

<p>1 Tuesday, 10 November 2015</p> <p>2 (10.30 am)</p> <p>3 MR JUSTICE HILDYARD: Good morning.</p> <p>4 Opening submissions by MR DICKER (continued)</p> <p>5 MR DICKER: My Lord, I wanted to start just by picking up</p> <p>6 a few points arising out of the discussion yesterday, to</p> <p>7 try to draw a few strands together.</p> <p>8 The first point I am sure your Lordship has, but it</p> <p>9 just concerns the meaning of the phrase "cost of</p> <p>10 funding". We say it has its natural meaning: "Funding"</p> <p>11 means funding, not some narrower concept like borrowing,</p> <p>12 and "cost" means cost, not some narrower concept like</p> <p>13 lowest cost.</p> <p>14 There is then a separate question, we say, as to the</p> <p>15 extent to which the relevant payee's determination can</p> <p>16 be challenged. Now, there were a number of possible</p> <p>17 approaches the draftsman could have taken, and just</p> <p>18 identifying those: firstly, there is obviously the bona</p> <p>19 fide and rationality test; secondly, he could have said,</p> <p>20 "Well, it should be an objective question ultimately to</p> <p>21 be decided by the court"; or, thirdly, he could have</p> <p>22 provided some more specific mechanism test or process.</p> <p>23 My Lord, it is common ground between the parties</p> <p>24 that what he did among those three mechanisms was adopt</p> <p>25 the first. He wasn't concerned with the consequences of</p> <p style="text-align: center;">Page 1</p>	<p>1 ended up with the worst of both worlds. He wouldn't</p> <p>2 have ensured certainty and finality, because there would</p> <p>3 be the whole construction exercise. If "funding"</p> <p>4 doesn't mean funding but means borrowing, what does</p> <p>5 "borrowing" mean, what are the limits of borrowing,</p> <p>6 arguments about arbitrary results and things of that</p> <p>7 sort. But, at the same time, he would have accepted,</p> <p>8 once you have resolved all those construction issues:</p> <p>9 "Nevertheless within that envelope I am still quite</p> <p>10 happy to have the relevant payee determine the question</p> <p>11 rationally and in good faith, and provided he does so,</p> <p>12 that is conclusive."</p> <p>13 My Lord, we say that is essentially Wentworth's</p> <p>14 case, as we now understand it, and we say that is an</p> <p>15 incoherent mixing of approaches.</p> <p>16 As I say, the draftsman chose rationality and good</p> <p>17 faith. There were alternative approaches he could have</p> <p>18 taken: an objective test for the court or some specific</p> <p>19 mechanism. He didn't take either of those, and that, we</p> <p>20 say, was for good reason.</p> <p>21 My Lord, the next point is this, again picking up</p> <p>22 a point I made yesterday, but just to add a couple more</p> <p>23 submissions in relation to it. We do say the</p> <p>24 relationship with the concept of loss and with the</p> <p>25 closeout amount in the 1992 and 2002 agreements is</p> <p style="text-align: center;">Page 3</p>
<p>1 that, in the sense that such concerns prompted him to</p> <p>2 say:</p> <p>3 "Well, rationality and good faith is not enough of</p> <p>4 a standard or hurdle. I need to give the court power to</p> <p>5 determine what the right cost of funding is."</p> <p>6 Nor did he say:</p> <p>7 "It is too open-textured, I need to find some other</p> <p>8 way of dealing with this."</p> <p>9 Your Lordship has seen examples of the latter</p> <p>10 obviously in another context. The non-default rate, in</p> <p>11 the context of the 2002 master agreement, where the</p> <p>12 draftsman shifted from a test based on cost of funding</p> <p>13 to simply asking, "Well, what would you have received</p> <p>14 from a bank if you deposited the funds overnight?"</p> <p>15 Which is obviously a much more specific question.</p> <p>16 The one thing we submit is clear is that what the</p> <p>17 draftsman didn't do, didn't intend to do, was to combine</p> <p>18 the use of broad words, like "funding" and "cost",</p> <p>19 require the court essentially to construe those words,</p> <p>20 and then say, "Well, within the constraints of whatever</p> <p>21 construction the court comes up with, within that</p> <p>22 envelope, any determination by the relevant payee is</p> <p>23 conclusive, provided it is rational and in good faith".</p> <p>24 My Lord, we would say there would be no sensible</p> <p>25 reason for him to do that. He essentially would have</p> <p style="text-align: center;">Page 2</p>	<p>1 instructive. Again, the test is essentially one based</p> <p>2 on rationality and good faith. It is not an objective</p> <p>3 question for the court. That is clear from the</p> <p>4 authorities.</p> <p>5 Your Lordship I think yesterday said, "Well, at</p> <p>6 least in that context, you have suffered a loss".</p> <p>7 My Lord, two responses to that.</p> <p>8 One, the definition of "loss", itself, includes, as</p> <p>9 your Lordship saw, cost of funding.</p> <p>10 Secondly, cost of funding is intended to compensate</p> <p>11 a party for a real loss, namely, the time value of</p> <p>12 money.</p> <p>13 We are not dealing with one situation in which there</p> <p>14 is a loss, and effectively it can define itself in that</p> <p>15 way, and another situation in which there isn't. It is</p> <p>16 simply a question in both cases of measuring what we are</p> <p>17 talking about. Loss which may, itself, include cost of</p> <p>18 funding requires to be measured. Similarly, in the</p> <p>19 context of default rate, cost of funding requires to be</p> <p>20 measured.</p> <p>21 Calculation of loss, again, we say may be difficult,</p> <p>22 may be very difficult. It will often be prospective,</p> <p>23 and it may depend on hypotheticals. What would have</p> <p>24 happened if the derivative had not been terminated and</p> <p>25 the obligations of the parties had been performed?</p> <p style="text-align: center;">Page 4</p>

1 Your Lordship, in our submission, does get some  
 2 assistance in relation to this from the expanded  
 3 approach which the draftsman took in the context of  
 4 definition of "closeout amount" in the 2002 agreement.  
 5 If your Lordship goes to the core bundle, tab 8, it is  
 6 page 193, just by the first hole punch on 193. The  
 7 draftsman identifies some of the information which the  
 8 determining party may take into account. He says, just  
 9 by the hole punch:  
 10 "In determining a closeout amount, the determining  
 11 party may consider any relevant information including  
 12 without limitation one or more of the following types of  
 13 information ..."  
 14 Then three paragraphs, just focusing on (ii) and  
 15 (iii). (ii) refers to:  
 16 "Information consisting of relevant market data in  
 17 the relevant market supplied by one or more third  
 18 parties, including without limitation relevant rates,  
 19 prices, yields, yield curves, volatilities, spreads,  
 20 correlations or other relevant market data in the  
 21 relevant market."  
 22 Are all mechanisms or all ingredients of an attempt  
 23 to measure what is ultimately often a hypothetical sum  
 24 which can only be estimated:  
 25 (iii):

Page 5

1 "Information of the types described in (i) or (ii)  
 2 above from internal sources, if that information is of  
 3 the same type used by the determining party in the  
 4 regular course of its business for the valuation of  
 5 similar transactions."  
 6 Again, if the party has internal models of rates,  
 7 prices, yields, yield curves, volatilities, et cetera,  
 8 then that is something it can use to determine loss,  
 9 including in that context cost of funding.  
 10 Then, if one just goes down to the last two  
 11 paragraphs on the page, the draftsman identifies  
 12 procedures, having dealt with information he says:  
 13 "Commercially reasonable procedures used in  
 14 determining a closeout amount may include the  
 15 following ..."  
 16 Focusing on paragraph (i):  
 17 "Application to relevant market data from third  
 18 parties pursuant to clause (ii) above, or information  
 19 from internal sources pursuant to clause (iii) above, of  
 20 pricing or other valuation models that are, at the time  
 21 of determination of the closeout amount, used by the  
 22 determining party in the regular course of its business  
 23 in pricing or valuing transactions between the  
 24 determining party and the unrelated third parties that  
 25 are similar to the terminated transaction or group of

Page 6

1 terminated transactions."  
 2 So an express recognition in the context of closeout  
 3 amounts that the party is entitled to -- not necessarily  
 4 required to -- use pricing or valuation models that it  
 5 uses in the regular course of business. The implication  
 6 of that is that, subject obviously to the overriding  
 7 constraint of rationality and good faith, that is  
 8 something it is entitled to do.  
 9 MR JUSTICE HILDYARD: In the certification of default rate,  
 10 for example, do you say that these techniques which  
 11 import commercially reasonable procedures in order to  
 12 produce a commercially reasonable result are imported?  
 13 MR DICKER: Not directly into the definition of "default  
 14 rate". The way we would submit it works is, what the  
 15 draftsman has done in the context of closeout amount  
 16 here is spell out in a little more detail essentially  
 17 what a rational and good faith approach may involve, may  
 18 be permitted or may be required. Now, he hasn't  
 19 expressly done the same in the context of default rate,  
 20 perhaps not surprisingly, because it is simply  
 21 certification in a similar way, but of the interest  
 22 accruing on a termination amount --  
 23 MR JUSTICE HILDYARD: Remind me, and I am sorry to be vague  
 24 about it, is there certification for closeout amount?  
 25 MR DICKER: Yes.

Page 7

1 MR JUSTICE HILDYARD: That certification would be reviewable  
 2 by a court, would it, as regards whether the procedures  
 3 were commercially reasonable or as to whether the result  
 4 was commercially reasonable, or do you say foreclosed by  
 5 certification, in the closeout case?  
 6 MR DICKER: We say the same test applies in both contexts.  
 7 Ultimately, on the authorities, the constraints are  
 8 rationality and good faith. Rationality, in the sense  
 9 of *Wednesbury* unreasonableness. Neither agreement --  
 10 this is common ground -- requires the determining party  
 11 to reach what the court considers to be the objectively  
 12 correct result.  
 13 MR JUSTICE HILDYARD: Not objectively correct, but having  
 14 imported a specific mechanism of commercial  
 15 reasonability by reference to and with a view to the  
 16 production of a commercially reasonable result, you say  
 17 that the assessment of what is commercially reasonable  
 18 and what is a commercially reasonable result is subject  
 19 only to the controls of good faith and irrationality?  
 20 MR DICKER: Yes, that is what we say one finds from the  
 21 authorities in relation to loss and the closeout amount.  
 22 We say the same equally goes in relation to  
 23 certification of the default rate.  
 24 MR JUSTICE HILDYARD: Why import these mechanisms if the  
 25 only test is going to be irrationality and good faith;

Page 8

<p>1 why spell it out?</p> <p>2 MR DICKER: The draftsman didn't spell it out in the context</p> <p>3 of loss in the context of the 1992 agreement. He did go</p> <p>4 further in the context of the 2002 agreement, and one</p> <p>5 can speculate as to why.</p> <p>6 The first point is, these are not -- it makes it</p> <p>7 clear, these are not the only mechanisms you can use,</p> <p>8 "Commercially reasonable procedures in determining may</p> <p>9 include the following ..."</p> <p>10 It may well be that what the draftsman was seeking</p> <p>11 to do was simply to make it plain that, if you did this,</p> <p>12 this is, as it were, presumptively, absent, no doubt,</p> <p>13 some extraordinary factors, would normally be a rational</p> <p>14 and good faith approach to take.</p> <p>15 MR JUSTICE HILDYARD: One is bound to wonder, quite apart</p> <p>16 from the question of certification and the circumstances</p> <p>17 in which the certificate might be challenged, which</p> <p>18 I know is the point we are on, but floating around</p> <p>19 a bit, with apologies, one is bound to wonder whether</p> <p>20 the draftsman, at least in 2002, didn't by then consider</p> <p>21 that if you were to import not an objective test, ie,</p> <p>22 borrowing rate, but a model which was one of many</p> <p>23 models, might be useful, might be accurate, might not</p> <p>24 be, you had to have an express warrant for that.</p> <p>25 Put another way, you wouldn't have an exercise which</p> <p style="text-align: center;">Page 9</p>	<p>1 circumstances are such it was never intended to apply to</p> <p>2 it.</p> <p>3 Conversely, in such a situation, it would be</p> <p>4 rational and good faith to use a different model. You</p> <p>5 don't have an existing model. There is no alternative.</p> <p>6 MR JUSTICE HILDYARD: Those are very high tests, because</p> <p>7 I mean Socimer makes clear that "irrational" in the</p> <p>8 context means what used to be called Wednesbury</p> <p>9 unreasonableness, ie, bonkers.</p> <p>10 MR DICKER: My Lord, again, one can go through the cases.</p> <p>11 I haven't done so simply because it is one of the issues</p> <p>12 which is actually common ground between the parties.</p> <p>13 But the test is rationality and good faith.</p> <p>14 MR JUSTICE HILDYARD: I'm not saying it isn't. You've both</p> <p>15 agreed it isn't reasonableness. It isn't rationality,</p> <p>16 in other words, it is irrationality. It must be free of</p> <p>17 irrationality, ie, it mustn't be bonkers.</p> <p>18 MR DICKER: In the Wednesbury sense, according to the</p> <p>19 authorities.</p> <p>20 MR JUSTICE HILDYARD: No reasonable commercial party could</p> <p>21 reasonably have thought that to be an appropriate way of</p> <p>22 going about things.</p> <p>23 MR DICKER: That's what the authorities say is the test in</p> <p>24 relation to --</p> <p>25 MR JUSTICE HILDYARD: Rationality.</p> <p style="text-align: center;">Page 11</p>
<p>1 depended on a model without warrant for it.</p> <p>2 MR DICKER: My Lord, we would say -- no-one is suggesting</p> <p>3 the result is different depending on the 1992 and the</p> <p>4 2002 agreement --</p> <p>5 MR JUSTICE HILDYARD: No.</p> <p>6 MR DICKER: -- we say, effectively, whatever one can read</p> <p>7 out of the 2002 agreement so far as the requirements of</p> <p>8 rationality and good faith are concerned can effectively</p> <p>9 be read into that test in the context of the 1992</p> <p>10 agreement. You get to the same result.</p> <p>11 If and to the extent the draftsman was saying it</p> <p>12 would be rational and good faith to use a model of this</p> <p>13 sort, and if and to the extent he was saying it would</p> <p>14 not be rational and in good faith to use a different</p> <p>15 model, then we say he achieved the same through the</p> <p>16 umbrella phrase "rational and good faith" in the context</p> <p>17 of the 1992 agreement. So no different outcome.</p> <p>18 What I would stress, so far as the latter</p> <p>19 possibility is concerned -- in other words -- my Lord,</p> <p>20 in our submission, it would be wrong to assume that what</p> <p>21 the draftsman was doing here was saying it would only be</p> <p>22 rational and good faith to use a model if it is a model</p> <p>23 of this sort. One can plainly think of circumstances in</p> <p>24 which using a model which you normally use is not</p> <p>25 actually rational or good faith because the</p> <p style="text-align: center;">Page 10</p>	<p>1 MR DICKER: -- loss and closeout amount.</p> <p>2 As I emphasised yesterday, one might think that is</p> <p>3 the big sum with which the termination provisions are</p> <p>4 concerned. Default rate is simply interest on that sum</p> <p>5 at an applicable rate.</p> <p>6 MR JUSTICE HILDYARD: That, I understand. That goes two</p> <p>7 ways, I suppose. I quite take your point that, if it is</p> <p>8 common ground, and if it is generally accepted, either</p> <p>9 one, that this imported the definition of "closeout</p> <p>10 amount" and what permissibly in assessing it you could</p> <p>11 take into account, has not under the ground changed</p> <p>12 between the two versions, so that the latter version is</p> <p>13 simply an expression of what was always accepted to be</p> <p>14 implicit in the first. I quite understand that point.</p> <p>15 MR DICKER: That is our submission, yes.</p> <p>16 My Lord, the next point is this: we say there is</p> <p>17 a danger in approaching a construction of the default</p> <p>18 rate with a preconception about how businesses fund</p> <p>19 themselves. It is an empirical question. It depends on</p> <p>20 the facts. With respect to your Lordship, there isn't</p> <p>21 any evidence before the court.</p> <p>22 I am told by those behind me that there is published</p> <p>23 research material, for example, on the extent to which</p> <p>24 companies fund themselves by way of debt and fund</p> <p>25 themselves by way of equity and the extent to which</p> <p style="text-align: center;">Page 12</p>

