted further

updates on the client money webpage on 15 October 2008, describing the letters which we had sent to clients (**pages 176-177**) and, on 13 November 2008, setting out information relating to the client money estate, including potential issues in resolving it (**pages 178-180**). These initial communications led to widespread engagement between LBIE and individual client money claimants. In practice, that was ordinarily part of a broader conversation regarding a client's claims into, and debts owed to, LBIE.

- 26** The Joint Administrators issued the Client Money Application on 1 May 2009 and shortly thereafter we wrote to Known Clients (a form of the letter sent is at **pages 99-106** and the initial website updates in relation to the Client Money Application are at **pages 194-203**). In late May and early June 2009 we sought to give Known Clients a broad estimate (an example, with client specific information redacted, is at **pages 107-111**) of their CMEs and included an indication of how those CMEs had arisen (for example: custody cash, or ETDs) and an invitation to tell us if they wished to participate in the Client Money Application (the website updates in relation to these letters are at **pages 204-207**).
- 27** In September 2009 we wrote to Known Clients and provided login instructions for the online "Client Information Portal". Copies of the forms of letters sent to clients (i) with CMEs and (ii) with CMEs and other client asset entitlements are at **pages 112-113** and **pages 114-115** respectively. In the following months we posted "Client Money Statements" on the Client Information Portal, which contained detailed information about Known Clients' CMEs and the manner in which those CMEs had arisen (website updates in relation to these Client Money Statements are at **pages 230-231** and **251-252**).
- 28** The Client Money Application was heard in the High Court from 9 November 2009 to 24 November 2009 and judgments were handed down on 15 December 2009 and 20 January 2010 (website updates are at **pages 249-250** in respect of the hearing; **pages 253-256** in respect of the December judgment and **pages 259-260** in respect of the January judgment). On 8 April 2010 we used the two High Court judgments to refine the approach which we adopted in the previous Client Money Statements and posted revised Client Money Statements on the Client Information Portal (a website update in relation to these revised Client Money Statements is at **pages 271-274**).

- 29 In 2010, mindful of pending appeals in the Client Money Application, we recognised that dealing with such a large number of beneficiaries was likely to lead to disproportionately high administrative costs. In particular, it was clear from the analysis which LBIE had conducted that over 564 clients had CMEs of US\$10,000 or less, and a large proportion of these had not engaged with LBIE's communications to date. For these reasons the Joint Administrators made a proposal to clients in April 2010 (the "**First CM Proposal**") (website updates in relation to the First CM Proposal are at **pages 271-278, 282-283, 286-291 and 299-300**).
- 30 Clients who accepted the First CM Proposal were entitled to receive a single payment from LBIE's unsecured estate of US\$10,000 or their CME as determined by LBIE, whichever was lower. Client money beneficiaries who participated in the First CM Proposal assigned the whole of their CME to Laurifer in exchange for the payment. LBIE made payments to 230 clients under the First CM Proposal in July and August 2010.
- 31 Similar proposals were made in February 2014 (the "**Second CM Proposal**"), September 2014 (the "**Extended Second CM Proposal**") and January 2015 (the "**Third CM Proposal**") which, collectively, resulted in a further 75 clients assigning their CMEs to Laurifer and five waiving their CMEs.
- 32 The judgments of the Court of Appeal were handed down on 2 August 2010 (a website update relating to the Court of Appeal judgments is contained at **pages 294-296**). These judgments represented a major departure in principle from the judgments of the High Court, in particular because the Court of Appeal decided that CMEs were to be calculated on the Claims Basis rather than the Contributions Basis. This decision fundamentally shifted the theoretical basis of calculating CMEs and, as such, LBIE was required to carry out a large amount of work to reach revised conclusions about (i) which clients had CMEs, and (ii) the quantum of those CMEs. As a consequence, we expanded the client money team significantly in September 2010 and conducted a review of LBIE's broader client population to determine which clients had CMEs in accordance with the Court of Appeal judgments. One significant impact of the Court of Appeal judgments was that LBIE's affiliates (in respect of whose positions LBIE did not generally segregate client money) potentially held CMEs and some of those CMEs were potentially very large.

- 33** The Supreme Court judgments (which I summarised, in broad terms, in paragraph 8 above) were handed down on 29 February 2012 and broadly upheld the judgments of the Court of Appeal (a website update relating to the Supreme Court decision is contained at **pages 321-322**). Following the Supreme Court decision, LBIE prepared a methodology to govern LBIE's determination of CMEs (the "**CME Principles**"). The objective of the CME Principles was to set out, for each of the types of financial contract which LBIE had with its clients, whether that contract type would give rise to a CME. On 24 May 2012 we posted a website update explaining, and providing a link to, these CME Principles and inviting clients to raise any objections to them at the earliest opportunity (**pages 325-328**).
- 34** We received no objections to the CME Principles and, accordingly, between May and December 2012 we reviewed LBIE's total client population and concluded that there were 1,320 Known Clients under this new methodology (including those Known Clients who had, at this point, already assigned or waived their CMEs). We sent out Client Information Portal links to documents ("**Client Money Determinations**") containing our CME determinations to Known Clients. An example copy of a communication to a client is at **page 116** and an example copy of a Client Money Determination is at **pages 117-126** (in each case, with identifying information redacted).
- 35** In July 2012 we posted a website update (**pages 329-331**) saying that we expected that the prospective distributions of client money might be less than the aggregate CMEs being communicated to Known Clients (in other words, we expected that there may be a client money shortfall). As such we invited client money claimants to file proofs of debt by 31 July 2012 in order to preserve their rights as unsecured creditors in respect of any shortfall. In fact, as I explain later in this witness statement, there is currently a surplus in the CMP.
- 36** Clients who agreed with their Client Money Determinations were invited to enter into agreements with LBIE to settle their client money claims ("**Client Money Deeds**"). On 11 December 2012 we posted an update on the website to say that we intended to make an interim distribution of client money (the "**First Interim CM Distribution**") and clients who had entered into Client Money Deeds would be entitled to participate (**pages 332-333**; other website updates relating to the First Interim CM Distribution are at **pages 334-343**).