<p>1 companies raise equity. None of that information is 2 before your Lordship.</p> <p>3 What we do say is, your Lordship should not proceed 4 on the basis that debt funding is effectively the norm 5 and equity funding is in some sense unusual. Because, 6 in our respectful submission, that's not supported by 7 any information before your Lordship.</p> <p>8 My instructions are that that is not the case.</p> <p>9 We say that sort of information shouldn't play 10 a role in deciding what the definition of "default rate" 11 did. If your Lordship thought it necessary to have that 12 information, then obviously it would need to be 13 provided. But we say --</p> <p>14 MR JUSTICE HILDYARD: It is a salutary warning which I will 15 take. I realise that there are very many ways in which 16 people can obtain what they need. Generally, and you 17 may say I should rid this of my thought process also, 18 instinctively one associates equity funding with 19 enterprise funding and "borrowing" with project-specific 20 funding, or at least one would very rarely see equity 21 funding for individual transaction unless it is a sort 22 of whopping, what used to be called superclass 1 type 23 transaction. You may say that that also is something 24 I shouldn't assume.</p> <p>25 MR DICKER: My Lord, yes, we do submit that. Both, in fact,</p> <p style="text-align: center;">Page 13</p>	<p>1 raise money may not translate to hedge funds. They may 2 simply go out to investors and say, "We have got a new 3 project. Would you like to make an additional 4 investment?"</p> <p>5 The second point is this: the definition does not 6 require you to identify, in our submission, a specific 7 transaction matching the relevant amount. That is why 8 we say, no doubt, the words "if it were to fund" were 9 included, the assumption being that many companies 10 wouldn't have transaction-specific funding, wouldn't go 11 out and obtain matched funding, in the same way as 12 entities can hedge themselves on a global basis. 13 Similarly, it may well be efficient and they may well 14 fund themselves on a global basis. Then it is 15 necessarily a question of trying to break down the costs 16 of the whole and attribute them to the relevant part.</p> <p>17 My Lord, the next point. Cost of equity is, as 18 your Lordship knows, we submit, a cost of funding. That 19 indeed is what Mr Justice Cooke said in terms in the 20 extract from the Gul Bottlers case that I showed 21 your Lordship yesterday.</p> <p>22 We also submitted that cost of capital, including 23 the cost of equity, is a metric that a CFO of 24 a financial institution will be aware of. What 25 I offered to show your Lordship yesterday was a little</p> <p style="text-align: center;">Page 15</p>
<p>1 in an English context, but obviously also taking into 2 account the range of parties who may be parties to 3 master agreements.</p> <p>4 There is a danger, in our submission, of construing 5 the default rate through or by reference to 6 a traditional English company, whether listed or 7 otherwise. Lots of the parties to derivative agreements 8 are not companies of that sort.</p> <p>9 MR JUSTICE HILDYARD: I'm not doing that. I'm just 10 thinking -- I'm not thinking nationally. I am simply 11 thinking of the usual badges of equity funding, albeit 12 that you can obviously equity fund through a fairly 13 short-term preference issue, if you wish to, or 14 a convertible one, or whatever it is -- millions of 15 combinations of these, I entirely accept that. But one 16 normally associates it with enterprise funding rather 17 than transactional funding. But I make that point to be 18 fair and open for you to ward me off my worries in that 19 regard. It isn't by reference to anything in the 20 Companies Act or any particular English experience.</p> <p>21 MR DICKER: My Lord, again, we would respectfully warn 22 your Lordship off that.</p> <p>23 Two points. First of all, entities fund themselves 24 in different ways. Take, for example, a hedge fund. 25 Assumptions your Lordship may make about how companies</p> <p style="text-align: center;">Page 14</p>	<p>1 extract in relation to CAPM, and that's what I was 2 proposing to do now. My learned friends have seen 3 a copy of the extract I am going to show your Lordship 4 and they are content for me to refer your Lordship to 5 it.</p> <p>6 I think your Lordship should have it in authorities 7 bundle 4A at tab 139A. My Lord, it is from a book 8 called "The Real Cost of Capital" by Mr Ogier, Mr Rugman 9 and Ms Spicer. One sees that from the first page. Just 10 to identify who they are and how the book was put 11 together, there is an author's acknowledgement on the 12 next page, the second paragraph:</p> <p>13 "The idea of writing a book on the cost of capital 14 stemmed from a global cost of capital initially from 15 which the authors were heavily involved at 16 PricewaterhouseCoopers or, rather, Price Waterhouse as 17 it then was."</p> <p>18 At the beginning of the next paragraph: 19 "Our work benefited from the enthusiasm of a large 20 group of PwC people from across the world. The sun 21 truly never sets on the PwC cost of capital empire." 22 Then the penultimate paragraph on that page: 23 "Thanks also go to the financial economists from 24 around the academic world who kindly agreed to review 25 the fruits of the initiatives, labour and helped us in</p> <p style="text-align: center;">Page 16</p>

<p>1 our workshop."</p> <p>2 And they are identified. Then what we have</p> <p>3 extracted is chapter 1, "Risk and return revisited".</p> <p>4 My Lord, it is worth reading all of the first eight</p> <p>5 pages, but if I can perhaps direct your Lordship's</p> <p>6 attention to particular passages at this stage. Under</p> <p>7 the heading "Introduction" on page 2:</p> <p>8 "The primary focus of this book is a practical not</p> <p>9 theoretical one. Attempts to set out as clearly and</p> <p>10 non-technically as possible what practitioners need to</p> <p>11 know about the cost of capital based on the knowledge of</p> <p>12 cutting-edge academic, corporate and advisory practice.</p> <p>13 This is as it should be, the understanding of the cost</p> <p>14 of capital is of fundamental importance in taking key</p> <p>15 business decisions."</p> <p>16 Then if your Lordship goes to page 4, under the</p> <p>17 heading "Towards the definition of the cost of capital",</p> <p>18 "Why cost of capital matters", in the middle of</p> <p>19 the page:</p> <p>20 "There can be little doubt the cost of capital is an</p> <p>21 extremely important business and financial tool. It is</p> <p>22 used in corporate business models to help determine</p> <p>23 company valuation and shape corporate strategy.</p> <p>24 Governments use estimates of the cost of capital to</p> <p>25 regulate prices charged by some industries. Most</p> <p style="text-align: center;">Page 17</p>	<p>1 there are essentially two forms of capital ..."</p> <p>2 They are identified. Firstly, debt and then over</p> <p>3 the page, equity.</p> <p>4 The heading "Cost of debt", which I think I can pass</p> <p>5 over, is followed by a heading, "Why is there a cost of</p> <p>6 equity?"</p> <p>7 The authors say:</p> <p>8 "The remuneration of equity, however, introduces far</p> <p>9 more complexity. Companies do not commit themselves to</p> <p>10 paying a certain level of dividends, share prices can</p> <p>11 fall as well as go up. There is, therefore, no clearly</p> <p>12 defined contractual cost of raising capital through</p> <p>13 issuing equity, the most common source of capital for</p> <p>14 companies. But while the payments that companies must</p> <p>15 make to shareholders are not contractually defined, that</p> <p>16 does not mean that equity finance is free. Indeed,</p> <p>17 because the payments that equity investors receive are</p> <p>18 not determined on a contractual basis, because equity</p> <p>19 investors receive payments only after debt payments have</p> <p>20 been made, equity finance is more expensive than debt</p> <p>21 finance. Companies need to reward equity investors for</p> <p>22 bearing a higher level of risk than debt investors."</p> <p>23 Then the heading "How is the cost of equity</p> <p>24 determined?":</p> <p>25 "If there is no contractual arrangement between</p> <p style="text-align: center;">Page 19</p>
<p>1 importantly, the cost of capital is used by companies,</p> <p>2 individuals and governments to help them take decisions</p> <p>3 regarding investment."</p> <p>4 Then, at the bottom of the page, the heading "What</p> <p>5 is capital?":</p> <p>6 "Normally, when economists refer to capital they are</p> <p>7 referring to real, physical assets."</p> <p>8 The next paragraph:</p> <p>9 "This is not the definition of capital applied by</p> <p>10 financial economists and other practitioners when they</p> <p>11 refer to the cost of capital. In this context the</p> <p>12 capital refers to the financial resources or funds that</p> <p>13 businesses, individuals or governments need in order to</p> <p>14 pursue a business enterprise or implement an investment</p> <p>15 project. It is essentially a monetary rather than</p> <p>16 a physical concept."</p> <p>17 Next heading, towards the bottom of page 5, "What is</p> <p>18 the cost of capital":</p> <p>19 "Having concluded that the appropriate definition of</p> <p>20 'capital' in the context of this book is a monetary one,</p> <p>21 meaning financial resources which must be committed to</p> <p>22 an enterprise or project with a delayed payback, it is</p> <p>23 now appropriate to consider what is meant by the cost of</p> <p>24 this capital. Ignoring for the time being some of</p> <p>25 the more complex ways in which companies raise finance,</p> <p style="text-align: center;">Page 18</p>	<p>1 a company and its equity investors regarding the level</p> <p>2 at which the firm remunerates the providers of equity</p> <p>3 capital, how is the cost of this type of capital</p> <p>4 determined? It seems at first glance odd even to refer</p> <p>5 to this as a cost, when it is clear there are real-world</p> <p>6 examples where companies far from paying equity</p> <p>7 investors for the use of their capital have actually</p> <p>8 given them negative returns."</p> <p>9 They say over the page:</p> <p>10 "Two elements to the explanation of this apparent</p> <p>11 mystery. The first element concerns the economic</p> <p>12 concept of opportunity cost."</p> <p>13 If your Lordship just goes to the last sentence in</p> <p>14 that section, under that heading:</p> <p>15 "This latter concept is the equity investor's</p> <p>16 opportunity cost of capital, it is this return which</p> <p>17 provides a floor on the expected return which the equity</p> <p>18 investment must yield."</p> <p>19 Then:</p> <p>20 "Expected versus actual returns brings us onto the</p> <p>21 second element in deriving the cost of equity defined in</p> <p>22 terms of expected or required returns on investment, not</p> <p>23 actual or achieved returns."</p> <p>24 Finally, on page 8, there is a heading "Weighted</p> <p>25 average cost of capital":</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 "There is thus a cost to a business in obtaining 2 capital for debt, this cost is defined in terms of 3 payments the company must honour contractually. For 4 equity the business must offer the expectation the 5 returns on its equity will be as good as those available 6 from other opportunities and over time it must achieve 7 these returns." 8 Then the standard formula -- or the formula for WACC 9 is identified. Your Lordship will see the first item in 10 the equation is KE, cost of equity. 11 My Lord, the chapter continues to deal with certain 12 other issues in relation to cost of capital, including 13 cost of equity. I wasn't proposing to refer 14 your Lordship to anything there. 15 There are also chapters -- we haven't provided 16 your Lordship with lengthy chapters on the operation of 17 CAPM and potential issues in relation to CAPM and issues 18 like the optimal capital structure. My Lord, it didn't 19 seem appropriate to provide your Lordship with those. 20 That seemed to be straying into the area of expert 21 evidence for which there is obviously no direction. 22 My Lord, what we do say your Lordship gets out of 23 those extracts which I have showed your Lordship is 24 a clear series of statements that there is a cost to 25 equity. It is something which matters, and it is</p> <p style="text-align: center;">Page 21</p>	<p>1 MR JUSTICE HILDYARD: I agree, and I think that is why, 2 whether by implication in 1992 or by express words in 3 2002, the draftsman had in mind commercially reasonable 4 models, and actually gave a mandate for that model 5 rather than contractual assessment. 6 MR DICKER: One goes back, then, we say, to the 1992 7 agreement. We say, whatever the parameters of good 8 faith and rationality are for the 2002 agreement as 9 spelt out, one can proceed on the basis, if that is what 10 we are talking about, similar limitations apply in 11 relation to assessments of loss under the 1992 12 agreement, and we say, if again we are talking about the 13 permissible ambit of rationality and good faith, that 14 would equally translate to the same test in the context 15 of the default rate. 16 There are plainly measurement issues here. The 17 question is: how did the draftsman seek to address them? 18 Did he seek to address them by saying, "I have to 19 ensure that the right answer is reached, even if it 20 requires proceedings of this sort, determination by the 21 court as to precisely what is permitted or what isn't, 22 an assessment of what was done", or did he want 23 a different mechanism, one might say more likely to 24 achieve certainty and finality, certainly absent 25 litigation. We say plainly the latter, not the former.</p> <p style="text-align: center;">Page 23</p>
<p>1 something which can be measured. 2 MR JUSTICE HILDYARD: It is that last bit which is the most 3 difficult. I quite accept that if you are trying to get 4 money out of people, you have to pay them for it. It 5 doesn't matter whether you are getting the money for 6 shares or simply borrowing. I quite accept that. 7 My worry is that, whereas borrowing is ultimately 8 founded in some contractually ascertainable amount, cost 9 of funding is an assessment of expectation, as it is put 10 there, and the measurement of the assessment of 11 expectation seems to me variable, to depend on models 12 and to be of a rather different order in terms of its 13 complexity. That is my worry. 14 MR DICKER: My Lord, we would accept, plainly, that 15 measuring the cost of equity is more complicated than 16 measuring the cost of straightforward borrowing. 17 MR JUSTICE HILDYARD: It has no footing in any contract, by 18 definition. 19 MR DICKER: But what we would say is, the level of 20 complexity in measuring cost of equity is no different 21 from the complexities which may arise in other 22 valuations which plainly have to be carried out, for 23 example, on a closeout, valuing a derivative. It may be 24 fantastically difficult to estimate what the future 25 performance of the derivative would have been.</p> <p style="text-align: center;">Page 22</p>	<p>1 Those points apply, we say, just as much to the default 2 rate as they do to the approach the draftsman took in 3 relation to closeout amount in the 2002 agreement and 4 loss in the 1992 agreement. 5 Put another way, there is no reason why he would 6 suddenly have thought in the context of the default 7 rate, say in the 1992 agreement: 8 "Right, at this stage, I am really concerned about 9 the way in which the rationality and good faith standard 10 may operate. I have to do something different. What 11 I propose to do is require the court to construe down 12 [as we would put it] the broad words I have used and 13 make sure that rationality and good faith only operate 14 within that narrowed-down envelope." 15 My Lord, that is all I was going to say, picking up 16 threads from yesterday. There was one specific point 17 that I sought to make yesterday but didn't, and that 18 concerned, if your Lordship recalls, section 9.9 of 19 the credit derivatives definition. I managed to lose 20 the relevant -- 21 MR JUSTICE HILDYARD: Oh, yes, I remember. 22 MR DICKER: If your Lordship goes to bundle 5, tab 9, there 23 is a copy of the 2003 credit derivatives definitions. 24 The relevant section is on page 377, section 9.9. 25 I took your Lordship to it yesterday. Just to identify</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 the point, 9.9 has a side heading "Buy-in of bonds not 2 delivered":</p> <p>3 "At any time after the date that is five business 4 days after the physical settlement date if buyer has not 5 delivered any deliverable obligations specified in the 6 notice of physical settlement that are bonds, seller may 7 exercise a right to close out all or a portion of 8 the credit derivative transaction by the purchase of 9 such bonds under the terms of this section 9.9, which is 10 called a buy-in."</p> <p>11 The relevant two sentences are over the page, 378, 12 the first paragraph:</p> <p>13 "On the buy-in date, seller shall attempt to obtain 14 from five or more dealers firm quotations for the sale, 15 buy-in offers, of the specified outstanding principal 16 balance of the relevant bonds. The lowest buy-in offer, 17 or if seller obtains only one buy-in offer, such buy-in 18 offer for the outstanding principal balance of 19 the relevant bonds shall be the buy-in price."</p> <p>20 This is an example of a situation in which, unlike, 21 say, market quotation, the draftsman has decided to 22 require the party to use the lowest price and has done 23 so expressly and in terms.</p> <p>24 My Lord, the final topic, and it is a short one in 25 relation to question 11, concerns ancillary costs,</p> <p style="text-align: center;">Page 25</p>	<p>1 advisers, if those are also required to enable it to get 2 the funding.</p> <p>3 In any sensible sense, we say that forms part of 4 the cost of funding.</p> <p>5 That is all I was going to say in relation to such 6 fees and expenses at this stage.</p> <p>7 My Lord, can I then finish question 11 just by 8 answering questions raised by question 11. If 9 your Lordship turns up the application, it is in core 10 bundle tab 1, page 5, question 11. Question 11 asks, is 11 the phrase capable of including:</p> <p>12 "(1) The actual or asserted cost to the relevant 13 payee to fund or of funding the relevant amount by 14 borrowing ..."</p> <p>15 We say, along with everyone else, the answer to that 16 is "yes".</p> <p>17 Question 2: 18 "[Is it capable of including the] cost to the 19 relevant payee of raising money ... by whatever means, 20 including any cost of raising shareholder funding?"</p> <p>21 We say the answer to that is "yes".</p> <p>22 Question 3 raises a slightly different point. It 23 is: 24 "[Whether it is capable of including] the actual or 25 asserted cost to the relevant payee to fund or of</p> <p style="text-align: center;">Page 27</p>
<p>1 professional expenses, other charges, things other than 2 the headline interest rate.</p> <p>3 As your Lordship knows, we say the relevant payee is 4 entitled to the cost of plugging the gap, and if in 5 obtaining funding to plug that gap he has incurred costs 6 not merely in respect of an interest rate which he has 7 to pay, otherwise he is entitled to recover those costs 8 as well.</p> <p>9 Wentworth's response, as we understand it, is to 10 say, "Well, those aren't costs of funding. Those are 11 costs of some separate, independent transaction". That 12 is the phrase they use. We say that is an unreal 13 categorisation. If you have to pay a sum realistically 14 to be able to obtain funding, then that is a cost of 15 funding for these purposes. You can't obtain it 16 otherwise.</p> <p>17 It is particularly unreal where the cost is 18 a separate charge made by the person providing the 19 funding. Take, for example, a bank which insists on 20 payment of its legal fees or requires other charges to 21 be made, the argument that those fees don't constitute 22 part of the cost of funding, my Lord, must be wrong. We 23 say there is no real distinction between that situation 24 and the payment of similar fees, not necessarily to the 25 bank's legal advisers, but to the party's own legal</p> <p style="text-align: center;">Page 26</p>	<p>1 funding and/or carrying on its balance sheet an asset 2 and/or any profits and/or losses incurred in relation to 3 the value of the asset, including any impact on the cost 4 of its borrowings and/or its equity capital in light of 5 the nature and riskiness of that asset?"</p> <p>6 Essentially, one is asking: can you take into 7 account the fact that on the relevant payee's balance 8 sheet is a defaulted receivable when calculating cost of 9 funding? We say the answer to that is, plainly, "yes", 10 for the simple reason that any lender or other funder 11 deciding whether or not to fund and what to charge for 12 such funding will do so by reference to the riskiness of 13 the business. If on the relevant payee's balance sheet 14 there is a large defaulted receivable, then that is 15 sufficient to have an impact on the lender's perception 16 or funder's perception of risk, then that is something 17 it will no doubt take into account, and the consequences 18 of it doing so is therefore something that will be 19 reflected in cost of funding.</p> <p>20 Question 4 I think, as your Lordship observed in 21 opening, no-one is now contending for --</p> <p>22 MR JUSTICE HILDYARD: Is that an additional thing? I'm so 23 sorry to interrupt. Is that an additional fact? 24 I mean, will the WACC calculation take that into 25 account?</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 MR DICKER: My Lord, my understanding is the answer is, yes.  2 There is an issue -- as I understand it, Wentworth  3 contend that WACC is by reference to historical  4 information. If that were right, then depending on the  5 extent to which the information is historic, it might  6 not.  7 My Lord, our submission is that is incorrect. This  8 aspect -- if you look at what an entity's cost of  9 funding is, you are looking at its cost of funding as at  10 a particular date or period. If, as at that date, or  11 during that period, it has a defaulted receivable on its  12 balance sheet, that will have an impact on the  13 willingness or price at which people are prepared to  14 provide funds to it.  15 MR JUSTICE HILDYARD: This would be subsumed, on your model  16 within WACC?  17 MR DICKER: Yes, as I understand it.  18 MR JUSTICE HILDYARD: So the answer -- if WACC is the chosen  19 model, the answer is "no", if you see what I mean? How  20 do we squeeze out double counting?  21 MR DICKER: Through the rational and good faith  22 certification.  23 I take your Lordship's point. We are obviously not  24 seeking, as it were, to get your Lordship to produce  25 declarations which entitle parties to double counting.</p> <p style="text-align: center;">Page 29</p>	<p>1 here.  2 11(4):  3 "Is it capable of taking into account the actual or  4 asserted costs of the relevant payee to fund or of  5 funding a claim against ..."  6 MR JUSTICE HILDYARD: You're all agreed on this?  7 MR DICKER: We're all agreed. Just so your Lordship knows  8 and understands how this arose and the arguments that  9 related to it, to the extent your Lordship needs to,  10 I don't know whether your Lordship looked at the witness  11 statement of Mr McKee in the core bundle, but he set  12 out, at Mr Justice David Richards's request, two  13 possible bases on which cost of funding could be  14 calculated.  15 One of them was called "The first basis". That  16 involved what can be referred to as a sort of coerced  17 loan theory. The logic was essentially that you can  18 treat the relevant payee as if it has effectively been  19 forced to lend LBIE the unpaid amount, and to assess its  20 cost of funding, you ought, therefore, to assess the  21 cost essentially of obtaining funding to make such  22 a loan to LBIE.  23 That approach, as your Lordship knows, isn't one for  24 which we are contending any longer on this matter.  25 There was a discussion in Mr McKee's witness statement</p> <p style="text-align: center;">Page 31</p>
<p>1 MR JUSTICE HILDYARD: No.  2 MR DICKER: The only point I am seeking to make at this  3 stage is, cost of funding reflects the financial  4 position of the entity, including the fact it has  5 a defaulted receivable on its balance sheet. If and to  6 the extent that is taken into account in WACC, as in my  7 submission it is, then this isn't a separate cost --  8 MR JUSTICE HILDYARD: No. I was just thinking, if you were  9 someone with money to equity fund, then the expectation  10 of dividend or return that you would have to be promised  11 would be affected according to the problems in the  12 company's balance sheet.  13 MR DICKER: Plainly.  14 MR JUSTICE HILDYARD: It would all be inclusive, wouldn't  15 it? It would all be one single assessment.  16 MR DICKER: If it was assessed in that way, the answer is  17 yes. The only reason for my hesitation is, conscious  18 that I am only representing three parties out of  19 the various creditors.  20 MR JUSTICE HILDYARD: You are the best I have on this side,  21 except for, of course -- Mr Foxton should not take that,  22 in any sense, as ...  23 MR DICKER: So no double counting, but this is an aspect of  24 the factual situation that can be taken into account.  25 I think that is, as we understand it, the short issue</p> <p style="text-align: center;">Page 30</p>	<p>1 about theories of corporate finance, the work of two  2 Nobel prize winning individuals, Miller and Modigliani.  3 In the absence of expert evidence, we are not in  4 a position to pursue that, and we don't. So 11(4) isn't  5 an issue for your Lordship.  6 MR JUSTICE HILDYARD: On that footing -- I remember  7 Mr McKee's only in general terms as being a very short  8 witness statement with a very long appendix, is that  9 right? Or longer appendix?  10 MR DICKER: Correct.  11 MR JUSTICE HILDYARD: With lots and lots of quite detailed  12 stuff. Is that, on this footing, something which I can  13 note but not take in?  14 MR DICKER: The second basis is essentially the basis which  15 we are contending for.  16 MR JUSTICE HILDYARD: So I should look at that?  17 MR DICKER: My Lord, I think at some stage your Lordship  18 should look at it, although there is nothing in it,  19 I think, which I haven't covered during the course of my  20 submissions.  21 MR JUSTICE HILDYARD: It is a summary, rather than --  22 MR DICKER: There are also three examples attached to  23 Mr McKee's statement showing how the first and second  24 basis work out. Now, again, it would, I think, be right  25 for your Lordship to look at the approach taken in</p> <p style="text-align: center;">Page 32</p>