- 37 The First Interim Client Distribution was made on 23 April 2013 at a rate of 23.2%. As noted in paragraph 12 a second interim distribution of 25% was paid in June 2014 (the "**Second Interim CM Distribution**") and a third interim distribution of 51.8% (the "**Third Interim CM Distribution**") was paid earlier this year, to which I refer further at paragraph 44 below (website updates are at **pages 344-347** in relation to the Second Interim CM Distribution and at **pages 348-350** in relation to the Third Interim CM Distribution). Clients who agreed their claims with LBIE after the relevant payment dates have been paid catch-up distributions.
- 38 Despite the efforts made by the Joint Administrators over a period of five years (as explained above) there remained a number of Known Clients to whom LBIE had not been able to make payments, either because they had been unable to contact the relevant clients or because, despite some degree of two-way communication, the clients had not engaged further. Accordingly, in October 2013 LBIE made a series of communications (the "**Three Stage Communications**") to 282 Known Clients who had not, at that time, engaged with LBIE in relation to the payment of their CMEs. We began by attempting to communicate with all those 282 clients and we sent a second round of follow-up letters to the 200 clients who did not respond to the first letters. We sent a final letter (enclosing copies of the previous two communications) to the head of legal at each of those 159 clients who had not responded to either of the first two communications. A set of the Three Stage Communications, with client-identifying information redacted, is included at **pages 127-164**². Overall 223 clients responded to the Three Stage Communications and, of these, 60 clients waived their CMEs and 116 assigned them to Laurifer.
- 39 There were, therefore, 106 Known Clients who had been sent the Three Stage Communications but who had not waived their CMEs, or signed a Client Money Deed retaining their CMEs or assigning them to Laurifer. Of these 106, 47 had responded to the Three Stage Communications but had not entered into Client Money Deeds or waived their CMEs and 59 had not responded at all to the Three Stage Communications.

² The documents at **pages 129-155, 156-158, 159-160** are the attachments to the precedent communication at **pages 127-128**.

40 Two of the 59 clients who did not respond to the Three Stage Communications had responded, to some extent, to our previous communications and, as such, we believed that the contact details which we had for them were reliable. We therefore considered alternative methods of dealing with those two clients and the 47 who responded to the Three Stage Communications but had not assigned or waived their CMEs. Accordingly, we decided that we would offer to pay those 49 clients their CMEs (as determined by LBIE) without them having to execute a Client Money Deed (the "**Non-Solicited Payment Process**").

- (i) From May 2014 we attempted to communicate with all 49 clients by email and by telephone. We advised clients that, if they confirmed their CMEs and submitted payment details on the Client Information Portal before a specified date (which was, as applicable, the date of the next interim distribution payment date), we would pay distributions in respect of their CMEs at the interim distribution rate (which was, by then, 48.2% as a result of the First Interim CM Distribution and Second Interim CM Distribution referred to in paragraph 37 above).
- (ii) We sent cheques to the value of 48.2% of their CMEs to the 33 clients who did not confirm their CMEs and submit payment details.

41 Of the 49 clients whom we contacted in the Non-Solicited Payment Process, 26 did not accept payment through the process. Of these 26:

- (i) seven otherwise agreed to waive their CMEs or assign them to Laurifer (either through bilateral negotiations or in the Extended Second CM Proposal or Third CM Proposal);
- (ii) we discovered that one was a Dissolved Client (see section (E) below);
- (iii) one donated its CME to Lehman Brothers Foundation Europe (a company limited by guarantee and a registered charity which was originally founded as part of the charitable programme of Lehman Brothers and which is still carried on by former employees of Lehman Brothers on a voluntary basis); and
- (iv) we treated the other 17 as unresponsive, in accordance with paragraph 43 below.

42 23 clients did accept payment in the Non-Solicited Payment Process. Of these 23:

- (i) two submitted payment details and received 48.2% of their CMEs but waived their remaining entitlements;
- (ii) seven accepted payment by cheque and assigned their remaining CMEs to Laurifer (either in the Extended Second CM Proposal or Third CM Proposal); and
- (iii) 11 clients who submitted electronic payment details and three clients who cashed cheques have, as at the date of this witness statement, not otherwise assigned or waived their CMEs. In this statement I refer to these remaining clients who accepted payment in the Non-Solicited Payment Process as the 14 **"NSP Beneficiaries"**.

43 There are accordingly 74 Known Clients (i) who did not respond to the Three Stage Communications and were not included in the Non-Solicited Payment Process (57 Known Clients), or (ii) who did not accept payment under the Non-Solicited Payment Process and did not otherwise assign, waive or donate their CMEs (i.e. the 17 remaining clients of the 26 in paragraph 41). These 74 Known Clients form the major part of the 83 clients to whom we had not been able to make payment by June 2018. I explain the position as regards the other nine clients in section (F) below.

44 In July 2018 we gave notice of our intention to make a Third Interim CM Distribution which would bring the aggregate interim distribution rate up to 100%, by posting an update on the PwC website and writing to the 14 NSP Beneficiaries as well as the 83 clients to whom, at the time, we had not been able to make payments. Between July and the date of this witness statement, eight clients, who would otherwise have been Unresponsive Clients, responded to our email and confirmed that they wished to participate in the Third Interim CM Distribution and therefore receive payments in amounts representing 100% of their CMEs. These eight clients, together with the 14 NSP Beneficiaries, constitute the 22 Payable Clients. As at the date of this witness statement we have paid 100c/\$ to seven Payable Clients (all of whom are NSP Beneficiaries) and, accordingly, we are still endeavouring to pay the Third Interim CM Distribution and catch-up distributions, as applicable, to the other 15 Payable Clients (i.e. the eight clients who became Payable Clients recently, and seven of the NSP Beneficiaries).