<p>1 relation to those three examples so far as the second 2 basis is concerned, which is essentially a WACC -- 3 MR JUSTICE HILDYARD: I have it. Thank you very much. 4 MR DICKER: My Lord, so that is question 11. 5 I can deal fairly quickly with questions 12, 13 and 6 14. 7 My Lord, question 12 raises a series of questions in 8 relation to cost of borrowing. Just before dealing with 9 each of subparagraphs 1 through to 4, we would again 10 emphasise there is a danger in assuming the answer to 11 each of these questions is necessarily "yes" or "no", as 12 opposed to "well, it may depend". But recognising that, 13 question 12(1): 14 "Should such borrowing be assumed to have recourse 15 solely to the relevant payee's claim against LBIE or to 16 the rest of the relevant payee's unencumbered assets?" 17 My Lord, I think in opening Mr Trower said that this 18 was agreed and that it was to be assessed by reference 19 to the rest of the relevant payee's unencumbered assets. 20 I think, in substance, that is broadly correct. But it 21 is important to appreciate, in our submission, why. 22 My Lord, what we do say is that a relevant payee who 23 funds the amount with debt funding but has resource to 24 the whole of its unencumbered assets is likely to be 25 acting rationally and in good faith and he is</p> <p style="text-align: center;">Page 33</p>	<p>1 We say -- again, subject to the same caveat about 2 "yes" or "no" answers -- it is in this case the former, 3 include the incremental cost to the relevant payee of 4 incurring additional debt. The reason is, one goes back 5 to the starting point: relevant payee has to assess cost 6 to it if it were to raise or has raised the relevant 7 amount. Therefore, it requires the relevant payee to 8 assess its incremental cost of funding, ie, this 9 additional amount, relevant amount. 10 There may, of course, be different ways in which it 11 can do so. It may, for example, do so by reference to 12 the coupon that would be charged to it over the relevant 13 period together with any other charges, or it may be 14 able to do so by reference to the average cost of all 15 its borrowings, where it determines that its average 16 cost of debt is equivalent to the incremental cost of 17 incurring additional debt. My Lord, again, this is all 18 part of good faith and rational determination. 19 If there is a proxy that it thinks would rationally 20 and in good faith produce the relevant figure, then it 21 is entitled to use that. 22 Obviously, we say it is entitled to do so by 23 reference to its weighted average cost of capital in 24 similar circumstances where it determines that it would 25 have funded by a mixture of debt and equity.</p> <p style="text-align: center;">Page 35</p>
<p>1 undoubtedly likely to find it harder to justify lending 2 by reference only to the specific asset. 3 There may be exceptional or unusual cases in which 4 that is not the case. For example, if he actually has 5 no other unencumbered assets, no assets which, for 6 whatever reason, it would be rational and good faith for 7 him to give the lender recourse to. 8 My Lord, broadly, we say the answer is likely to be 9 the second, to the rest of the relevant payee's 10 unencumbered assets, but this isn't one of those ones 11 which as a matter of logic we say can only be the 12 latter, can never be the former -- 13 MR JUSTICE HILDYARD: You say it mustn't artificially 14 restrict it to this? 15 MR DICKER: Yes. To put it another way, if he does restrict 16 it to that asset and provides rational and good faith 17 reasons as to why, and they are indeed rational and good 18 faith, then that is sufficient. 19 My Lord, 12(2) asks: 20 "If it is to the rest of the relevant payee's 21 unencumbered assets, should the cost of funding include 22 the incremental costs to the relevant payee of incurring 23 additional debt against his existing asset base or 24 should it include the weighted average cost on all its 25 borrowings?"</p> <p style="text-align: center;">Page 34</p>	<p>1 My Lord, one point that may be worth making here is 2 that, in many cases, the use of proxies along those 3 lines may, if anything, understate rather than overstate 4 the cost of funding. 5 The incremental cost of funding -- in other words, 6 the fresh bit of debt you are incurring -- is, by 7 definition, in most cases, likely to be more expensive 8 than your existing debt, if only because it is 9 increasing your leverage and you're putting the company 10 into a more risky position than previous lenders would 11 have faced. 12 My Lord, again, we say, if the relevant payee 13 determines that, for example, its weighted average cost 14 of capital or its average cost of borrowings is 15 a sufficiently accurate indication of that, albeit in 16 some cases potentially slightly lower, it can use that. 17 My Lord, 12(3) -- 18 MR JUSTICE HILDYARD: The exercise then would be -- I'm 19 worried I haven't captured this -- to, for example, do 20 the WACC calculation without this hanging on your 21 balance sheet and without the need to plug that gap, and 22 then to do it with that need and the difference is your 23 claim? 24 MR DICKER: Yes. 25 MR JUSTICE HILDYARD: In that regard.</p> <p style="text-align: center;">Page 36</p>

<p>1 MR DICKER: Yes.</p> <p>2 My Lord, 12(3):</p> <p>3 "Should such cost include any impact on the cost of</p> <p>4 the relevant payee's equity capital attributable to such</p> <p>5 borrowing?"</p> <p>6 My Lord, we say that is also a cost which can be</p> <p>7 taken into account. Can I just illustrate with a very</p> <p>8 simple example why there is a cost here, albeit</p> <p>9 measuring it may raise the same issues as any cost of</p> <p>10 equity may raise.</p> <p>11 If your Lordship imagines the debt owed by in this</p> <p>12 case LBIE was a substantial asset on the balance sheet</p> <p>13 of the relevant payee, to fund it, to plug the gap, it</p> <p>14 follows that the relevant payee will have to borrow</p> <p>15 a substantial sum of money, equal to the amount of</p> <p>16 the unpaid debt, which will substantially increase its</p> <p>17 leverage.</p> <p>18 That has two consequences. One, it will increase</p> <p>19 the cost of any further borrowing which it wishes to</p> <p>20 make. It will also increase its cost of equity, in the</p> <p>21 sense that any person considering whether or not to</p> <p>22 provide equity will want more for providing equity to</p> <p>23 this newly higher leveraged entity than it would have</p> <p>24 charged previously.</p> <p>25 We say, again, subject only to the same issues in</p> <p style="text-align: center;">Page 37</p>	<p>1 funding and acted rationally and in good faith in doing</p> <p>2 so, the position is obviously straightforward: one</p> <p>3 simply looks at the cost of funding it actually</p> <p>4 obtained.</p> <p>5 Where the relevant payee did not raise funding, it</p> <p>6 is required to make a rational and good faith</p> <p>7 determination of the funding that it would have used,</p> <p>8 and then make a determination of the cost of such</p> <p>9 funding.</p> <p>10 If one just walks through various possible things it</p> <p>11 might have done, one thing it might have done following</p> <p>12 the early termination date was to say, "I'm going to</p> <p>13 fund this on an overnight basis".</p> <p>14 If that is the decision essentially for the first</p> <p>15 day, a further question then arises on the second day,</p> <p>16 "What would it have done then?"</p> <p>17 Assume that it would have funded on an overnight</p> <p>18 basis throughout, one is effectively then looking at</p> <p>19 calculating its cost of funding by reference to or on</p> <p>20 a fluctuating basis, taking into account any changes in</p> <p>21 the relevant circumstances. That is because the way in</p> <p>22 which it chose to fund itself was a fluctuating basis.</p> <p>23 The way in which it would have chosen to fund itself was</p> <p>24 on a fluctuating basis. That is one possibility.</p> <p>25 Another possibility is that the relevant payee says,</p> <p style="text-align: center;">Page 39</p>
<p>1 relation to measurement of the cost, that that is just</p> <p>2 as much a cost of funding which the relevant payee is</p> <p>3 entitled to take into account.</p> <p>4 12(4) I think Mr Trower said is agreed. My Lord,</p> <p>5 that is certainly right, so far as the Senior Creditor</p> <p>6 Group is concerned. Costs may, depending on the</p> <p>7 circumstances, be capable of being calculated in any of</p> <p>8 the three ways identified in 12(4).</p> <p>9 MR JUSTICE HILDYARD: So any of?</p> <p>10 MR DICKER: Any, yes.</p> <p>11 13:</p> <p>12 "Whether the cost of funding should be calculated,</p> <p>13 (1), by reference to the relevant payee's circumstances</p> <p>14 on a particular date, or, (2), on a fluctuating basis,</p> <p>15 taking into account any changes in the relevant</p> <p>16 circumstances, and, if so, whether the benefit of</p> <p>17 hindsight applies when taking into account such changes,</p> <p>18 in each case whether or not taking into account relevant</p> <p>19 market conditions."</p> <p>20 So do you calculate it by reference to particular</p> <p>21 circumstances on a particular date, or on a fluctuating</p> <p>22 basis? My Lord, we say this really is a question to</p> <p>23 which there is no "yes" or "no" answer. This is</p> <p>24 essentially a false choice, because it all depends.</p> <p>25 Now, where the relevant payee did actually obtain</p> <p style="text-align: center;">Page 38</p>	<p>1 well, that would be an entirely unsatisfactory way of</p> <p>2 dealing with things. The sensible course is for me to</p> <p>3 take out term funding, and it either does so or would</p> <p>4 have done so, for a period. In that situation, if that</p> <p>5 is what it rationally and in good faith did or would</p> <p>6 have done, then you are not, as it were, looking at</p> <p>7 anything that happened thereafter during the life of</p> <p>8 the term of the funding. It has acquired funding on</p> <p>9 particular terms, and that is then its cost of funding</p> <p>10 for the relevant period.</p> <p>11 We say this is actually quite a difficult question</p> <p>12 for your Lordship to answer, and an impossible question</p> <p>13 for your Lordship to answer if you're essentially being</p> <p>14 required to choose between the two options, because</p> <p>15 there may be circumstances in which the first is</p> <p>16 rational, satisfies the rationality and good faith</p> <p>17 approach; alternatively, there may be circumstances in</p> <p>18 which the second does so.</p> <p>19 MR JUSTICE HILDYARD: Your answer is the one -- the</p> <p>20 certification.</p> <p>21 MR DICKER: We come back to that, because we say that is, in</p> <p>22 very simple terms, how the draftsman intended this to</p> <p>23 operate. He did not intend issues like 13 to have to be</p> <p>24 resolved, if necessary, by the court before a party was</p> <p>25 properly in a position to certify its cost of funding.</p> <p style="text-align: center;">Page 40</p>

<p>1 He certainly didn't, we say, intend the court to have to 2 choose between the two options and to identify which he 3 notionally intended and which he did not. 4 There is a connected point. Wentworth initially 5 contended that the relevant payee could only certify the 6 default rate at the end of the period and said that it 7 must be calculated on a fluctuating basis. Wentworth's 8 model is, you have an early termination date. The 9 relevant payee is required to calculate cost of funding. 10 But it must, Wentworth initially said, do so on the last 11 date and must do so on a fluctuating basis. That was 12 the only option open to it. 13 As we understand it, Wentworth's position has 14 changed, in that it now appears to contend: 15 "Well, you can provide ongoing certificates, but, 16 nevertheless, it's the last one that essentially 17 matters, and the last one has to be done on 18 a fluctuating basis." 19 I have already dealt with the fluctuating versus 20 fixed point, but I need to deal shortly with the 21 suggestion that you either have one certification at the 22 end of the date or a series of certifications, of which 23 the only one that matters is the last one. 24 We say there is no support for either of those 25 contentions. There is certainly no support for any</p> <p style="text-align: center;">Page 41</p>	<p>1 keep an employee monitoring what was going on to achieve 2 this, we say is not something the draftsman intended. 3 My Lord, that is all I wanted to say in relation to 4 13. 5 Two minutes in relation to question 14. I said it 6 is common ground a certification is conclusive unless it 7 can be shown to be irrational or in bad faith. There 8 is, as my learned friend Mr Trower I think indicated, 9 one small issue as to the formulation of any declaration 10 in this respect or any direction. It concerns whether 11 you include the additional words "manifest error". 12 My Lord, we say, if one looks at the authorities, the 13 phrase used is couched in terms of rationality and good 14 faith. To the extent "manifest error" leads to 15 irrationality or bad faith, then it is encompassed. It 16 doesn't need to be separately spelled out. If it is 17 suggested it means something different, then we would 18 say it is incorrect and shouldn't be included. 19 As we understand it, I don't think anyone is 20 suggesting it is in fact intended to spell out something 21 different, and if that is the case, in our submission, 22 your Lordship should stick with the normal formulation, 23 which is simply in terms of rationality and good faith. 24 My Lord, that is all on 14. 25 I have one more question to answer, or to address,</p> <p style="text-align: center;">Page 43</p>
<p>1 suggestion that a certificate can only be produced at 2 the end of the period. If that is what the draftsman 3 intended, he no doubt would have specified that. In 4 other contexts, he did say when a determination or 5 certification was required. He said, for example, in 6 relation to section 6(e): 7 "... on the early termination date or so soon 8 thereafter as reasonably practicable." 9 He doesn't take that approach in this situation. 10 Nor, we say, is there any support for essentially 11 requiring or even permitting the relevant payee to 12 certify from time to time but only on the basis it is 13 the last certificate that matters. My Lord, that would 14 require the relevant payee essentially to continue to 15 monitor what was going on, potentially to provide 16 ongoing certificates of its cost of funding, eventually 17 to certify what its final cost of funding had been. 18 My Lord, we say that is certainly inconsistent with 19 the simple approach taken by the master agreement, which 20 permits a party to say, "Rationally and in good faith 21 this is the form of funding that I have taken and it is 22 a form of funding which is effectively fixed", or "This 23 is a form of funding which I would have taken and it is 24 fixed", and that's the end of it. 25 The suggestion the relevant party effectively has to</p> <p style="text-align: center;">Page 42</p>	<p>1 which is question 10 -- 2 MR JUSTICE HILDYARD: That's the payee point. 3 MR DICKER: -- which will take me a little time. I wonder 4 whether this might be a convenient moment. 5 MR JUSTICE HILDYARD: Yes. Five minutes, we will say 6 (11.47 am) 7 (A short break) 8 (11.53 am) 9 MR DICKER: My Lord, question 10 is concerned with the 10 position in the event that one party assigns its rights 11 under a master agreement. The issue arises because of 12 the use of the words "the relevant payee" in the 13 definition of default rate. 14 There are two ways in which those words can be 15 construed. The first is to construe them as referring 16 solely to the contractual counterparties. That's the 17 construction for which Wentworth contends. If that is 18 the case, then the assignee needs to certify the cost of 19 funding of the original contractual counterparty for the 20 purposes of making its claim. 21 The second is to construe them as referring to 22 whomever is entitled to receive the relevant amount from 23 time to time. That's the construction, as your Lordship 24 knows, for which the Senior Creditor Group contends. 25 What that would mean is that, for the period up to the</p> <p style="text-align: center;">Page 44</p>

<p>1 assignment, the relevant cost of funding is the cost of 2 funding of the assignor, and from the date of 3 assignment, the cost of funding is the cost of funding 4 of the assignee. In other words, you are looking at who 5 at the relevant time was entitled to be paid the 6 relevant amount.</p> <p>7 I should start by showing your Lordship the transfer 8 and assignment provisions before making our submissions 9 on what "relevant payee" means. If your Lordship 10 therefore takes up the core bundle at tab 7, 11 your Lordship will find the transfer provisions for the 12 1992 agreement in section 7 on page 157:</p> <p>13 "Subject to section 6(b)(ii), neither this agreement 14 nor any interest or obligation in or under this 15 agreement may be transferred."</p> <p>16 There is a general prohibition on transfer, except 17 that (a) and (b). (a) is concerned with consolidations, 18 amalgamations and mergers, and (b), which is the 19 relevant one for present purposes, provides that:</p> <p>20 "A party may make such a transfer of all or any part 21 of its interest in any amount payable to it from 22 a defaulting party under section 6(e)."</p> <p>23 Two points to note in relation to section 7(b). It 24 is only concerned with payments under section 6(e), in 25 other words, the termination amount, and it is only</p> <p style="text-align: center;">Page 45</p>	<p>1 "relevant payee". Those words are not defined by the 2 master agreement. We say, as a matter of ordinary 3 language, they refer to the person who was entitled to 4 receive payment of the relevant amount from time to 5 time. That's simply because the ordinary meaning of 6 "payee" is a person to whom payment is or is to be made, 7 and the ordinary meaning of "relevant" suggests there 8 may be two or more potential payees and it is necessary 9 to identify the relevant one.</p> <p>10 The first thing, in our submission, your Lordship 11 should note is the draftsman has used the word "payee" 12 and not "party". There are three other sets of 13 provisions I should show your Lordship where, in 14 contrast, the draftsman has used the word "party". The 15 first of those is in relation to the termination rate. 16 If your Lordship takes, again, the 1992 agreement, 17 tab 7, page 163:</p> <p>18 "Termination rate means a rate per annum equal to 19 the arithmetic mean of the cost, without proof or 20 evidence of any actual cost to each party as certified 21 by such party if it were to fund or of funding such 22 amounts."</p> <p>23 There are some obvious similarities with the 24 definition of "default rate", in particular the use of 25 the concept of cost "if it were to fund or of funding".</p> <p style="text-align: center;">Page 47</p>
<p>1 concerned with such payments to the extent that they are 2 payable from a defaulting party. We are dealing with 3 one situation in which there is a closeout amount 4 payable by a defaulting party to a non-defaulting party.</p> <p>5 The 2002 agreement is in similar terms. If 6 your Lordship goes to tab 8, section 7, the transfer 7 provision is on page 185. There is one change that 8 I should identify, and I will come back to in due 9 course. It is in section 7(b), after the statement 10 that, "A party may make such a transfer of all or any 11 part of its interest and any termination amount payable 12 to it by a defaulting party".</p> <p>13 The 2002 agreement then adds: 14 "... together with any amounts payable on or with 15 respect to that interest and any other rights associated 16 with that interest pursuant to sections 8, 9(h) and 11."</p> <p>17 There was, at one stage, I think, an issue about 18 whether, given the absence of those words, it was 19 permitted to transfer a right to interest under the 1992 20 agreement, but Wentworth aren't pursuing that argument. 21 It is common ground that under the 1992 and the 2002 22 agreement, you can transfer claims, entitlements to 23 interest, as much as entitlements to the underlying 24 section 6(e) closeout amount.</p> <p>25 The relevant words, as your Lordship knows, are</p> <p style="text-align: center;">Page 46</p>	<p>1 One difference is that in this context -- I will come 2 back to this -- the draftsman used the word "party" 3 rather than "payee". He also said it is each party, 4 because essentially you need an arithmetic mean of 5 the two. That is the first, termination rate.</p> <p>6 The second is the non-default rate. If 7 your Lordship just goes back one page in the 1992 8 agreement, page 162:</p> <p>9 "Non-default rate means a rate per annum equal to 10 the cost without proof or evidence of any actual cost to 11 the non-defaulting party as certified by it if it were 12 to fund the relevant amount."</p> <p>13 Again, the draftsman hasn't used the word "payee", 14 he's used the phrase "non-defaulting party".</p> <p>15 The same point again can be made in relation to the 16 2002 agreement, although, as your Lordship knows, what 17 constitutes the non-default rate has changed. If 18 your Lordship goes on, tab 8, page 195. The definition 19 of "non-default rate", your Lordship can see the 20 draftsman uses the phrase "non-defaulting party" rather 21 than "payee". So that is the second situation.</p> <p>22 The third situation concerns where the default rate 23 is payable prior to the early termination date. We are 24 concerned with the default rate, but it is where it is 25 payable prior to the early termination date. Again, the</p> <p style="text-align: center;">Page 48</p>

1 point to note here is that, in the relevant provisions,  
 2 the draftsman does not use the words "relevant payee".  
 3 Those words are only used in relation to a sum which is  
 4 payable after designation of an early termination date.  
 5 If your Lordship goes to section 2(e) of the 1992  
 6 agreement, page 149, my learned friend Mr Trower showed  
 7 your Lordship this I think in his opening submissions:  
 8 "Default interest other amounts. Prior to the  
 9 occurrence or effective designation of an early  
 10 termination date in respect of the relevant transaction,  
 11 a party that defaults in performance of any payment  
 12 obligation will, to the extent permitted by law and  
 13 subject to section 6(c), be required to pay interest  
 14 before as well as after judgment on the overdue amount  
 15 to the other party on demand in the same currency. As  
 16 such, overdue amount ..."  
 17 And then "at the default rate". So it is payable to  
 18 the other party.  
 19 Similarly, in the 2002 agreement, in the new  
 20 section 9, dealing with interest, it is 9(h)(i)(1) on  
 21 page 187:  
 22 "Interest on defaulted payments. If a party  
 23 defaults in the performance of any payment obligation,  
 24 it will, to the extent permitted by applicable law  
 25 subject to section 6(e), pay interest before as well as

Page 49

1 after judgment on the overdue amount to the other  
 2 party."  
 3 In contrast, the equivalent provisions dealing with  
 4 payment of interest at the default rate after  
 5 designation of the early termination date omit  
 6 references to "party". If your Lordship goes now to  
 7 section 6(d) of the 1992 agreement, page 155, it is in  
 8 (ii), "Payment date":  
 9 "An amount calculated as being due in respect of any  
 10 early termination date under section 6(e) will be  
 11 payable ..."  
 12 The relevant bit is five lines from the end of  
 13 the paragraph:  
 14 "Such amount will be paid together with (to the  
 15 extent permitted under applicable law) interest thereon  
 16 (before as well as after judgment) in the termination  
 17 currency, from (and including) the relevant early  
 18 termination date to (but excluding) the date such amount  
 19 is paid, at the applicable rate."  
 20 So there is no reference here to it being paid to  
 21 the other party. To identify to whom it is payable, you  
 22 have to go to the applicable rate, and in relation to  
 23 the default rate, in respect of a section 6(e) payment,  
 24 that is the stage at which you get the words "relevant  
 25 payee".

Page 50

1 MR JUSTICE HILDYARD: Take the example, though -- I was just  
 2 glancing at clause 8, which, as I understand it, covers  
 3 all payments and stipulates the currency, and stipulates  
 4 it, as I understand it -- but I have only read it very  
 5 quickly -- by reference to the party. Is that right?  
 6 In which currency is the payee not being a party to be  
 7 paid?  
 8 MR DICKER: Can I come back in relation to --  
 9 MR JUSTICE HILDYARD: Yes.  
 10 MR DICKER: -- section 8 --  
 11 MR JUSTICE HILDYARD: Sorry.  
 12 MR DICKER: No, I obviously need to address that. Just  
 13 focusing on the interest provisions and the way the  
 14 wording has been structured, the comparable provision to  
 15 the one I have just identified in the 1992 agreement  
 16 your Lordship will see in 9(h)(ii) of the 2002  
 17 agreement. That is tab 8, page 188.  
 18 It is a similar point. Your Lordship doesn't find  
 19 a reference here to the sum being paid to a party, the  
 20 other party, or anything of that sort. You only get the  
 21 person to whom payment is to be made identified when you  
 22 get to, in our case, the definition of "default rate".  
 23 We say one has to ask why the draftsman has used the  
 24 phrase "party" rather than "payee" in the three other  
 25 situations I have just shown your Lordship, but not in

Page 51

1 the context of sums payable by a defaulting party after  
 2 designation of an early termination date.  
 3 What is special about a section 6(e) sum, closeout  
 4 sum, payable by a defaulting party to a non-defaulting  
 5 party that would explain the use of the phrase in that  
 6 context "relevant payee" rather than "party"? We say it  
 7 is appropriate to see if one can identify why the  
 8 draftsman may have used different terms.  
 9 We say the obvious explanation is because of  
 10 section 7, and I showed your Lordship. There is an  
 11 exception to the general prohibition on transfer of  
 12 assignment, but it is limited to one situation. It only  
 13 applies in relation to a section 6(e) payment owed by  
 14 a defaulting party. That is also the one situation in  
 15 which the phrase "relevant payee" is found.  
 16 Why might the draftsman have used that phrase in  
 17 this context but not in any other? We say the answer is  
 18 obvious, because where you have an assignment, you have  
 19 two potential payees, the assignor initially and the  
 20 assignee afterwards. One needs to allocate cost of  
 21 funding to the relevant person.  
 22 Now, we say there is a further point. I have been  
 23 focusing so far on the use of the word "payee" as  
 24 opposed to "party", but the draftsman also added the  
 25 word "relevant payee". As I have just mentioned, we say

Page 52

<p>1 the reason he did so is because there are two and he 2 needs to identify which is relevant.</p> <p>3 How does this work in the context of a closeout 4 amount under section 6(e)? We say it is important to 5 bear in mind that the master agreements are structured 6 so as to produce a net amount payable one way or other 7 on closeout. In other words, all claims and 8 cross-claims are effectively netted off against each 9 other, and one is left with a single sum owed one way or 10 another.</p> <p>11 We say the fact that the section 6(e) payment will 12 always go one way has the effect that, on Wentworth's 13 construction, the word "relevant" in the phrase 14 "relevant payee" is meaningless or unnecessary.</p> <p>15 Wentworth's submission is that a relevant payee can 16 only be a contractual counterparty, so you're 17 essentially choosing between the two original 18 counterparties. When you are dealing with a closeout 19 amount, the closeout amount is only ever going to be 20 payable one way, and having done the calculation, you 21 will know to which of the two parties it has to be paid.</p> <p>22 There is no question of there being two possible 23 relevant payees.</p> <p>24 As between the two parties, there is only one 25 possible payee: the person entitled to the one-way</p> <p style="text-align: center;">Page 53</p>	<p>1 ie, initially the assignor, and I have a period where 2 the relevant cost of funding is now the cost of funding 3 by the assignee, given that it is he who is now owed the 4 debt, he who has not been paid, and he who is 5 effectively having to bear the burden of a sum which 6 should have been paid but hasn't been paid.</p> <p>7 There is one further linguistic point made by 8 Wentworth that I need to deal with. It is slightly 9 intricate. What Wentworth says is if you go back to 10 section 7 of the master agreement, take the 1992 11 agreement, tab 7, page 157, they focus on 7(b) and they 12 say:</p> <p>13 "It says a party may make such a transfer of all or 14 any part of its interest in any amount payable to it 15 from a defaulting party under section 6(e)."</p> <p>16 They emphasise the words "payable to it". They say 17 that means that what the draftsman therefore had in mind 18 was solely sums payable to the assignor, not the 19 assignee.</p> <p>20 We say that is wrong. Dealing with the 1992 21 agreement and then the 2002 agreement, we say it is 22 wrong in relation to the 1992 agreement because the only 23 sum with which section 7(b) is concerned is the section 24 6(e) closeout amount. 7(b), when it is talking about 25 the sum being an amount payable to it, is referring to</p> <p style="text-align: center;">Page 55</p>
<p>1 payment. On its construction, it would have been 2 sufficient for the draftsman simply to have said 3 "payee", the original or the contractual counterparty 4 entitled to the closeout amount. That is one approach 5 the draftsman could logically have taken.</p> <p>6 Another approach the draftsman could logically have 7 taken was to use the phrase "relevant party", which, 8 again, would have made sense, in the sense that the 9 closeout amount could be owed to either party, so one 10 could say, if one wanted to, "Well, it is the relevant 11 party that matters".</p> <p>12 What doesn't make any sense, we say, on Wentworth's 13 construction, is the use of the phrase "relevant payee".</p> <p>14 The reason for that, again, we say, is provided by 15 section 7. The only situation in which the concept of 16 relevant payee, in other words, the possibility of there 17 being two potential payee, arises where you are dealing 18 with a termination sum, a closeout amount owed by the 19 defaulting party. The only situation in which that 20 phrase makes sense is in the context of a section 7 21 transfer where you may have assignor and assignee. What 22 the draftsman was seeking to do, we say, by using the 23 phrase "relevant payee", was essentially to say, I have 24 a period of cost of funding where the relevant cost of 25 funding is the cost of funding of the relevant payee,</p> <p style="text-align: center;">Page 54</p>	<p>1 the section 6(e) sum. It is not referring to interest. 2 Interest, as I showed your Lordship a few moments ago, 3 is dealt with separately, in section 6(d)(ii) on 4 page 155. My point there was that, in the last 5 sentence, where it provides for interest to be paid, it 6 doesn't refer to interest as being a sum payable just 7 to, solely to, the original contractual counterparty.</p> <p>8 As far as interest is concerned, you identify who it 9 is payable to, we say by looking at the definition of 10 "default rate" where you get the words "relevant payee".</p> <p>11 The position is even clearer in relation to the 2002 12 agreement. Start with section 7(b), page 185:</p> <p>13 "A party may make such a transfer of all or any part 14 of its interest in any early termination amount payable 15 to it by a defaulting party."</p> <p>16 We say the same applies here, "payable to it" is 17 a reference to the section 6(e) closeout amount. In 18 relation to the 2002 agreement, that is perfectly clear 19 because of the words that have been added. It adds:</p> <p>20 "Together with any amounts payable on or with 21 respect to that interest [ie the section 6(e) amount] 22 and any other rights associated with that interest 23 pursuant to sections 8, 9(h) and 11."</p> <p>24 It is drawing a distinction between the amount 25 payable to it, on the one hand, and interest, on the</p> <p style="text-align: center;">Page 56</p>