(E) Dissolved Clients

- 45** In the course of our attempts to contact Known Clients we discovered that a number of them are unable to receive payments because they have been dissolved or are struck off the companies register in their place of incorporation (the “**Dissolved Clients**”), whether in the UK or elsewhere.
- 46** We have conducted extensive investigations to try to ensure that the proper beneficiaries receive the benefit of the CMEs of these Known Clients. There are broadly two circumstances where Known Clients have been dissolved: either where there has been an insolvency event (for example a liquidation or the local equivalent) or where there has been no insolvency event (for example an automatic dissolution for failure to meet certain reporting requirements or a planned dissolution).
- 47** In respect of Dissolved Clients who appear to have been subject to an insolvency event, LBIE has taken steps to communicate with the current client contact or former liquidator (or local equivalent) to establish whether the CME (i) has been distributed/assigned or is still vested with a liquidator; or (ii) whether it has become *bona vacantia*.
- 48** We are aware of five Dissolved Clients which were dissolved following a formal insolvency process (excluding the client discussed in paragraph 49 below). We have received confirmation in respect of four of these entities that no assignments of the relevant CMEs were made prior to dissolution and, as such, we have determined that their CMEs have become *bona vacantia*. The last known contact for the remaining client did not respond to the Joint Administrators’ three letters requesting information. We do not believe that there are any further steps that we can reasonably take to alert the beneficiary to the existence of its CME and, as such, we believe that the CME is *bona vacantia*.
- 49** LBIE’s records show that one CME (recorded as US\$610,326 held for “Bishopsgate”) arose in around 1990 and related to a company which was involved in the Robert Maxwell misappropriation of pension fund assets. Our records show that, from at least 1996, LBIE had been unclear about what to do with the CME. Shortly after the PPE, a former Lehman Brothers employee who had knowledge of the matter recorded that LBIE had contacted “the

administrators" on several occasions but received no response. The precise identity of the client for whom the money was segregated is unclear. However, our records also include a reference, from 1996, to the money having been segregated for "BIM", which we infer may be a reference to Bishopsgate Investment Management Ltd, a company which was involved in the Robert Maxwell misappropriation of pension fund assets and is long since dissolved. Accordingly, whilst we cannot be certain of the precise identity of the beneficiary, we believe it is a reasonable conclusion to reach that the CME is *bona vacantia* and due to the UK Treasury Solicitor.

50 We have come to the following conclusions in respect of the 18 Dissolved Clients:

- (i) we have determined that the CMEs of the nine UK entities have become *bona vacantia*, and the Treasury Solicitor has agreed to accept a single and final *bona vacantia* payment in respect of these nine UK entities;
- (ii) the Cayman Islands Treasury has confirmed that it will accept a single and final *bona vacantia* payment in respect of the five clients formerly registered in the Cayman Islands;
- (iii) LBIE has liaised with the Delaware State Escheator which agreed to accept a single and final payment in respect of the CME of the client formerly registered in Delaware;
- (iv) LBIE liaised with the government of the British Virgin Islands, which has agreed to accept a single and final payment in respect of the CME of the client formerly registered in the British Virgin Islands; and
- (v) we intend to pay distributions to the government of the Bahamas in respect of the CMEs of the two clients formerly registered in the Bahamas, and we are currently seeking confirmation from the government of the Bahamas in respect of this.

(F) Unresponsive Clients

51 The 75 Unresponsive Clients, whom we have not been able to pay, can be broken down as follows:

- (i) 49 are clients in respect of whom we believe we have reliable contact details;

- (ii) six are clients for whom we have postal addresses, but no email address, and who have not responded to any communications;
- (iii) 16 are clients who had previously contacted us in the Three Stage Communications, and were sent cheques, but did not present such cheques for payment in the Non-Solicited Payment Process;
- (iv) two are clients who were previously unresponsive but did respond to the communications which we made in respect of the Third Interim CM Distribution this year. These clients have informed us that their own former (underlying) clients, for the benefit of whom our clients say they hold the CMEs, do not still hold accounts with them and that they are considering how to instruct us in respect of the underlying clients' CMEs; and
- (v) two are clients with whom LBIE is engaged in litigation in Germany in respect of the cost of closing out certain call options entered into before the PPE. Pursuant to English law security deeds, the two clients had each charged two million shares in favour of LBIE, although LBIE has since returned 1,700,000 shares to each client. The two clients assert (a) client asset claims against the shares themselves and (b) post-administration client money claims on the dividends received on the shares (which LBIE has also retained) of approximately €7.2 million each. Pending the outcome of the litigation in Germany we have reserved the retained shares and dividends, which are not part of the pre-administration client money estate, and we do not intend for them to be affected by this Application. Separately, we have determined these two clients have pre-administration CMEs of US\$2,604 in total.

52 Of the 83 clients to whom we had not been able to make payments by July 2018, we had sent 74 the Three Stage Communications. Of the remaining nine who were not sent the Three Stage Communications:

- (i) we sought to contact one client (whose CME is US\$1,269) by email and telephone in 2009, 2010 and 2011 and a representative of the client told us that they did not believe that it had a claim;

- (ii) we communicated with our contacts at the fund manager and operational services provider for one client (whose CME is US\$59,890), after which we concluded that we needed to contact the underlying client. We attempted to contact the underlying client by email in September 2013, but received a delivery failure notification;
- (iii) one CME (recorded as US\$2,236 held for "Titulo, Portugal", which when translated I understand means "Portuguese Title") is held for an undisclosed principal. We contacted the agent in 2010 who told us that it had no contacts for the principal and that it was not aware of any outstanding trades with the principal. The agent did provide an address for the principal in Lisbon, to which we sent notice of the Third Interim CM Distribution in 2018. We are yet to receive any response to that notice;
- (iv) we wrote to our contact for one client (whose CME is US\$1,068) in June 2010 (in the context of the First CM Proposal, in which the client had previously expressed an interest in participating). We received no response and sought to contact them again earlier this year, but are yet to receive any response;
- (v) we attempted to contact three clients whose CMEs are of minimal value (US\$7, US\$3 and US\$3 respectively) earlier this year, but are yet to receive any response; and
- (vi) we attempted to contact the two clients with whom we are in litigation in Germany (whose CMEs are US\$1,324 and US\$1,280 respectively) by email in February 2013 in the context of the First Interim CM Distribution, but received no response. We contacted them again in respect of these CMEs in 2018 and are yet to receive any response. We have also made multiple attempts to engage with these clients in order to settle the ongoing litigation.

53 As I have explained in paragraph 44 above, between July and September 2018 we wrote to all 83 clients to whom, at the time, we had not been able to make any payments, including the nine clients discussed in paragraph 52 above. In these communications we set out their CMEs and invited them to email us in order to participate in the Third Interim CM Distribution, otherwise claim an alternative entitlement to client money or ask any questions about their CME determination. As I explained in paragraph 44 above, eight clients (who now comprise

part of the 22 Payable Clients) responded to our email and confirmed that they would like to participate in the Third Interim CM Distribution and therefore receive payments in amounts representing 100% of their CMEs. None of the nine clients discussed in paragraph 52 above have responded to our 2018 communications.

(G) What has LBIE done to collect client money and how much money is in the Client Money pool?

54 In this section of my statement I provide an overview of the current state of the CMP. Overall, total recoveries into the CMP are US\$2,187,302,021. At the date of this witness statement LBIE has made distributions out of the CMP of US\$1,434,221,670 and Court-ordered costs of US\$10,191,762 have been deducted. Therefore the CMP currently totals US\$742,888,589.

55 In the summary below I use the term the "point of last segregation" (or "**PLS**"), which refers to the last client money segregation exercise prior to the PPE, which LBIE conducted on 12 September 2008 using data as at 11 September 2008.

56 Client money that has been recovered to date, and therefore which forms part of the CMP, falls into seven categories:

- (i) client money held by LBIE in Third Party Bank Accounts,
- (ii) money held by LBIE in Designated Client Transaction Accounts (including money representing the cash proceeds of gains on open positions which accrued to those accounts),
- (iii) Late Receipt Client Money,
- (iv) unapplied segregated credits,
- (v) recovery from LBI in respect of certain "Disputed Clients",
- (vi) client money recovered by LBIE in respect of LBB and an LBHI guarantee, and
- (vii) interest earned on the CMP.

57 I set out further information about each of these categories of the CMP in the paragraphs below.

Third Party Bank Accounts

58 As at the PPE LBIE held US\$892,970,277 in a number of different client money accounts with commercial bank counterparties ("**Third Party Bank Accounts**").

Designated Client Transaction Accounts

59 As part of its ETD business, LBIE held accounts with certain clearing houses and third-party brokers which LBIE used only for the purposes of ETD trading for the account of its clients ("**Designated Client Transaction Accounts**"). LBIE treated the balances on its Designated Client Transaction Accounts as being segregated client money.

60 As at the PPE, balances on transaction accounts (including Designated Client Transaction Account) related, at least in part, to open contracts denominated in a range of currencies. As a result, following the PPE, the balances on Designated Client Transaction Accounts were subject to change because the open positions and the currencies in which the related transactions were denominated were subject to market movements.

61 As at the PPE, LBIE held US\$242,731,574 in Designated Client Transaction Accounts. US\$328,347,563 has now been recovered in respect of these accounts. As such the Designated Client Transaction Accounts have increased in value by a total of US\$85,615,989. In this witness statement I refer to the net gains in the values of Designated Client Transaction Accounts as "**gains on open positions**" after the PPE. I deal with the treatment of the US\$85,615,989 of gains on open positions in section (H) below.

Late Receipt Client Money

62 "**Late Receipt Client Money**" was client money received after the PLS but before the PPE, which (but for the PPE) would have been segregated in accordance with LBIE's normal procedures. We have undertaken investigations to identify any Late Receipt Client Money and, as a result of these investigations, we have added US\$167,335,472 to the CMP. This amount was received in respect of a single bond which matured on the morning of 15

September 2008 and has been converted from Swiss francs as at the time of receipt by LBIE).

Unapplied segregated credits

- 63** Since the PPE we have received four payments from third party banks, totalling US\$5,793, which the respective third party banks have described to us as being payments in respect of client money. In all four cases the third party banks were not able to provide any further information and, as such, we are not able to determine what these credits represent. We have, however, added the credits to the CMP.

LBI Disputed Clients

- 64** In February 2013, LBIE and LBI entered into a wide-ranging settlement agreement pursuant to which, amongst other things, LBI transferred funds back to LBIE that likely related to LBIE clients and appeared to have been paid to LBI in error.
- 65** As a result of this settlement, LBIE received US\$63,950,157 from LBI in respect of those "Disputed Clients" and the Joint Administrators have added this receipt to the CMP.

LBB/LBHI guarantee

- 66** As at the PLS, LBIE had placed client money on deposit with Lehman Brothers Bankhaus ("LBB"), which is in a German insolvency process. LBIE undertook extensive litigation in Germany in an effort to have its claim to those funds recognised other than as a subordinated claim. LBIE entered into a settlement agreement with LBB on 14 March 2014 which settled all claims between LBIE and LBB.
- 67** The settlement provided for LBIE to have an agreed general unsecured claim of €403,245,699 and a subordinated claim in the same amount for the balance of LBIE's client money claim.
- 68** LBIE has received distributions from LBB totalling €401,484,044, which equates to a 99.563% distribution. On the basis of creditor reports published by LBB's liquidator, the Joint Administrators do not expect LBIE to receive any further distributions from LBB. Converted

into US dollars at the time of receipt, the total distributions from LBB equate to US\$476,233,737.

69 We understand, however, that in making its distributions to LBIE, LBB deducted €538,064 in German withholding tax. We currently intend to begin a taxation reclaim process with the German tax authorities so that LBIE can obtain a withholding tax refund. As discussed in paragraph 108 below, we intend that LBIE will assign its rights in respect of these payments (the "**LBB Taxation Receivables**") to the LBIE house estate once all known CMEs are satisfied after the Bar Date (as defined in paragraph 92 below).

70 In addition, in 2011 the Joint Administrators entered into a settlement agreement with the parent company of the Lehman group, Lehman Brothers Holdings Inc ("**LBHI**"), which included a settlement of LBHI's liability to LBIE, as guarantor, in respect of LBB's debt to LBIE. One element of the settlement was that LBHI admitted a claim of US\$1,008,000,000, which was equivalent to the amounts deposited with LBB. Notwithstanding the fact that LBIE had numerous claims against LBHI, the Joint Administrators treated the admitted claim as being in respect of client money, and therefore the recoveries have formed part of the CMP.

71 LBIE and LBHI agreed in the settlement agreement that no distribution would be paid to LBIE until LBIE's claim against LBB was resolved. Following resolution of LBIE's LBB claim, LBIE has received US\$352,854,247 from LBHI in catch-up distributions which amounts to a 35.0054% distribution.