<p>1 other. Again, you only know who the interest is payable 2 to when you look at the definition of "default rate". 3 Those are our submissions on the language of the 4 relevant provisions. 5 Turning to commercial commonsense, we say the Senior 6 Creditor Group's construction makes commercial sense, 7 Wentworth's construction does not. Wentworth argues 8 that the purpose of the default rate is to compensate 9 the person entitled to payment from being kept out of 10 its money and we agree, but we say the logic of that is 11 that before the section 7(b) transfer, the person who is 12 being kept out of his money and should be compensated is 13 the assignee. After a section 7 transfer, the person 14 entitled to the money who is being kept out of his money 15 and should be compensated for his cost of funding is the 16 assignee. 17 MR JUSTICE HILDYARD: Assignor first, assignee second? 18 MR DICKER: Yes. 19 If one accepts, and Wentworth asserts, that the 20 purpose is to compensate the person entitled to payment, 21 we say the logic of that involves asking: who is 22 entitled to payment? Initially, the assignor. So he 23 ought to get his cost of funding. He is being kept out 24 of the money. Post transfer, who is entitled to 25 payment? It is the assignee. Who is being kept out of</p> <p style="text-align: center;">Page 57</p>	<p>1 "Why am I interested in this? This is a period in 2 respect of which I had no interest in the debt and 3 a period for which you were entitled to payment." 4 It is also not clear how this would actually be 5 done. Presumably, the original counterparty would not 6 in fact have incurred any cost of funding for that 7 period, given that we are dealing with a period after 8 it's assigned the debt. So one would be necessarily 9 asking the original counterparty to work out what its 10 cost of funding would have been had it incurred a cost 11 of funding, had it not assigned the debt to the 12 assignee. In other words, building hypotheticals on 13 hypotheticals. That can't be what the draftsman had in 14 mind. 15 We say it would also be capable of producing 16 outcomes contrary to commercial commonsense. Imagine 17 a case in which the original contracting party had 18 a high cost of funding and assigns the claim to an 19 assignee with a low cost of funding. What sensible 20 reason could there be for the assignee to be entitled to 21 receive high cost of funding, which isn't his cost of 22 funding, it is the assignor's cost of funding, and 23 a cost of funding which, by definition, the assignor 24 isn't actually bearing for the relevant period? It 25 makes no sense at all, we say.</p> <p style="text-align: center;">Page 59</p>
<p>1 the money? It is the assignee, he should be entitled to 2 payment. 3 MR JUSTICE HILDYARD: At page 57, I think you said 4 "assignee" twice. I don't criticise you. It is just so 5 that there is no confusion. It is assignor first, 6 before the section 7 transfer; assignee afterwards. 7 MR DICKER: Your Lordship is correct, and I am grateful to 8 your Lordship. 9 MR JUSTICE HILDYARD: Just in case I became confused when 10 re-reading the transcript. 11 MR DICKER: My Lord, we also say it doesn't make sense for 12 the compensation to continue to be assessed by reference 13 to the assignor's cost of funding following an 14 assignment. It doesn't make sense for a number of 15 reasons. 16 First of all, it would require the assignee to 17 certify the cost of funding by reference to the original 18 counterparty's cost of funding. Potentially some years 19 after the original counterparty had disposed of its 20 interest and where the original counterparty had no 21 continuing economic interest in the sum at all. 22 On Wentworth's case, what the assignee needs to do 23 is to effectively go along to the assignor and say, 24 "What's your cost of funding for this period?" One 25 might expect the assignor to say:</p> <p style="text-align: center;">Page 58</p>	<p>1 Wentworth says, well, whatever the strength of all 2 of those linguistic and commercial commonsense points, 3 there is one reason why its construction must be the 4 right one. It says it must be the right one because the 5 draftsman was no doubt concerned not to expose parties 6 to a master agreement to the credit risk of third 7 parties. It argues the prohibition on assignment was 8 designed to prevent parties from being exposed to credit 9 risk of third parties, other than their specifically 10 chosen counterparty, and it contends the Senior Creditor 11 Group's argument undermines that in a way the draftsman 12 cannot have intended. 13 In our respectful submission, there is no force in 14 that submission. The first point that needs to be made 15 is that protection against exposure to credit risk is 16 necessarily defined by and limited to the protection 17 provided by section 7. 7(b) contains a carve-out -- in 18 fact, section 7 contains a carve-out. 7(a) in relation 19 to situations of consolidation, merger and amalgamation, 20 7(b) in relation to situations of assignment. 21 In relation to the former, 7(a), any issues that the 22 draftsman had are specifically dealt with by the 23 agreement. Nothing is said in relation to section 7(b). 24 So we say, to the extent that the draftsman was 25 concerned about not exposing one to credit risk, the</p> <p style="text-align: center;">Page 60</p>

<p>1 limits of his concern are logically expressed by the 2 limits of section 7, and 7(b) is an exception to the 3 prohibition in section 7.</p> <p>4 The second point is this: in our submission, we are 5 not concerned with the defaulting party being exposed to 6 the credit risk of the assignee in any normal sense. 7 The credit risk that the draftsman was undoubtedly 8 concerned with was the credit risk of being faced with 9 a counterparty that might be unable to perform its 10 obligations under the agreement for credit-related 11 reasons.</p> <p>12 When one talks about parties being entitled to 13 choose their contractual counterparties to ensure that 14 they're happy with the credit risk they are taking on, 15 the concern is to ensure that your counterparty will 16 perform, won't be precluded to do so by reason of credit 17 issues that it may have. That is obviously not the 18 present situation. The present situation involves a sum 19 owed by the defaulting party to the non-defaulting 20 party, the closeout sum. There aren't any remaining 21 obligations owed by the non-defaulting party. There 22 isn't, therefore, any possibility of the non-defaulting 23 party being unable to perform those obligations because 24 it gets into credit difficulties. This simply isn't 25 a situation involving credit risk in any normal sense.</p> <p style="text-align: center;">Page 61</p>	<p>1 amount that it owes. If it does so, the remedy is in 2 its own hands, the sum is no longer outstanding and 3 there will be no relevant cost of funding capable of 4 being recovered.</p> <p>5 Again, we do say your Lordship should bear in mind 6 the position, certainly take into account the position, 7 in other jurisdictions. Again, they divide into two. 8 Firstly, the position in New York, and your Lordship 9 will see the expert evidence in relation to that in due 10 course. There are authorities in New York to which the 11 Senior Creditor Group's expert refers, dealing with 12 attorneys' fees, for example, where it appears perfectly 13 clear that when an assignee claims an indemnity in 14 respect of his costs following an assignment of a claim 15 between two original counterparties, the attorneys' fees 16 one is talking about are the attorneys' fees incurred by 17 the assignee, not attorneys' fees that would have been 18 incurred by the assignor. We say that is analogous.</p> <p>19 Secondly, although more loosely -- again, 20 your Lordship will see some of this in due course -- 21 although one can't describe the German master agreement 22 in the same way as one can describe the English and 23 New York variants on the official ISDA master agreement 24 we say it is also significant that under German law it 25 appears to be the position that, following an</p> <p style="text-align: center;">Page 63</p>
<p>1 The third point we make is, the suggestion that the 2 assignee can't have been intended to have its cost of 3 funding because of a concern about credit risk is, in 4 any event, wholly artificial. When a party enters into 5 a master agreement, it is concerned about the 6 creditworthiness of the other party, as I said, because 7 of a risk it may fail to perform. The suggestion that 8 when you enter into a master agreement you're concerned 9 about credit risk in the sense that you are concerned 10 that if you go bust and you end up owing a sum to the 11 other party, your cost of funding, the amount you may 12 have to pay in respect of cost of funding, may go up in 13 that situation. The suggestion that this is a concern 14 which a party entering into a transaction would have in 15 mind again we say is unreal. You don't enter into 16 transactions on that sort of basis. Credit risk is to 17 do with the risk of non-performance of obligations owed, 18 not a risk of potentially higher cost of funding in the 19 event that you, yourself, default and owe a closeout 20 amount.</p> <p>21 If the defaulting party had had concerns along these 22 lines, then obviously it could have protected itself, it 23 could have amended section 7. That's one possibility.</p> <p>24 The alternative, of course, is that, in many 25 situations, it can protect itself simply by paying the</p> <p style="text-align: center;">Page 62</p>	<p>1 assignment, one is concerned with the cost of funding of 2 the assignee. The issue between the two experts is 3 whether, although that's the approach, such cost of 4 funding is effectively capped by reference to the 5 assignor's cost of funding. But as far as one is 6 testing this in terms of commercial sense, as a matter 7 of German law it appears they don't regard anything 8 surprising in the suggestion that following an 9 assignment you look at the position from the perspective 10 of the assignee. Again, as I said, your Lordship will 11 see that in due course.</p> <p>12 The next stage in Wentworth's argument is, it seeks 13 to support its position by relying on general principles 14 of English law relating to assignment. The assumption 15 underlying the argument appears to be that one should 16 assume the draftsman intended to replicate, reflect, 17 principles of English common law unless he indicated to 18 the contrary. Wentworth say, well, it is a principle of 19 English common law that an assignment can't put the 20 other contracting party into a worse position than he 21 would have been pre assignment.</p> <p>22 My Lord, we say, following the submissions I made 23 right at the start, there are potential dangers in 24 proceeding on the assumption that the draftsman 25 effectively intended to incorporate, whether lock, stock</p> <p style="text-align: center;">Page 64</p>



<p>1 and barrel or not, English common law's approach to the</p> <p>2 consequences of an assignment. There is certainly no</p> <p>3 reason, we say, why one should assume that the parties</p> <p>4 to a master agreement would have been aware of that</p> <p>5 material or could reasonably have been aware of it.</p> <p>6 MR JUSTICE HILDYARD: I found that a difficult proposition</p> <p>7 initially. I mean, these agreements are not in some</p> <p>8 cage (?), are they? They have to be governed according</p> <p>9 to the relevant laws.</p> <p>10 I can quite see the contract may contain its own</p> <p>11 rules properly construed in accordance with the relevant</p> <p>12 law. I find it difficult to think that there is some</p> <p>13 sort of protection against the application of any of</p> <p>14 the common law principles, except as specified in the</p> <p>15 contract as interpreted in accordance with the common</p> <p>16 law.</p> <p>17 MR DICKER: It is essentially a question of construction of</p> <p>18 the contract. One starts and stops with the wording.</p> <p>19 We certainly say that is the starting point. If the</p> <p>20 wording provides the answer, that is an end of it.</p> <p>21 Conversely, one shouldn't assume, essentially, that</p> <p>22 what the draftsman was doing -- whatever he provided for</p> <p>23 produces the same result and uses -- exactly is based on</p> <p>24 the same body of case law as one would find at common</p> <p>25 law, unless he clearly indicated the contrary.</p> <p style="text-align: center;">Page 65</p>	<p>1 My Lord, the passage I was going to show</p> <p>2 your Lordship is from the judgment of</p> <p>3 Lord Justice Millett. His judgment starts at page 27.</p> <p>4 The relevant passage is on page 31. It is the</p> <p>5 penultimate paragraph on page 31. Lord Justice Millett</p> <p>6 says:</p> <p>7 "We have heard much argument on what the position</p> <p>8 would have been if the assignment to Shire had not been</p> <p>9 by way of security only."</p> <p>10 It was by way of security only, but assume it</p> <p>11 wasn't, and we are dealing with a normal assignment:</p> <p>12 "Discussion has centred on the rule that the</p> <p>13 assignee of the benefit of a contract cannot recover</p> <p>14 damages for breach of contract in excess of the damages</p> <p>15 which would have been recoverable if there had been no</p> <p>16 assignment."</p> <p>17 Reference is made to the well-known cases in that</p> <p>18 respect:</p> <p>19 "It is, of course, obvious that the assignment</p> <p>20 cannot change the nature or extent of the obligation,</p> <p>21 but subject thereto and to the ordinary rules of</p> <p>22 remoteness, I should have thought that the assignee is</p> <p>23 entitled to recover damages in respect of all</p> <p>24 uncompensated loss which he or his assignor has</p> <p>25 sustained. This may be only another way of putting the</p> <p style="text-align: center;">Page 67</p>
<p>1 My Lord, we also say that, in any event, the</p> <p>2 construction for which the Senior Creditor Group</p> <p>3 contends is perfectly consistent with common law</p> <p>4 principles in relation to assignment. The proposition</p> <p>5 that the debtor can't be liable for more than he would</p> <p>6 have been liable to the assignor is ultimately</p> <p>7 a question of construction of the contract. It is not</p> <p>8 a rule of public policy. Wentworth appears to accept</p> <p>9 that.</p> <p>10 So if a contract permits assignment, it necessarily</p> <p>11 follows that the parties must be intending third parties</p> <p>12 to be capable of benefiting from it. The only question</p> <p>13 is, on what basis and what terms?</p> <p>14 We say, if the measure of damages varies over time,</p> <p>15 nothing inherently surprising in a contract which</p> <p>16 provides that the amount of any damages depends on the</p> <p>17 factual position of the assignee post assignment.</p> <p>18 Two authorities that it may be worth showing</p> <p>19 your Lordship at this stage in relation to that. The</p> <p>20 first is a decision in a case called L/M International</p> <p>21 Construction Limited v The Circle Partnership. It is in</p> <p>22 the authorities, bundle 1, tab 24.</p> <p>23 My Lord, I'm sorry, the version that appears to have</p> <p>24 gotten into my bundle is not the one I have marked up,</p> <p>25 so if your Lordship would give me one moment.</p> <p style="text-align: center;">Page 66</p>	<p>1 rule, but it has merit of bringing out the distinction</p> <p>2 between the heads of damage and the measure of damage.</p> <p>3 As at present advised, I do not believe that the rule</p> <p>4 under discussion has anything to do with the latter."</p> <p>5 What Lord Justice Millett is doing is drawing</p> <p>6 a distinction between heads of damage on the one side,</p> <p>7 and measure of damages. What, in our submission, he is</p> <p>8 saying is that, yes, it is correct that the debtor is</p> <p>9 protected, in the sense that it can't be liable for</p> <p>10 heads of damages to an assignee that it wasn't liable to</p> <p>11 an assignor for, but that is a different question of</p> <p>12 the measure of damages. There is nothing contrary to</p> <p>13 those cases in saying that, when one comes to the</p> <p>14 measure of damages, and you measure it by reference to</p> <p>15 the position of the assignee, you may end up with</p> <p>16 a different number from the number you might have ended</p> <p>17 up with in relation to the assignor.</p> <p>18 So we say nothing inconsistent if one adopts the</p> <p>19 approach taken by Lord Justice Millett in saying that</p> <p>20 cases about the extent of protection to an assignor</p> <p>21 don't actually address the situation that we are dealing</p> <p>22 with.</p> <p>23 My Lord, again, your Lordship may or may not find it</p> <p>24 interesting in due course that there was a similar</p> <p>25 distinction certain in certain of the expert evidence so</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 far as German law is concerned between essentially legal 2 liability on the one hand and factual damages on the 3 other. Again, your Lordship will see that in due 4 course.</p> <p>5 My Lord, the only thing perhaps I should add is, if 6 one just goes back to the paragraph in 7 Lord Justice Millett's judgment, and just picks up the 8 phrase after the reference to the three cases:</p> <p>9 "Obvious the assignment cannot change the nature or 10 extent of the obligation, but subject thereto and to the 11 ordinary rules of remoteness ..."</p> <p>12 Plainly one protection for the debtor here is, of 13 course, that if the assignee comes forward and says, 14 "I have this particular claim", and applying the normal 15 rules of remoteness that could not reasonably have been 16 in the contemplation of the debtor, even taking into 17 account the existence of the transfer provisions, then 18 it is not going to be liable for that sum. One is only 19 concerned with a claim for damages by the assignee which 20 does satisfy the rules of remoteness.</p> <p>21 MR JUSTICE HILDYARD: Common law of assistance there. 22 MR DICKER: Yes. Applying Lord Justice Millett's approach, 23 yes.</p> <p>24 My Lord, the second authority is Mr Justice Coleman 25 in a case called Lordsvale Finance v Bank of Zambia.</p> <p style="text-align: center;">Page 69</p>	<p>1 respect. So, essentially, I'm deriving a negative 2 absence of a point being taken, and it may be 3 your Lordship doesn't think this takes this very far. 4 The relevant discussion, if your Lordship wants to look 5 at it at some stage, is pages 163C to 164F.</p> <p>6 I think all I can say is that, in that case, the 7 point wasn't taken, it doesn't appear to have been 8 thought commercially absurd that when one is talking 9 about the cost of dollar deposits following an 10 assignment one is talking about the cost of dollar 11 deposits to the assignee as opposed to the assignor.</p> <p>12 My Lord, the final point --</p> <p>13 MR JUSTICE HILDYARD: It does seem to turn on a construction 14 of that agreement.</p> <p>15 MR DICKER: In a sense --</p> <p>16 MR JUSTICE HILDYARD: Yes, but this seems to be very -- will 17 I be able to extrapolate much from it?</p> <p>18 MR DICKER: I think not. As I said, I'm not sure I can put 19 it much higher than a situation in which no-one seems to 20 have certainly thought it was absurd. One can 21 understand why. If you have a syndicate of banks and 22 a provision which permits the syndicate to change and 23 essentially to have new assignees, there is nothing 24 inherently surprising in the idea that as the syndicate 25 rolls forward you apply the terms of the contract to the</p> <p style="text-align: center;">Page 71</p>
<p>1 MR JUSTICE HILDYARD: Where is that? 2 MR DICKER: I'm not sure, on reflection, how much benefit 3 your Lordship will derive from going through a detailed 4 discussion of the case. Can I just explain --</p> <p>5 MR JUSTICE HILDYARD: Where is it? 6 MR DICKER: Oh, I'm sorry. It is in authorities bundle 1, 7 tab 27.</p> <p>8 My Lord, can I just explain what we seek to say one 9 can derive from this case? The case involved 10 a syndicated loan agreement. The loan agreement 11 contained a provision for calculating the default rate 12 which was based on a debt cost of funding component for 13 each lender, namely, the cost as determined by each bank 14 of obtaining dollar deposits, and the definition of 15 "bank" included any of its assignees.</p> <p>16 The argument in the case was about whether, where 17 the assignee had acquired the claim at a discount, 18 interest should be based on the amount of the loan owed 19 by the debtor or the amount of the discounted purchase 20 price which the assignee had paid for the debt. The 21 answer was the former, not the latter.</p> <p>22 Subject to this, it doesn't appear to have been 23 suggested that the assignee was not entitled to 24 determine its own cost of obtaining dollar deposits but 25 was limited to the cost of the original bank in that</p> <p style="text-align: center;">Page 70</p>	<p>1 new members of the syndicate rather than the old members 2 and, if necessary, assignees as well.</p> <p>3 My Lord, the final point is this. Wentworth 4 contends that if the relevant payee includes an 5 assignee, then there is the potential for abuse. The 6 suggestion appears to be that the closeout amount could 7 be assigned to a party with a very high cost of funding, 8 and the benefit of the extra payment will then be shared 9 between the assignor and the assignee. Essentially, 10 a scheme: find someone with an extraordinarily high cost 11 of funding, assign the claim to him and spare the 12 spoils.</p> <p>13 My Lord, we say, with the greatest respect, 14 speculative scare stories of this sort are not a proper 15 basis on which to construe the master agreement. One 16 starts with the fact, again, certification required to 17 be rational and in good faith. Nor in those 18 circumstances could there be we say any risk of abuse. 19 If the assignee is entitled to cost of funding at a high 20 rate, that is because it actually has a high cost of 21 funding. If it doesn't receive its high cost of 22 funding, it won't be compensated by the sum necessary to 23 compensate it for its time value of money.</p> <p>24 In other words, it actually will have lost out. So 25 it has a high cost of funding, but that is because its</p> <p style="text-align: center;">Page 72</p>

<p>1 cost of funding is high. The two are the same. They 2 match each other. There isn't some magical generation 3 of a surplus which can then be generated in favour of 4 a third party. 5 One can, of course, as with almost any situation, no 6 doubt identify particular circumstances in which it may 7 still be possible to generate a surplus and to share it, 8 but we say if one simply thinks about a normal situation 9 of an assignment of a claim to an assignee with a high 10 cost of funding, there is nothing in there which 11 generates a spoil capable of being shared between 12 assignor and assignee, and, therefore, no risk of abuse, 13 at least in that standard situation. 14 My Lord, the trouble with these sorts of arguments 15 is, they almost always are capable of cutting both ways. 16 Go back to the submission I made previously about an 17 original counterparty with a very high cost of funding. 18 On Wentworth's argument, that original counterparty can 19 assign the claim to an assignee with a very low cost of 20 funding but the assignee can continue to receive the 21 benefit. Why wouldn't there be equal prospect of 22 a sharing of spoils in that situation? We do 23 respectfully say this is not a reliable method for 24 construing the master agreement. 25 In summary on question 10, in our submission, the Page 73</p>	<p>1 sought to submit an explanation for that difference. 2 My Lord, it may be -- section 8 may be an example of 3 this -- there are other situations in which the 4 draftsman hasn't followed through the logic of that -- 5 MR JUSTICE HILDYARD: By all means, think further about it, 6 if you would like. I think if you are going to maintain 7 that the draftsman has this sort of almost superhuman 8 accuracy without any slips into words like "relevant", 9 which can happen in drafting these sort of documents, 10 I think you have to make it good throughout the 11 document, really, rather than in the particular context 12 in which it works for you. 13 MR DICKER: My Lord, I entirely accept the point is 14 undoubtedly less strong to the extent it is not 15 reflected throughout. 16 My Lord, Mr Fisher has just referred me to 17 paragraphs 110 and 111 of our skeleton argument. 18 MR JUSTICE HILDYARD: Thank you. 19 MR DICKER: It will be quickest if your Lordship were just 20 to glance at 110 and 111, rather than me reading them 21 out. 22 MR JUSTICE HILDYARD: Yes. Would this be fair: you have 23 identified the problem, but the answer is not perfection 24 of drafting but a possible inconsistency in the use of 25 the word? Page 75</p>
<p>1 draftsman intended an assignee to be able to recover its 2 cost of funds following any assignment. That is the 3 effect of the language used. It is its natural meaning. 4 One sees that from the way in which the draftsman used, 5 on the one hand, "party", and, on the other hand, 6 "payee" and if one analyses why he used "relevant 7 payee". We also say it makes perfectly sensible 8 commercial sense. 9 Would your Lordship just give me one moment? 10 Your Lordship did raise a question in relation to 11 use of the word "party" in section 8. 12 MR JUSTICE HILDYARD: It may be a false point. My 13 understanding of the construction that you offer is that 14 the draftsman confined the use of the words "relevant 15 payee" to a very particular circumstance, and used 16 "party" when he meant "party". My question was, what 17 happens as to, for example, currency denominations? 8 18 appears to apply only to parties, on your version, 19 therefore, not to relevant payees. 20 MR DICKER: My Lord, at this stage can I respond simply in 21 this way: what I have been doing is essentially looking 22 at the various provisions for interest, which one can 23 think of, perhaps, as part of a broader whole. There 24 plainly is a distinction there between situations in 25 which "party" is used and "payee" is used. I have Page 74</p>	<p>1 MR DICKER: Use of the word "party", but that doesn't 2 necessarily undermine -- 3 MR JUSTICE HILDYARD: You say he was very, very careful to 4 restrict "relevant payee"? 5 MR DICKER: That is the point, yes. 6 Unless I can help your Lordship further, those are 7 our submissions. 8 MR JUSTICE HILDYARD: That has been extremely helpful. 9 Thank you. 10 Have you gobbled some of the time allotted to 11 Goldman Sachs, or is that by agreement between you? 12 MR DICKER: I think it may in part have been unilateral on 13 my part, but I do understand from my learned friend that 14 hopefully that won't be an issue. 15 MR FOXTON: My Lord, I am conscious it is 5 to 1. 16 MR JUSTICE HILDYARD: Do you want to start now? 17 MR FOXTON: I'm happy to start now, my Lord. When one looks 18 around this time, the money value of time is possibly as 19 obvious to all as the time value of money. I think we 20 can make some progress now. 21 Opening submissions by MR FOXTON 22 MR FOXTON: Your Lordship knows that Goldman Sachs 23 International was given permission to participate in 24 this hearing by the order of Mr Justice David Richards 25 of 23 June. My Lord, the terms of that participation Page 76</p>

<p>1 are limited to submissions of evidence and the making of</p> <p>2 arguments which don't repeat those of the Senior</p> <p>3 Creditor Group.</p> <p>4 We are very happy to adopt Mr Dicker's submissions,</p> <p>5 we don't intend to repeat them. There are some areas</p> <p>6 where we would like to make either some additional</p> <p>7 points or to develop topics further, most especially</p> <p>8 from the perspective of financial institutions.</p> <p>9 My Lord, our submissions are principally aimed at</p> <p>10 issue 11. There is very little to add on anything else.</p> <p>11 My Lord, I was going to begin with some further points</p> <p>12 on factual matrix. My Lord, then looking at what the</p> <p>13 treatment of loss, in particular the 1992 ISDA</p> <p>14 agreement, will tell the court about the correct</p> <p>15 approach to the construction of the cost of funding and</p> <p>16 "if it were to fund" language.</p> <p>17 I then want to pick up a point your Lordship has</p> <p>18 raised, which is whether the actual or notional funding</p> <p>19 costs must be transaction specific, if I can put it in</p> <p>20 that way.</p> <p>21 My Lord, the principal fresh topic which we wish to</p> <p>22 develop is to look at some of the ways in which</p> <p>23 financial institutions did indeed raise funds in</p> <p>24 response to the Lehman's default, and there are some</p> <p>25 examples of that.</p> <p style="text-align: center;">Page 77</p>	<p>1 themselves are many, varied and developing. We all know</p> <p>2 that particular iterations of the ISDA master agreement</p> <p>3 can have quite a long life. We went 10 years between</p> <p>4 1992 and 2002. We are often told a week is a long time</p> <p>5 in politics; ten years is a very long time in the way in</p> <p>6 which financial instruments are developed.</p> <p>7 My Lord, the last general point is this, that we are</p> <p>8 going to invite your Lordship to distinguish very</p> <p>9 carefully between general issues that are legitimately</p> <p>10 questions of construction and what are, in effect,</p> <p>11 anticipatory attacks on the way in which a particular</p> <p>12 relevant payee might seek to certify its cost of</p> <p>13 funding.</p> <p>14 My Lord, that distinction is very important.</p> <p>15 Statements in decisions on the ISDA master form have</p> <p>16 a very long half life, and can find themselves being</p> <p>17 resurrected in very different factual circumstances from</p> <p>18 those in which they were made, and, as we will seek to</p> <p>19 explain to your Lordship, the draftsman having drawn</p> <p>20 this very clear distinction between the general and the</p> <p>21 particular, we believe that the construction exercise</p> <p>22 should honour that distinction.</p> <p>23 My Lord, that takes us to just after 1 pm, and</p> <p>24 I propose to come back and turn to the factual matrix</p> <p>25 issue after lunch.</p> <p style="text-align: center;">Page 79</p>
<p>1 My Lord, when one looks at that and then tests the</p> <p>2 suggested distinction between debt and equity, which</p> <p>3 Wentworth and the joint administrators advance, one sees</p> <p>4 that the distinction is not capable of being maintained</p> <p>5 in practice. It will have a series of uncommercial</p> <p>6 consequences and be wholly unworkable in practice, as</p> <p>7 well as having what we submit would be the rather</p> <p>8 surprising effect that costs of funding actually</p> <p>9 incurred by financial institutions and others in</p> <p>10 response to Lehman's default would not be capable of</p> <p>11 falling within the cost of funding language in the</p> <p>12 default rate.</p> <p>13 My Lord, finally, there are some very short</p> <p>14 submissions indeed on issues 12 and 14.</p> <p>15 My Lord, the conclusions we will be inviting</p> <p>16 your Lordship to draw from these points are as follows.</p> <p>17 First, that, as a matter of construction, the cost</p> <p>18 of funding language doesn't preclude any particular type</p> <p>19 of funding at all. Still less does it preclude actual</p> <p>20 costs incurred in response to Lehman's default, for the</p> <p>21 purposes of those parties coming to certify them.</p> <p>22 My Lord, second, we would say it is very dangerous</p> <p>23 to seek to read words of limitation into actual or</p> <p>24 potential costs of funding, because the way in which not</p> <p>25 just financial institutions, but all corporates, fund</p> <p style="text-align: center;">Page 78</p>	<p>1 (1.00 pm)</p> <p>2 (The short adjournment)</p> <p>3 (2.00 pm)</p> <p>4 MR FOXTON: My Lord, Mr Dicker has already referred to the</p> <p>5 fact that regulatory requirements applicable to</p> <p>6 financial institutions require them to maintain certain</p> <p>7 ratios of debt to equity, and has made the submission</p> <p>8 that that is something that at least at that level of</p> <p>9 generality ought to have been within the contemplation</p> <p>10 of users of the form. That was a topic on which</p> <p>11 I wanted to say a little more, given Goldman Sachs'</p> <p>12 basis of intervention in the case.</p> <p>13 Your Lordship will know that ISDA's origins lie</p> <p>14 originally in a group of US financial institutions. We</p> <p>15 quite accept that the users of the form have spread</p> <p>16 beyond that initial base, but financial institutions</p> <p>17 remain a very important group, and we would say among</p> <p>18 the principal users of the master form.</p> <p>19 My Lord, it also ought to be uncontroversial that</p> <p>20 financial institutions fund themselves through a broad</p> <p>21 range of sources, both debt, equity and financial</p> <p>22 instruments which perhaps aren't so readily classifiable</p> <p>23 by either of those two descriptions.</p> <p>24 My Lord, we have mentioned a number of those in</p> <p>25 further information we have served: trust preferred</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 securities; hybrid capital; enhanced capital; contingent 2 capital; additional tier capital; and so it goes on. 3 My Lord, what is significant, for present purposes, 4 is it is not a matter of unbridled discretion for 5 a financial institution as to which form of funding it 6 secures. Of course there are the regulatory 7 requirements which I have referred to for capital ratios 8 which may, themselves, require a particular funding of 9 loss to take the form of equity rather than debt. 10 The regulatory requirements are not, themselves, 11 static, and would not have been seen to have been static 12 at the time the ISDA master agreement 1992 form was 13 drawn up. 14 My Lord, certainly, so far as the 1992 form is 15 concerned, one sees some manifestation of those 16 requirements in the user guide. I just wanted to take 17 your Lordship briefly to that in bundle 5. 18 My Lord, we have the 1992 user guide at tab 5. 19 My Lord, the passage I wanted to pick up was at page 135 20 of the bundle. It is discussing there, at the top of 21 the page, the election now available between first 22 method and second method and the explanation of 23 the introduction of second method. Your Lordship will 24 see what is said is: 25 "The fallback provision for the payment method on Page 81</p>	<p>1 additional capital. 2 My Lord, we say that all of those matters militate 3 very strongly against the suggestion that the ISDA 4 master form only allows for or contemplates debt funding 5 when using the "cost of funding" language in the 6 definition of "default rate". 7 My Lord, there are two responses to that contention, 8 and I think it is right that I should deal with them 9 now. One put forward by Wentworth and one raised for 10 the court's consideration by the joint administrators. 11 My Lord, so far as Wentworth are concerned, they say 12 that characteristics of particular users of the form 13 cannot be relevant to the court's construction of what 14 is, after all, a single standard set of terms. My Lord, 15 there is some irony, for what it is worth, in that point 16 coming forward from the skeleton from Wentworth, because 17 it was the party that had originally suggested that the 18 words "cost of funding" had a conventionally or 19 customarily narrower meaning for financial institutions, 20 but that heresy is no longer pursued. 21 Goldmans of course accept that the words have the 22 same meaning for all users of the master form, be they 23 financial institutions or anyone else, but that does not 24 mean that matters of fairly notorious application to 25 a significant group of users of the form and of which Page 83</p>
<p>1 early termination in the event parties fail to select 2 a payment methodology in the schedule has been 3 designated as the second method, partly in response to 4 past and recent statements by bank regulators, 5 suggesting that recognition of netting for capital 6 purposes could be conditioned on use of the second 7 method." 8 There we have the form, itself, at least insofar as 9 it is specifying the default when the choice between 10 first and second method is presented, relying upon the 11 regulatory capital regime applicable to banks as the 12 basis for the decision taken. 13 My Lord, even if one leaves aside any question of 14 regulatory requirement, the mix of funding which 15 financial institutions adopt and the relative weight of 16 debt and equity is of course also a matter of legitimate 17 concern so far as its market counterparties are 18 concerned, and, indeed, those who assess the financial 19 strength of financial institutions, be they rating 20 agencies or analysts. 21 So the choice of debt versus equity is certainly not 22 one that is value neutral in the market. It is 23 something that has implications, and those implications 24 are capable of influencing or framing the choice which 25 a financial institution has to make when raising Page 82</p>	<p>1 all potential users ought to be aware cannot influence 2 the court's construction of the phrase "cost of 3 funding". 4 My Lord, when one is relying upon matrix in support 5 of giving a phrase an extended meaning, enlarging the 6 universe of potential applications, the argument that 7 somehow a particular group falling outside those most 8 immediately concerned with the factual matrix are 9 somehow being disadvantaged is much reduced. It might 10 be rather different if we were contending that 11 a narrower scope should be given to words simply to 12 reflect the capital requirements imposed on banks. 13 My Lord, the other point that I think falls to be 14 made in response to Wentworth's argument is this: the 15 ratio of debt and equity is actually a matter of great 16 significance to all corporate users of the form. It may 17 be that non-financial institutions don't face the 18 requirements of Basel II and III, but the covenants 19 under which they themselves have borrowed money may well 20 impose requirements as to the debt/equity ratio, such 21 that for their own reasons if required to raise funding 22 they might have no choice but to raise it by way of 23 equity rather than by way of debt, for fear of falling 24 foul of those covenants. 25 My Lord, the point that the joint administrators Page 84</p>