72 On the basis of information released to the public by LBHI, the Joint Administrators understand that LBHI expects to pay further unsecured dividends of around 3.4% which equates to further receipts of US\$34,272,000. We have previously considered selling LBIE's rights in respect of these payments (the "**LBHI Receivables**") but, as discussed in paragraph 108 below, we now intend that LBIE will assign them to the LBIE house estate once all known CMEs are satisfied after the Bar Date (as defined in paragraph 92 below).

Interest earned on the CMP

73 US\$28,010,016 has been earned by way of accrued interest on the CMP. I deal with the distribution of this interest in section (H) below.

Balancing adjustment

- 74** When calculating, in US dollars, the total amount of client money that has been recovered, it is necessary to make an adjustment to the values of client money recoveries, set out in this section (G), so that the amounts recovered total the actual US dollar value of the CMP as at 31 August 2018. The size of the necessary adjustment is a negative US\$122,405,241. The adjustment is necessary largely because of foreign exchange fluctuations. These affect the CMP because it has (in part) been held in currencies other than US dollars, but the CMP values are expressed in US dollars by reference to the foreign exchange rates as at the PPE and as at 31 August 2018 respectively.

Summary

- 75** The following table summarises the changes to the CMP between the PPE and 31 August 2018.

Account	Balance as at the PPE (in US\$)	Value recovered as at 31 August 2018 (in US\$)
Third Party Bank Accounts	892,970,277	892,970,277
Designated Client Transaction Accounts	242,731,574	328,347,563
Late Receipt Client Money	167,335,472	167,335,472
Unapplied segregated credits	0	5,793
LBI Disputed Client recovery	0	63,950,157
LBB/LBHI guarantee	1,008,000,000	829,087,984
Interest	0	28,010,016

Account	Balance as at the PPE (in US\$)	Value recovered as at 31 August 2018 (in US\$)
Balancing adjustment	0	-122,405,241
Court ordered costs	0	-10,191,762
Total	2,311,037,323	2,177,110,259

- 76** As I have explained in paragraph 54 above, LBIE has to date made distributions out of the CMP of US\$1,434,221,670. Therefore, after distributions to date are accounted for, the CMP currently totals US\$742,888,589. Overall there is currently a surplus in the CMP of US\$736,541,172 (the "**CMP Surplus**"), which is slightly less than the current CMP due to anticipated future distributions in respect of Known Clients' CMEs. The CMP Surplus is calculated by subtracting the total value of CMEs in paragraph 21 above (US\$1,440,569,087) from the total CMP as at 31 August 2018 in paragraph 75 above (US\$2,177,110,259), but without deducting distributions of interest and gains on open positions discussed in section (H) below.

Tracing and costs

- 77** As I said in paragraph 9 above, the Joint Administrators had previously issued, and the Court had adjourned a Tracing Application.
- 78** The Tracing Application was issued at a time when we considered that there would likely be a shortfall in the client money estate. The application raised a number of potentially complex legal and factual issues. As there is now a CMP Surplus in excess of US\$700 million, it is highly likely that the questions about tracing will be of no relevance and consequence as regards the remaining interests of Known Clients. Any assets successfully traced would only inflate the CMP so that LBIE's interest in residue would become larger. The only theoretical way in which client money claimants could benefit from a tracing exercise would be in the unlikely event that the traced property had accrued interest which, according to the commentary of Briggs J, is distributable to clients in the manner discussed in section (H) below. Even then, 99.51% of the economic entitlement to interest would flow to LBIE (either

through Laurifer and the Benefit Transfer Agreement, see paragraph 18 above, or directly to LBIE in its capacity as holder of the residuary interest) and the capital recoveries associated with the interest would inflate LBIE's interest in residue such that client money claimants could only theoretically benefit to the extent that traceable proceeds were discovered and interest on those proceeds had accrued at a substantially higher rate than CMP interest. This is unlikely, and the considerations given to the calculation of interest on CMEs (discussed in section (H) below) should alleviate this theoretical risk.

- 79** As will be apparent, the Court-ordered costs which appear in the table in paragraph 75 above, and which I have mentioned in paragraph 54 above, only represent the costs which Briggs J ordered to be paid out of the CMP and are by no means the only costs which the Joint Administrators have incurred in relation to the client money estate. However, in light of the existence and expected size of the CMP Surplus we do not consider that there would be any practical benefit in allocating our expenses as between the CMP and the general estate unless those expenses exceed the CMP Surplus. We do not consider that there is any possibility that our costs have exceeded the US\$736,541,172 CMP Surplus.

(H) Payment of interest and gains on open positions

- 80** The judgment of Briggs J in the Client Money Application includes commentary about how LBIE should distribute client money in the event of a surplus in the client money estate. However, I am advised that there is some uncertainty regarding the legal position in this respect and in this section of my statement I briefly describe how we intend to distribute interest earned on the CMP and gains on open positions.
- 81** As discussed in paragraph 61 above, the balances of Designated Client Transaction Accounts were US\$242,731,574 as at the PPE and are currently US\$328,347,563. As such, the net gains on open positions since the PPE stand at US\$85,615,989.
- 82** Likewise, and as I explained in paragraph 73 above, LBIE has received US\$28,010,016 in interest on the CMP since the PPE.
- 83** Briggs J's comments, I am advised, indicate that LBIE should distribute this interest and the gains on open positions by calculating each client's notional percentage entitlement to the

CMP, including LBIE's notional percentage entitlement in its capacity as holder of the residuary interest in the CMP.

- 84** Disregarding interest earned and gains on open positions, the CMP was US\$2,063,484,254 (before distributions) and, as such, LBIE's interest in residue is US\$626,247,222 once Laurifer's and the other clients' interests are deducted. As such each category of clients' (and LBIE's) percentage entitlements is as follows.

Client	CME	Entitlement %
Laurifer	\$1,427,176,448	69.16%
Other clients	\$10,060,584	0.49%
LBIE in residue	\$626,247,222	30.35%
<i>Total</i>	<i>\$2,063,484,254</i>	<i>100%</i>

- 85** Those percentage entitlements to the CMP equate to the following entitlements to receive a share of the US\$85,615,989 gains on open positions.

Clients	CME	Entitlement %	Gain	Gain %
Laurifer	\$1,427,176,448	69.16%	\$59,214,953	4.15%
Other clients	\$10,060,584	0.49%	\$417,424	4.15%
LBIE in residue	\$626,247,222	30.35%	\$25,983,613	4.15%
<i>Total</i>	<i>\$2,063,484,254</i>	<i>100.00%</i>	<i>\$85,615,989</i>	<i>4.15%</i>

- 86** As such we intend that, in addition to receiving 100c/\$ of their CMEs, LBIE will also pay 4.15% to clients (including Laurifer) in accordance with the table above, as well as an individually calculated amount of interest which I address below.
- 87** Applying the percentage entitlements to the CMP, as done in respect of gains on open positions above, would give rise to the following distribution of the US\$28,010,016 interest.

Clients	CME	Entitlement %	Interest	Interest %
Laurifer	\$1,427,176,448	69.16%	\$19,372,687	1.36%
Other clients	\$10,060,584	0.49%	\$136,564	1.36%
LBIE in residue	\$626,247,222	30.35%	\$8,500,765	1.36%
<i>Total</i>	<i>\$2,063,484,254</i>	<i>100.00%</i>	<i>\$28,010,016</i>	<i>1.36%</i>

88 However, we believe that the analysis in respect of the distribution of interest is complicated by the fact that we have made interim distributions (and catch up distributions). For example, a client who promptly received the First Interim CM Distribution is likely entitled to proportionately less interest than a client whose claim was not agreed (and paid) until a much later date. We have considered the point and it is our view that clients should only be entitled to interest in respect of their CMEs to the extent that their CME remains outstanding. As such we have sought to adjust the methodology above to seek to ensure that no client will receive less interest than they are entitled to. We have done this by calculating the weighted average cash balance in the CMP from the PPE to 31 August 2018 (US\$1,171,183,837) and calculating the total average interest return on cash held (2.39%). This total rate of interest is equivalent to 0.23% per annum.

89 The weighted average cash balance in the CMP is the average amount of client money cash which LBIE actually held during the life of the administration, weighted to reflect the length of time for which each balance existed. As a result, this figure is much smaller than the total CMP because LBIE has not held the total CMP as cash throughout the whole life of the administration (in part because cash has been received during the course of the administration, and in part because cash has been paid out during the course of the administration). The total CMP figure (US\$2,063,484,254) represents the CMP at its theoretical maximum³: after all amounts have been recovered and before any amounts were

³ Subject to the deduction of court ordered costs (US\$10,191,762) and the balancing adjustment (US\$-122,405,241) and excluding interest and gains on open positions.

paid out⁴. By contrast, the weighted average cash balance (US\$1,171,183,837) is roughly half the size of the total CMP figure because it accounts for the various times at which cash was recovered and paid out. Using a smaller total figure, such as the weighted average cash balance, will benefit clients because the resulting interest rate is calculated by dividing the total interest accrued (US\$28,010,016) by the weighted average cash balance (US\$1,171,183,837), whereas using a larger denominator such as the total CMP (US\$2,063,484,254) would yield a lower interest rate (1.36%). We are, accordingly, adopting the interest rate accrued on the weighted average cash balance in order to calculate their interest entitlements. We intend to apply this 0.23% rate of interest to the amount of each client's outstanding CME as it existed during the periods before and after each interim distribution which they have received.

- 90** There is a theoretical possibility that some clients could still be entitled to a greater rate of interest than 0.23% if (i) the rate of interest accruing on the total CMP increased after distributions were made to other clients and (ii) the level of that increase was significant enough to exceed the assumptions made in calculating the 0.23% rate. To negate this risk we have conducted a stress testing exercise to approximate the effect of actual changes in interest rates on the interest entitlements of different categories of clients. As a result of these stress testing exercises, we believe that the weighted average cash balance (0.23%) approach yields interest entitlements which are greater than the amount which clients would otherwise be entitled to.

(I) Final distributions from the client money estate

- 91** Having explained the work done by the Joint Administrators to identify and contact potential client money claimants, and the work done to collect in client money, I explain in this section what the Joint Administrators consider remains to be done and the relief sought in respect of those steps.
- 92** In summary we believe that, in order to make a final distribution to client money claimants and close the client money trust, we need to:

⁴ Other than those referred to in note 3.

- (i) obtain a legally binding bar date (the "**Bar Date**") by which any further, unknown, client money claimants must assert their claims and by which Known Clients must assert any claims in excess of our determination of their CMEs (if they so wish);
- (ii) distribute interest earned on the CMP;
- (iii) distribute gains earned on open positions since the PPE;
- (iv) deal with the monies owed to Known Clients whom LBIE is not able to pay;
- (v) deal with claims made by the Bar Date, if any (although none are expected);
- (vi) deal with future client money receivables; and
- (vii) as soon as is practical after the Bar Date and resulting crystallisation of the class of client money claimants, distribute any remaining CMP Surplus to LBIE pursuant to its residuary interest under the CASS Rules.

93 I have explained our proposed approach to issues (ii) and (iii) in section (H) above.

94 I shall now turn to how we propose to deal with Known Clients to the extent that issue (iv) applies to them, before turning to the proposed Bar Date.

95 I explained in paragraph 16 above that, aside from Laurifer, the only remaining client money claimants fall into the following categories:

- (i) those clients whose remaining CMEs we believe we will be able to make payment in respect of:
 - (a) 22 Payable Clients (see paragraph 44 above);
 - (b) 18 Dissolved Clients (see section (E) above); and
 - (c) one client who has instructed the Joint Administrators to pay its CME to charity (see paragraph 41(iii) above); and
- (ii) those clients whom we believe we may not be able to pay directly: i.e. the 75 Unresponsive Clients (see section (F) above).