<p>1 have raised is to draw the court's attention to 2 a decision of Mr Justice Briggs and raising the issue of 3 whether that has definitively held that the regulatory 4 capital position of banks is not admissible for the 5 purposes of construing the ISDA master form. 6 Your Lordship will have seen reference to that in 7 the skeletons, the Carlton Communications decision. 8 My Lord, it might be worth turning that up. That is in 9 authorities bundle 2 at tab 46. 10 My Lord, the specific context was obviously the 11 much-litigated question of whether section 2(a)(iii), 12 which created certain conditions precedent to payment 13 obligations under the ISDA form, how that should be 14 interpreted. A matter eventually resolved by the Court 15 of Appeal. The argument put forward in that case was 16 that the clause should not be interpreted as a walk-away 17 clause, which would discharge the non-defaulting party 18 from any obligation to pay, because that would cut 19 across the way in which capital adequacy requirements 20 imposed upon banks participating in the ISDA scheme had 21 hitherto been interpreted. 22 My Lord, one gets the point, I think, in summary at 23 paragraph 17. My Lord, that was Mr Nash's summary of 24 his factual matrix argument by reference to the 25 regulatory capital requirements. The argument, in Page 85</p>	<p>1 that, and you are then looking at "cost of funding" 2 language with no limitation in that language to debt, 3 you have, we would say, strong support from the factual 4 matrix that that language should not be narrowly 5 construed. 6 My Lord, that is all that I wanted to say in 7 addition to what Mr Dicker has already said on the 8 question of factual matrix. 9 My Lord, I then wanted to turn to what I think all 10 of us at various stages rather grandly called the 11 architecture of the ISDA form. The point I was 12 particularly keen to develop before your Lordship -- it 13 is a point on which Mr Dicker has made some very helpful 14 submissions as well -- is the interrelationship between 15 loss and default rate, and what the approach to the 16 former tells us about the latter. 17 My Lord has been taken to that definition of "loss" 18 in the 1992 form before. It might be worth just having 19 it open in front of us again, in core bundle tab 7, 20 page 161. My Lord, if one pulls together the 21 submissions made by Mr Trower and Mr Dicker in relation 22 to this clause, we submit that the combination of 23 the two is of real assistance in moving on to the 24 construction of default rate. 25 As Mr Trower pointed out, where you have an unpaid Page 87</p>
<p>1 effect, is, this can't be a walk-away clause, because 2 for reg cap purposes banks are acting on the basis that 3 it isn't. 4 My Lord, paragraph 19, unchallenged expert evidence 5 in the form of Professor Morrison. It is helpful, 6 I think, in identifying quite how recondite the point of 7 factual matrix was, to look at the summary of 8 Professor Morrison's opinion at paragraph 20. 9 My Lord, it was, with all respect to those advancing 10 it, a very ambitious argument that Basel II and 11 paragraph 13.7.9 of the Prudential source book for 12 banks, building societies and investment firms which 13 implemented it could be matters of which non-bank users, 14 as well as bank users, of the ISDA master form ought 15 reasonably to have been aware. 16 My Lord, we therefore say it is not surprising that 17 in paragraphs 25 and 26 Mr Justice Briggs holds that 18 this falls outside the ambit of permissible factual 19 matrix. 20 My Lord, we are in a very different territory. The 21 fact which users of the forms we say can reasonably be 22 treated as having been aware or at least having the 23 means of being aware is that regulatory capital 24 requirements may require a certain portion of funding to 25 take the form of equity rather than debt. Once you know Page 86</p>	<p>1 amount which has accrued, as it were, prior to the 2 designation of an early termination date, that gets 3 swept up in the loss method within the definition of 4 "loss". 5 The interest or the cost of funding in relation to 6 it that has occurred prior to the date of calculating 7 your loss sum is also swept up within that definition. 8 So for at least a period of time until you have 9 your -- when you have calculated your loss sum, you have 10 served your notification of it, and that then 11 crystallises the amount, you have an exercise being done 12 to work out the funding cost of the unpaid amount as 13 part of the loss exercise. Once you have notified your 14 loss, you then have a separate exercise, at least so far 15 as the contractual clause you are acting under, in 16 relation to the cost of funding, namely, the default 17 rate. 18 My Lord, it would, we say, be very curious if you 19 were conducting two different exercises on, in part at 20 least, the same underlying principle as part of your 21 loss calculation up to the date when you notify your 22 loss and then when addressing your cost of funding under 23 the default rate provision thereafter. 24 Although I suspect it would be a rare case in which 25 this would occur, you could have a closeout in which the Page 88</p>

<p>1 only element feeding into your loss calculation was 2 a prior unpaid amount, because if everything else had 3 sort of netted out, leaving no net sum, that would be 4 all there was left to calculate. But it would just be 5 the case that for the period between when it first 6 became payable and when it is eventually payable, you 7 would be determining the cost of funding under two 8 separate provisions but using very similar language. 9 My Lord, that shows quite how closely related the 10 loss and the default rate provisions are. As far as 11 loss is concerned, I think it would be very generally 12 accepted that we are not engaged in the search for 13 a single ultimate right answer. That which is produced 14 by the party acting in good faith and rationally is, 15 I suppose, fairly described as a proxy, to some extent. 16 It is an exercise in which I think even under the 1992 17 form the use of models to determine what the loss would 18 be, would be a matter that is entirely unobjectionable. 19 My Lord, it is probably worth pausing and thinking 20 that if one is in market quotation rather than loss, all 21 that is is the output of someone else's model, their 22 pricing model for the particular transaction. One is in 23 a context here in which the use of models to determine 24 loss or cost is very standard, and we would say nothing 25 surprising about it at all.</p> <p style="text-align: center;">Page 89</p>	<p>1 the same exercise, partly within the loss provision and 2 partly within the default provision, just simply for 3 different periods of time. 4 Mr Dicker mentioned the decision of the US Federal 5 Court for the Southern District of New York in the Intel 6 Corporation case. I think it would be helpful for 7 your Lordship to see that case, because, in relation to 8 loss, it reinforces what we say is the correct approach, 9 which is a construction approach which does not seek to 10 preclude anything in advance, or mandate any particular 11 approach but the role of the good faith and rationality 12 requirements thereafter. 13 My Lord, we have that in authorities bundle 4, 14 tab 128. My Lord, it is one of those documents where 15 the internal pagination is at the top of the page. 16 My Lord, if one goes to at the top of the page, what 17 is described as page 6 of 51, one sees the nature of 18 the dispute encapsulated in summary form. 19 MR JUSTICE HILDYARD: This is Judge Chapman? 20 MR FOXTON: This is Judge Chapman, my Lord. 21 MR JUSTICE HILDYARD: And she analyses it? 22 MR FOXTON: Your Lordship sees it is a dispute which, at 23 least in headline terms, is one which we would say is 24 very similar to the nature of the dispute before 25 your Lordship. Intel saying, basically:</p> <p style="text-align: center;">Page 91</p>
<p>1 Mr Dicker has shown your Lordship that in 2002 we 2 have nonexclusive language expressly referring to the 3 permissibility of the use of models, but that is 4 implicit in the 1992 form, either your own model or 5 someone else's. 6 My Lord, if one then stands back, we have, so far as 7 loss is concerned, clearly a regime in which very broad 8 language is used. We would say that language is used 9 with a view not to cutting anything out on an a priori 10 basis, but we have requirements of good faith and 11 rationality that then come into play, and we have, 12 although the word "certification" is not used, 13 a self-certification regime within those constraints by 14 the party serving the loss calculation. 15 My Lord, we say that provides, really, very strong 16 support for the view that, within the context of 17 the default rate, essentially, the same approach and the 18 same exercise is being undertaken. We have the general 19 language "cost of funding" without any attempt to limit 20 that to particular types. We have the 21 self-certification. We have, it is accepted, within 22 that, implied legal constraints of good faith and 23 rationality. And we have the fact that, at least for 24 certain types of cost incurred, the court may be 25 doing -- or, rather, the parties may be doing -- exactly</p> <p style="text-align: center;">Page 90</p>	<p>1 "We can calculate loss however we see fit, so long 2 as the calculation is made reasonably in good faith." 3 Lehman contending that the master agreement, itself, 4 limited the calculation methodology to a particular one, 5 rather here, as Wentworth submit, that the cost of 6 funding is limited to cost of a particular form of 7 funding. 8 My Lord, that summary is repeated later on. I don't 9 think we need to turn to that again, but Judge Chapman's 10 analysis begins at page 24 of 51. 11 My Lord, having set out the quotation from the 12 requisite part of the form, the judge notes: 13 "Nothing in the text that explicitly mandates any 14 particular calculation method or otherwise modifies the 15 plain meaning of that sentence." 16 Of course, my Lord, we would say, similarly here, 17 nothing in the "cost of funding" language which 18 explicitly mandates borrowing only. 19 My Lord, there is then reference to the user guide 20 discussion of "loss". If one goes over to page 25 of 21 51, after the quotation which appears, Judge Chapman 22 notes: 23 "The loss is intended to provide the parties 24 flexibility in selecting a method to calculate their 25 early termination payments and thereby functions as an</p> <p style="text-align: center;">Page 92</p>

<p>1 express alternative to the rigid methodology of using 2 market quotation." 3 My Lord, perhaps I might invite your Lordship -- it 4 may be your Lordship has already done so -- simply to 5 read through to page 27 of 51, because we say that there 6 is a great deal here which -- 7 MR JUSTICE HILDYARD: From, "Thus the users' guide on 20 8 ..." or where? 9 MR FOXTON: From "Thus the users' guide" -- just after the 10 quote on page 25, my Lord. 11 MR JUSTICE HILDYARD: I have reached the foot of 27. Do you 12 want me to read over? 13 MR FOXTON: My Lord, what is, we submit, very helpful in the 14 approach that Judge Chapman has taken there is of course 15 parties always urge on a court on this sort of argument 16 the uncertainty and unpredictability that will come from 17 the other side's approach. 18 Lehman's have done it in this case when dealing with 19 Intel's construction, and vice versa. But, as the judge 20 noted, the clarity, certainty and predictability, which 21 everyone agrees ISDA is looking to achieve, comes not 22 from trying to introduce limitations into contractual 23 language that does not have it, it comes from affording 24 a broad and flexible discretion to the party certifying, 25 the party who has suffered the cost of funding or the</p> <p style="text-align: center;">Page 93</p>	<p>1 being models for loss because loss will always be 2 a matter of modelling, or not always, but in many, many 3 instances will be a matter of modelling, but one might 4 baulk, prima facie, at modelling for interest, if 5 default rates and interest are broadly the same. 6 I was trying to work out in my own mind why that 7 might be so, and I think the reason I suggested to 8 Mr Dicker, and still feel, is because the habit of 9 the law here -- I don't know whether in the 10 United States -- is to regard that as essentially an 11 impersonal, generic response which is required. 12 To iron out the very problems you have identified to 13 me of the infinite difficulties of determining how 14 people would plug a gap. The response of the law has 15 always been, as far as I know: 16 "You mustn't look at the individual, you mustn't 17 even worry whether he was a borrower or an investor. 18 You must simply ascribe a one-size-fits-all response, 19 which may vary, sometimes 1 per cent above LIBOR, 20 sometimes more than that, it depends on the market 21 conditions, but it isn't made to measure." 22 I only put that out so that you see, you know, where 23 I am struggling. 24 MR FOXTON: My Lord, it is very helpful. It is fair to say 25 that we have all been able to rid ourselves of common</p> <p style="text-align: center;">Page 95</p>
<p>1 loss, and then requiring them to act rationally and in 2 good faith in certifying it. 3 My Lord, we submit that the parallels, for the 4 reasons I have developed, between issue of loss and 5 default rate are very close. Mr Zacaroli, I think, 6 would accept much of what I say if confined to an 7 interpretation of the "definition of "loss", but says it 8 is not appropriate to carry that across into the "cost 9 of funding" language in the default rate, but given the 10 similarity of the language that appears in both, the 11 similarity of the exercise, and the fact that, as we 12 have seen, sometimes the default rate is simply 13 finishing off the same function that will already have 14 been begun within the context of the loss calculation, 15 we say there is every reason to approach the 16 construction of those two provisions on the assumption 17 that they implement the same scheme and that they give 18 effect to ISDA's desire for certainty and predictability 19 in the same way. 20 MR JUSTICE HILDYARD: I mentioned broadly the same to 21 Mr Dicker, and I appreciate that in -- if not throughout 22 at least in due course, I have to rid myself of 23 preconceptions from other more mundane matters. I was 24 trying to work out why instinctively, or in the case of 25 my instinct, you don't baulk at the notion of there</p> <p style="text-align: center;">Page 94</p>	<p>1 law concepts of damages when it comes to interpreting 2 the loss provision, although I hope it is not unfair to 3 say that perhaps on very early encounters with the form 4 there were some judges who did tend to stray into more 5 familiar paths. 6 As far as compensating for the time value of money 7 is concerned, I would suggest that is not an area where 8 the history of English law has been at its happiest. 9 MR JUSTICE HILDYARD: We didn't even recognise a right to 10 interest for a very long time. 11 MR FOXTON: My Lord, we didn't, and we had a succession of 12 statutory interventions, and each of them gave rise to 13 problems, and perhaps only with Sempra Metals has that 14 sort of historical legacy finally been done away with. 15 My Lord, I quite accept that, in the exercise of 16 the statutory procedural remedy at the end of a hearing, 17 there are a number of simplifying assumptions built into 18 that. We would suggest that, because of the very 19 different nature of the task, and, frankly, because of 20 the rather unsatisfactory history of English law on 21 interest, that that really is of rather little 22 assistance in working out the interpretation of this 23 contractual provision. 24 My Lord, there is perhaps another point I can make. 25 There are, of course, costs of equity that don't require</p> <p style="text-align: center;">Page 96</p>



<p>1 a model to arrive at them, I am going to show 2 your Lordship some very shortly. Equally, in working 3 out costs of funding by borrowing, one sees models used. 4 This is exactly what the joint administrators did in the 5 witness statement that was placed before the court 6 seeking to work out what the consequences of various 7 arguments would be. 8 My Lord, one had various alternative approaches 9 based upon weighted average cost of all borrowing, 10 short-term borrowing, incremental long-term borrowing, 11 and the results presented. It is certainly not the case 12 that only equity can involve the use of models, any more 13 than it is the case that all forms of equity require you 14 to use a model to work out the cost of equity funding. 15 MR JUSTICE HILDYARD: I suppose the other factor which 16 I have been mulling over is on this side of the court, 17 your side of the court and Mr Dicker, it is quite a sort 18 of expansive version of "you take your victim as you 19 find him", and if he is in a hopeless financial 20 position, tipped into the most terrible problems by the 21 events that happened with respect to Lehmans, it could 22 be a very expensive answer, but you don't -- and 23 particularly if you are right about who the original 24 payee is, you may have a victim of the victim, as it 25 were, without any appreciation, probably, when you</p> <p style="text-align: center;">Page 97</p>	<p>1 MR FOXTON: My Lord, equally, one has seen costs of 2 borrowing which can be very high, indeed. So far as 3 "take your victim him as you find him" is concerned, one 4 might say that equally, I suppose, about their ability 5 to reflect their hedging arrangements, or lack of them, 6 in the calculation of loss. It is certainly true of 7 borrowing, where the terms on which they can borrow may 8 differ very markedly. 9 We say we don't really materially add to the 10 consequences that flow from "take your victim as you 11 find them", but when concerned with what is ultimately 12 a compensatory mechanism, if you have caused a greater 13 cost of funding to your victim, there is really no 14 injustice in requiring you to compensate them for that 15 cost, rather than for some different and lesser cost. 16 My Lord, the other point I wanted to make, just 17 finally on this topic, is this, that obviously what 18 models are doing very often is they are seeking to 19 predict future events. So when I go and get a market 20 quotation to close down a position on a two-year swap 21 transaction, for example, what very complicated 22 algorithms are doing, using interest rate curves, and no 23 doubt numerous other inputs, is to seek to arrive at 24 where we would be down the line on a predicted basis to 25 arrive at a present value of the position.</p> <p style="text-align: center;">Page 99</p>
<p>1 undertook the business, of that possibility. 2 I know that the control function of the certificate 3 will iron out irrationality, though that might not be 4 quite as easy to apply as it first seems, and good 5 faith, but isn't it quite a sort of startling example of 6 a very, very variable exposure? 7 MR FOXTON: My Lord, it is fair to say that, insofar as 8 issue 10 is concerned, Goldmans are not -- 9 MR JUSTICE HILDYARD: I know you don't say anything about 10 that. 11 MR FOXTON: -- involved in this issue, and I will refrain 12 from even offering a view as to who may be right and who 13 may be wrong. 14 MR JUSTICE HILDYARD: Yes. 15 MR FOXTON: My Lord, so far as the outcomes are concerned, 16 Goldmans have not yet certified their rate because they 17 obviously want to be informed by the court's ruling on 18 the clause. I think at an earlier stage the joint 19 administrators had put forward a surplus entitlement 20 proposal with a view to seeking agreement, which would 21 have offered simple interest rates from 10 to 22 18 per cent. I think our expectation and the rate we 23 anticipate certifying will be within that range. 24 MR JUSTICE HILDYARD: You may be a reasonably large 25 institution, for all I know.</p> <p style="text-align: center;">Page 98</p>	<p>1 Now, my Lord, if one is forward looking so far as 2 borrowing is concerned, one is probably engaged 3 similarly in a predictive exercise, if wanting to know 4 how a rate will move -- if it is a tracker rate, for 5 example, over a particular period. No doubt, again, 6 using interest rate curves and other inputs to get 7 there. 8 If one certifies at the end of the period, one is 9 able to look back with the knowledge of what has 10 happened. If one is dealing with the party who would 11 have borrowed at a tracker rate, one is able to look 12 back and see how the rate has moved. If one is dealing 13 with cost of equity looking back, one knows what 14 dividends have had to be paid over that period. 15 To some extent, the necessity of prediction, which 16 is what models enable us to do, may be more driven by 17 whether one is engaging in a prospective or 18 retrospective exercise than it is by any fundamental 19 difference between equity or debt as a way of funding. 20 My Lord, another point your Lordship made to 21 Mr Dicker -- it may be related to the same issue -- is 22 that if you're thinking of someone raising a sum of 23 money for a specific purpose, such as to fund a specific 24 default, I think my Lord felt that one would more 25 naturally think of debt as a means of raising that</p> <p style="text-align: center;">Page 100</p>