96 Following the Bar Date we intend to:

- (i) make a final payment in respect of each of the CMEs described in paragraph 95(i), provided that the relevant clients confirm their payment details by the Bar Date;
- (ii) make a final payment to each of the Unresponsive Clients described in paragraph 95(ii) who confirms their payment details by the Bar Date;
- (iii) make a final payment to any unknown claimant who has claimed a CME by the Bar Date (and to any Known Client who has claimed a CME in excess of our determination of their CME by the Bar Date), provided that either (a) we have accepted that claim (or part of it), and/or (b) the Court has found in favour of that claim (or part of it);
- (iv) assuming that the direction sought from the FCA is given in the form of the Proposed CASS Waiver (as described in paragraphs 98 and 99 below), unless the total amount due to a client is less than US\$25, make a final payment to the Insolvency Service in respect of each of the clients' CMEs described in paragraph 95 if those clients do not confirm their payment details by the Bar Date; and
- (v) assuming that the direction sought from the FCA is given in the form of the Proposed CASS Waiver, and if the total amount due to a client is less than US\$25, disregard each of the clients' CMEs described in paragraph 95 if those clients do not confirm their payment details by the Bar Date.

97 To the extent that distributions have, at the relevant time, been made up to 100c/\$ of a particular CME the term "final payment", in paragraph 96 above, means the payment of interest and gains on open positions as described in section (H) above. To the extent that LBIE has not, at the relevant time, made distributions of 100c/\$ of a particular CME the term "final payment", in paragraph 96 above, means payment up to 100c/\$ of CMEs as well as the payment of interest and gains on open positions.

98 These steps accord with a direction that LBIE has sought from the FCA under section 138A of the *Financial Services and Markets Act 2000* (the "**Proposed CASS Waiver**").

99 I have included a copy of the Proposed CASS Waiver at **pages 165-170**. I am advised that the effect of the Proposed CASS Waiver, if it were directed by the FCA in its current form, is

that CASS 7.9.6R(2) and CASS 7.9.9R would be modified. In particular, the effect of the Proposed CASS Waiver would be as follows:

- (i) LBIE would be entitled to make a final distribution of client money without regard to the interests of any Known Clients who do not confirm their payment instructions by the Bar Date and whose remaining CME (including interest and gains on open positions in respect of that CME, calculated in accordance with section (H) above), after any distributions they have received are deducted, is less than US\$25, provided that LBIE complies with the requirements of the Proposed CASS Waiver. The relevant clients would cease to have an interest in client money on the Bar Date.
- (ii) In respect of Known Clients who do not confirm their payment instructions by the Bar Date and whose remaining CME (including interest and gains on open positions in respect of that CME, calculated in accordance with section (H) above), after any distributions they have received are deducted, is at least US\$25, LBIE may pay the remaining value of that CME (together with the interest and gains on open positions in respect of that CME) into the Insolvency Service's Unclaimed Dividends Account (the "**Insolvency Service Account**"), provided that LBIE complies with the requirements of the Proposed CASS Waiver. The relevant clients will cease to have an interest in client money when LBIE pays money into the Insolvency Service Account in respect of their CME and/or their entitlement to interest and gains on open positions in respect of that CME.
- (iii) The Proposed CASS Waiver would require (or enable) LBIE to take the following steps.
 - (a) LBIE would need to write (or have written), after 1 July 2018, to any Known Client that has not received any payment in respect of its CME inviting the client to contact LBIE if they wish to claim a CME. (As discussed above, we wrote to all 83 clients between July and September 2018 who, at the time, had not received payment in respect of their CMEs, inviting them to contact LBIE if they wished to claim their CME.)

- (b) At least 21 days after the action described in paragraph (a) above, LBIE would need to ensure that notice is placed in a prominent position on the website which we use to communicate with LBIE's clients. In that notice LBIE would need to inform clients that (I) they should confirm their settlement instructions or a current address to which LBIE can send a cheque (i.e. their payment details) by the Bar Date, (II) for clients whose remaining CMEs (including interest and gains on open positions in respect of those CMEs) are at least US\$25 but who do not confirm their payment details, LBIE intends to pay CMEs (including interest and gains on open positions in respect of those CMEs) into the Insolvency Service Account (and LBIE must include the Insolvency Service Account's contact details in the notice); (III) for clients whose remaining CMEs (including interest and gains on open positions in respect of those CMEs) are less than US\$25, LBIE intends to disregard their interests in client money if they do not confirm their payment details; and (IV) when LBIE makes payments into the Insolvency Service Account, or makes a final distribution of client money without regard to a client's interest in client money, the relevant client's interest in client money will cease.
- (c) At least 21 days after the action described in paragraph (a) above (which could therefore be simultaneous with the notice in paragraph (b) above), LBIE would need to write to all Known Clients in substantially the same terms as the website notice described immediately above, as applicable to each client's situation.
- (iv) In respect of a client who is sent a cheque because the client provided a current address to which a cheque could be sent, but the client does not present it for payment within three months of the cheque's date, LBIE may pay the value of that distribution into the Insolvency Service Account so that the client may receive the distribution from that account at any time, provided that, at least 30 days before the cheque's expiry date:

- (a) LBIE writes to the client informing them: (I) that if a cheque is not presented for payments within three months of the cheque's date, then distributions will be made to the Insolvency Service Account; and (II) of the contact details of the Insolvency Service Account; and
- (b) LBIE ensures that a notice is placed in a prominent position on the website which we use to communicate with LBIE's clients in substantially the same terms as the communication referred to in (a) above.

The relevant clients would cease to have an interest in client money when LBIE pays the value of the distribution into the Insolvency Service Account.

(J) Bar Date and next steps

- 100** On the basis of the extensive steps taken to date to communicate with clients, the significant passage of time and the general publicity surrounding Lehman Brothers' collapse, LBIE's administration and, indeed, its recent ten year anniversary, the Joint Administrators believe that it is very unlikely that there are any client money beneficiaries who are not Known Clients.
- 101** However, notwithstanding our considerable and repeated efforts to date, we cannot be certain that we have identified every possible client money beneficiary and, as set out in this witness statement, there are clients to whom we may be unable to make payments in satisfaction of their CMEs (and/or their entitlements to interest and gains on open positions in respect of their CMEs).
- 102** The aim of the Application is, therefore, to seek the assistance of the Court in order to bring certainty and finality to LBIE's client money estate and to protect the Joint Administrators' position in doing so. In particular, the Joint Administrators do not wish to expose themselves or LBIE to (a) any claims from client money claimants who do not come forward as part of the "client money distributions procedure" in the Order which we are seeking; (b) any claims from client money claimants who do come forward as part of the "client money distributions procedure" in the Order, but who later seek to establish an entitlement to a greater CME; and/or (c) any claims from any person who does claim for a purported CME which LBIE

rejects (in whole or in part) and the person fails to appeal within the period required by the Order.

- 103** It is possible (although very unlikely) that certain clients, in respect of whom LBIE has no record to suggest that the client was entitled to client money protection, will come forward to assert a client money claim. If we are satisfied that the entitlement is genuine, then LBIE will admit the CME and the Order which we are seeking would entitle us to distribute client money accordingly. If LBIE rejects the claim, and the client appeals that decision, then (on the terms of the Order which we are seeking) the potential claims of any such claimant would be dealt with by the Court. We believe that it is highly unlikely that any additional clients who can substantiate their right to receive client money protection will come forward by the proposed Bar Date (or at all), and even if they do, we believe (on the basis of our experience dealing with the client money estate) that it is probable that the related entitlement would be relatively small.
- 104** The terms of the Order sought by the Joint Administrators will also require LBIE to reserve for a CME which it has a record of on its books and records. Assuming that it is obtained from the FCA, the Proposed CASS Waiver would then require LBIE, if the remaining CME (together with interest and gains on open positions) is at least US\$25, to pay such funds to the Insolvency Service Account as described above. However, we consider that (given that a decade has passed since LBIE's entry into administration) it is reasonable that we should not have to make any additional provision for claims other than those of Known Clients.
- 105** The Order which we invite the Court to make expressly preserves the rights of clients who establish an entitlement otherwise available to them after the distribution of client money (without acknowledging such claim) to follow or trace and claim against any person, including clients in receipt of part of the final distribution from the CMP. I am advised that such rights are necessarily preserved because the Order is not intended to (nor could it) alter a client's CME.

Proposed steps to be taken if the Court grants the Order

106 If the Court grants an Order substantially in the form which the Joint Administrators are seeking then, subject to obtaining the Proposed CASS Waiver, we intend to give notice as soon as possible after the Order is made that the Joint Administrators propose to make a final distribution of client money (a "**Notice of Final Client Distribution**"). In accordance with paragraph 6 of Schedule A of the draft Order, we intend:

- (i) to give a Notice of Final Client Distribution to all clients who are shown in LBIE's records to have had positive or negative balances on their accounts as at 15 September 2008 and for whom we have a current email address, fax number or postal address, except those clients who (a) have entered into full and final settlements with LBIE and/or (b) have assigned or waived their CMEs; and
- (ii) to post a Notice of Final Client Distribution on the PwC website, in the London Gazette, in all editions of the Financial Times, in the Times and in the USA and Europe & Asia editions of the Wall Street Journal.

107 In accordance with paragraph 12 of Schedule A of the draft Order, the Notice of Final Client Distribution will be deemed to have been given at the latest by five business days after posting by airmail to addresses not within the UK. Accordingly we intend to specify a date up to which client money claims may be lodged (designated the "last date for proving" under the terms of the draft Order, which we intend to be the same as the Bar Date referred to in this witness statement and in the Proposed CASS Waiver) which we propose would be around four weeks after the last notices are sent out (i.e. the five business day deemed notice period, plus the 21 day period required by paragraph 6(4)(b) of the draft Order).

108 Assuming that we do not receive any client money claims from any unknown claimants, we intend:

- (i) to distribute any outstanding principal on their CMEs to Payable Clients and Unresponsive Clients (to the extent that they confirm their payment details by the Bar Date) and to distribute to them, and to Laurifer, interest and gains on open positions in accordance with the methodology described in section (H) above;

- (ii) to make distributions (of principal, interest and gains on open positions, in accordance with the methodology described section (H) above) in respect of the Dissolved Clients' CMEs to the relevant government entities and in respect of the CME donated to Lehman Brothers Foundation Europe;
- (iii) assuming that the direction sought from the FCA is given in the form of the Proposed CASS Waiver and they do not confirm their payment details by the Bar Date, to treat the CMEs (including interest and gains on open positions) of Unresponsive Clients and Payable Clients in accordance with the Proposed CASS Waiver and the methodology described in section (H) above;
- (iv) to distribute the remaining CMP Surplus to LBIE house as soon as is practical, pursuant to its residuary interest in the CMP and to assign any remaining client money assets, including in relation to the LBB Taxation Receivables and the LBHI Receivables, to the house estate; and
- (v) to close the client money estate.

(K) Application for relief pursuant to section 1157 Companies Act 2006

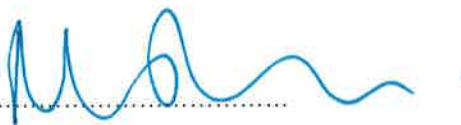
109 The relief we are seeking includes an Order under section 1157 *Companies Act* 2006 to excuse the Joint Administrators (as officers of LBIE) from any liability which might potentially arise as a result of the Joint Administrators distributing client money to LBIE's house estate in residue, in reliance on the assumption that there are no clients who are entitled to client money other than those shown in LBIE's books and records and those who make a valid client money claim before the Bar Date.

110 As I have explained in paragraphs 100 to 105 above, the Joint Administrators believe that we have taken all reasonable and proportionate steps to identify client money beneficiaries and believe it is highly unlikely that an unknown client who comes forward now or after the Bar Date, would be able to establish a valid CME. As such we believe that, in relying on the Bar Date in the Order which we are seeking, we would be acting reasonably and honestly, and that having regard to all the circumstances, we ought fairly to be excused.

STATEMENT OF TRUTH

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

Signed:

A handwritten signature in blue ink, appearing to be 'R. Downs', written over a dotted line.

RUSSELL DOWNS

Dated:

12 October 2018

Schedule – Current and former Joint Administrators

Name of Joint Administrator	Date of appointment	Date of retirement
Michael John Andrew Jervis	15 September 2008	2 November 2011
Dan Yoram Schwarzmann	15 September 2008	2 November 2011
Anthony Victor Lomas	15 September 2008	16 July 2018
Steven Anthony Pearson	15 September 2008	16 July 2018
Derek Anthony Howell	30 November 2009	22 March 2013
Paul David Copley	2 November 2011	24 June 2016
Russell Downs	2 November 2011	Not retired
Julian Guy Parr	22 March 2013	Not retired
Gillian Eleanor Bruce	16 July 2018	Not retired
Edward John MacNamara	16 July 2018	Not retired