<p>1 funding rather than equity, and that perhaps the natural 2 situation in which you would more likely contemplate 3 equity being funded would be something to cover the 4 needs of an enterprise as a whole, or at least a very 5 large and significant specific need, rather than one of 6 a lesser size.</p> <p>7 My Lord, we would start from the definition of 8 "default rate" itself I suppose, first of all, to say 9 there is nothing in there that requires the actual or 10 notional funding to be one entered into for the specific 11 purpose of funding the relevant amount. There are 12 a number of reasons for that. The relevant payee may 13 not know what the relevant amount will be if it is in 14 dispute. He certainly won't know, in the vast majority 15 of cases, how long it will be outstanding for.</p> <p>16 My Lord, perhaps more fundamentally, we say that is 17 simply not how entities fund themselves in the ordinary 18 course. They will have general debt facilities which 19 will meet aggregate requirements for debt funding, just 20 as they will have equity raised for general corporate 21 purposes available where equity funding is required, and 22 to the extent that it is, if they are members of 23 corporate groups, it is quite likely that the debt and 24 equity funding is arranged at group level, with 25 companies within the group being able to have an</p> <p style="text-align: center;">Page 101</p>	<p>1 been.</p> <p>2 The words, whatever may be the commercial reality, 3 appear to indicate specific funding for the specific 4 exposure.</p> <p>5 MR FOXTON: My Lord, in relation to the first part of the 6 words, a company might have actually funded it, not by 7 entering into a funding transaction specifically and 8 solely for the purpose of doing that, but by drawing 9 down or obtaining an allocation on a facility that 10 exists either to which it is party or at parent level, 11 or neither of those things may happen. It simply leaves 12 the hole and does not plug it, in which case one is 13 concerned with the notional cost of doing so.</p> <p>14 That, we would submit, is still not the notional 15 cost of a bespoke, specific transaction to fund that 16 amount if what in fact would have happened, had it 17 sought to fund it, is it would have looked to benefit 18 from equity or debt funding raised at group level or 19 raised for general corporate purposes and effectively 20 allocate part of such a facility or such funding to plug 21 this particular hole.</p> <p>22 My Lord, we would say that, on either side of that 23 cost of funding or if it were to fund, one is not driven 24 to consider a specific purpose-built transaction, as it 25 were, to fund this specific amount. One is still --</p> <p style="text-align: center;">Page 103</p>
<p>1 allocation dependent on their particular needs.</p> <p>2 Certainly looking at the position of financial 3 institutions and the ordinary ISDA default, if I may so 4 term it, I think the idea of going out and obtaining 5 a specific funding facility, debt or equity, to cover 6 the default seems improbable, and an unlikely scenario.</p> <p>7 Much more likely you will be drawing on existing general 8 purpose facilities, be they debt or equity.</p> <p>9 My Lord, there is a decision of Mr Justice Burton, 10 which it might be worth briefing looking at, referred to 11 in the skeleton, Lehman Brothers v Sal Oppenheim, where 12 one sees debt funding being arrived at not by reference 13 to a facility taken out or a notional facility for 14 funding the specific default, but by reference to a much 15 larger and indeed anterior debt facility taken out by 16 the parent company.</p> <p>17 MR JUSTICE HILDYARD: I can quite see that it is 18 commercially unlikely that people, big institutions, or 19 even small institutions, do sort of piecemeal funding 20 and simply identify a possible exposure and go out and 21 cover it and no more. The architecture, for want of 22 a better word, seems to contemplate two possibilities. 23 One is that there has actually been funding of that 24 sort -- you may say not -- or, if there hasn't been, you 25 then have to envisage the counterfactual if there had</p> <p style="text-align: center;">Page 102</p>	<p>1 indeed it is more likely to be the case -- entitled to 2 look at an allocation from some wider general purpose 3 facility available to the company itself or the group of 4 which it forms part.</p> <p>5 MR JUSTICE HILDYARD: In circumstances, which may not be 6 completely hypothetical, you get a situation of 7 a disaster in 2008/2009, whenever it may be, of which 8 there is a horrible perfect storm of individual 9 exposures and regulators requiring much greater 10 protection than possibly they did in 2006, and they 11 require much greater level of capital coverage. The 12 institution, be it large or small, is then confronted 13 with the demands of its particular exposures, of which 14 this might be one, and the particular requirements of 15 the regulator. And it reckons:</p> <p>16 "Well, in order to cover both, I must go out into 17 the market and raise money from albeit a more expensive 18 source, nevertheless one which will suit me over the 19 longer term."</p> <p>20 Is the master agreement requiring, notwithstanding 21 the decision is motivated by those two factors, is the 22 counterparty, as it were, to be held harmless against 23 its superadded costs, or do you say that is all part of 24 the certification process?</p> <p>25 MR FOXTON: My Lord, I do say that, but I think in fairness</p> <p style="text-align: center;">Page 104</p>

<p>1 to your Lordship I should expand a little by way of 2 response. 3 MR JUSTICE HILDYARD: Yes. 4 MR FOXTON: First of all, if there is an occasion in which 5 one can link the need to raise equity funding to the 6 default of a particular institution under ISDA master 7 agreements, plural, it is this one. The consequences to 8 all of those on the other end of ISDA master agreements 9 from the various entities in the Lehman empire were very 10 significant, and if one added all of that together, it 11 was a very large sum. Then one is -- I accept this 12 isn't usually the case -- getting pretty close to 13 a situation where you would be raising equity for that 14 purpose anyway. 15 To move more closely to my Lord's example, if one 16 had the situation where the company or the entity simply 17 wasn't permitted to raise any more funding by way of 18 debt, and the only means open to it to plug the hole was 19 equity, we would say that there could not conceivably be 20 any legitimate complaint on the part of the defaulting 21 party if that is the cost that it now has to bear. 22 My Lord, if one accepts that as the premise, one 23 then has to accept that the wording is capable of 24 embracing funding of that kind, and one then is in the 25 realms of good faith and rationality as to the</p> <p style="text-align: center;">Page 105</p>	<p>1 prorate those as the only rational thing to do, or what 2 do you do? 3 MR FOXTON: My Lord, the court has various options on the 4 question of costs which don't necessarily stand or fall 5 with the question about whether equity funding can come 6 within the clause at all. I want to make that clear, in 7 case it is being presented to the court as a sort of 8 "all or nothing" choice. It would be possible, although 9 we agree with Mr Dicker that this is not the correct 10 analysis, to say that the word "cost of funding" does 11 not extend to fees of that kind. 12 MR JUSTICE HILDYARD: I see. Your primary submission is, in 13 agreement with Mr Dicker, that it does? 14 MR FOXTON: It does. 15 MR JUSTICE HILDYARD: I'm going to hold you to that for the 16 moment. 17 MR FOXTON: We would say the position there is really no 18 different than if you have incurred, you know, large 19 arrangement fees in arranging your borrowing on a group 20 level, which perhaps could easily have been reflected in 21 a higher interest rate, because one can repackage the 22 costs of a funding transaction in any number of ways. 23 Once again, you would need to properly allocate those -- 24 MR JUSTICE HILDYARD: Properly? 25 MR FOXTON: Well, rationally and in good faith.</p> <p style="text-align: center;">Page 107</p>
<p>1 certification. 2 My Lord, otherwise, it could lead to a number of 3 sort of rather arbitrary distinctions. If, for example, 4 the current requirements would permit me to raise 5 funding by way of debt, that the expectation in the 6 market is that those will be changed such that if I do 7 raise this funding by way of debt I could then find 8 myself having to go out and raise equity funding almost 9 immediately afterwards, it would, we would submit, be 10 very odd if a party who acted in anticipation was held 11 thereby to have precluded themselves from recovering the 12 actual cost of funding they incurred. 13 So we do some back to rationality and good faith as 14 the only reliable touchstones here to distinguish what 15 is within the clause and what is not. The attempt at 16 construction level to say either never any equity 17 funding or only if it was the only legal way of raising 18 funding at the time, will just lead to a number of very 19 arbitrary divides. 20 MR JUSTICE HILDYARD: Just to take another more particular 21 example, but within that construct. Supposing in the 22 mega issue which is required to solve the regulator's 23 problems and your own institution's problems as regards 24 counterparties, the costs of placing and underwriting or 25 anything like that are absolutely ginormous, do you</p> <p style="text-align: center;">Page 106</p>	<p>1 MR JUSTICE HILDYARD: Not irrationally? 2 MR FOXTON: No. 3 MR JUSTICE HILDYARD: Someone may say it is perfectly 4 rational. How effective is this control system? We 5 can't have "proper", we can't have "reasonable", it has 6 got to be "not bonkers", doesn't it? 7 MR FOXTON: In terms of rationality, we have obviously 8 borrowed that language from -- I say "we", I mean 9 contract lawyers have borrowed the language from -- 10 MR JUSTICE HILDYARD: Wednesbury. 11 MR FOXTON: -- Wednesbury. The reason we have done so -- 12 MR JUSTICE HILDYARD: And because Lord Justice Rix told us 13 to. 14 MR FOXTON: My Lord, sometimes in life there is more than 15 one reasonable answer to a problem. That is the 16 difficulty. When one presents issues to the court 17 ordinarily, there is simply a binary choice. There is 18 a right answer, simply because there will be a judicial 19 determination at the end of the process that becomes the 20 right answer. 21 Although I understand why your Lordship says "not 22 bonkers", what that really is a shorthand for is saying, 23 if there are a range of what can properly be described 24 as reasonable answers, the party certifying does not get 25 trumped simply because I prefer my reasonable answer to</p> <p style="text-align: center;">Page 108</p>

<p>1 his reasonable answer.</p> <p>2 MR JUSTICE HILDYARD: That is better than "bonkers", yes.</p> <p>3 MR FOXTON: My Lord, we say if you go back and look at the</p> <p>4 cases on contractual discretion, that is really what</p> <p>5 they are saying.</p> <p>6 MR JUSTICE HILDYARD: Your answer is that the no</p> <p>7 irrationality control mechanism would have its answer to</p> <p>8 Goldman Sachs' efforts to recover the superadded costs</p> <p>9 of a very large rights issue to, for example, whatever</p> <p>10 its equivalent would be, having regard to your corporate</p> <p>11 status, would be a sufficient tool, you say?</p> <p>12 MR FOXTON: My Lord, it would. I suppose I would go further</p> <p>13 and say, let's imagine that by the time you come to fund</p> <p>14 this loss the Government has, for reasons of, I don't</p> <p>15 know, control of the economy, decided to put interest</p> <p>16 rates up to 20 to 30 per cent or has introduced controls</p> <p>17 on the credit market or perhaps financial uncertainty is</p> <p>18 so great that the only way in which you can borrow money</p> <p>19 is at some huge rate of interest, no doubt the very same</p> <p>20 points your Lordship is putting to me in relation to the</p> <p>21 effect of this on the defaulting --</p> <p>22 MR JUSTICE HILDYARD: I don't think it would, actually,</p> <p>23 because that would arise very tightly in relation to the</p> <p>24 particular exposure. My question is when the costs do</p> <p>25 not really relate to this particular exposure but relate</p> <p style="text-align: center;">Page 109</p>	<p>1 cost of funding that the relevant payee has incurred and</p> <p>2 you have no legitimate basis to complain about that when</p> <p>3 it all follows from your default and not paying what you</p> <p>4 were legally obliged to pay."</p> <p>5 I was going to show your Lordship</p> <p>6 Mr Justice Burton's judgment in the Sal Oppenheim case</p> <p>7 in authorities bundle 3, tab 60. My Lord, it is fair</p> <p>8 today -- as I say, I am sure that the time spent arguing</p> <p>9 this point in this case would have been but a fraction</p> <p>10 of the attention which the calculation of the default</p> <p>11 rate is receiving before your Lordship.</p> <p>12 MR JUSTICE HILDYARD: It is what?</p> <p>13 MR FOXTON: It would be but a fraction of the time we are</p> <p>14 spending considering this point. It has not had</p> <p>15 anything like the same in-depth study.</p> <p>16 MR JUSTICE HILDYARD: Is it 3 or 2?</p> <p>17 MR FOXTON: My Lord, it appears it is 2 for everyone else,</p> <p>18 but 3 for me. Apologies.</p> <p>19 MR JUSTICE HILDYARD: I think it might be 2 in my lot,</p> <p>20 anyway.</p> <p>21 MR FOXTON: My Lord, the issue relating to the default rate</p> <p>22 is picked up at paragraph 48. My Lord, evidence was put</p> <p>23 forward in fact not as to the costs of a sort of</p> <p>24 transaction-specific funding being raised by the</p> <p>25 claimant, but as to senior credit default swaps of its</p> <p style="text-align: center;">Page 111</p>
<p>1 to some other need which, if satisfied, will also deal</p> <p>2 with exposure. Do you see what I mean? There is</p> <p>3 a crisis. You default or someone defaults against you,</p> <p>4 and the regulators have their requirements. You need</p> <p>5 much more money than the particular exposure because you</p> <p>6 need not only to cover but to double up your cushion,</p> <p>7 and the doubling up cushion costs a fortune. I am just</p> <p>8 puzzling whether irrationality will enable the other</p> <p>9 party to say, "Well, I'm not going to pay for that".</p> <p>10 MR FOXTON: My Lord, at the end of the day, in order to be</p> <p>11 able to claim it, it has to come back to being a cost of</p> <p>12 funding the relevant amount. Both as to the principal,</p> <p>13 if I can call it that --</p> <p>14 MR JUSTICE HILDYARD: Funding the relevant amount.</p> <p>15 MR FOXTON: -- and the period of time for which you will be</p> <p>16 paying this rate, those are both specific. But,</p> <p>17 my Lord, I would suggest that the very same issues can</p> <p>18 and probably did arise during the financial crisis in</p> <p>19 terms of debt funding, and for the defaulting party to</p> <p>20 say, you know, the reason you are having to borrow at</p> <p>21 25 per cent has very little to do with me, I could never</p> <p>22 have foreseen that when I entered into my ISDA master</p> <p>23 agreement with you back in 1996. The answer to that</p> <p>24 would all be:</p> <p>25 "Well, you know, at the end of the day, that is the</p> <p style="text-align: center;">Page 110</p>	<p>1 parent. My Lord, at 51 to 53, various points were taken</p> <p>2 as to the sufficiency and, indeed, relevance of</p> <p>3 the evidence put forward.</p> <p>4 You will see that the rate in fact used was taken</p> <p>5 from a debtor in possession credit agreement, entered</p> <p>6 into by the parent prior to the -- I think on</p> <p>7 17 September, which would have had a minimum lending</p> <p>8 rate of 11 per cent. At paragraph 53 Mr Justice Burton</p> <p>9 accepted that that was an available source of funding to</p> <p>10 the company. He took the 11 per cent and added the</p> <p>11 default rate 1 per cent to arrive at 12 per cent</p> <p>12 compound interest.</p> <p>13 My Lord, it is interesting in passing simply because</p> <p>14 the suggestion that it is only when one gets into costs</p> <p>15 of equity that one is going to be worried about</p> <p>16 exceeding the Judgments Act rate. Plainly not correct,</p> <p>17 one can have high borrowing levels.</p> <p>18 Here the facility was for I think \$450 million,</p> <p>19 whereas the amount being recovered was about</p> <p>20 2.96 million euros. The facility had been taken out by</p> <p>21 the parent rather than by the relevant payee, but</p> <p>22 nonetheless it provided -- because it would have been</p> <p>23 funding available to the claimant as the subsidiary,</p> <p>24 Mr Justice Burton felt able to determine the default</p> <p>25 rate by reference to it.</p> <p style="text-align: center;">Page 112</p>

<p>1 My Lord, in a number of respects, therefore, in the 2 absence of sort of transaction-specific funding, the 3 fact that it's involved funding being raised at parent 4 level which is available to the subsidiary, we say that 5 this illustrates that the cost of funding, or "if it 6 were to fund" language is not contemplating or at least 7 certainly not requiring funding to be on the basis of 8 the payee either actually or notionally entering into 9 a specific funding transaction for the specific amount 10 payable under the closeout provision.</p> <p>11 My Lord, the third topic I wanted to go to was just 12 to look, by reference to some real-world examples --</p> <p>13 MR JUSTICE HILDYARD: I think in your skeleton argument 14 I was just trying to see it, you say that in this case 15 the certificate was not accepted because there was 16 literally no evidence to support it, or at least it 17 seemed to be confounded by such evidence as there was. 18 Is that right?</p> <p>19 MR FOXTON: My Lord, the evidence at paragraph 48 was, 20 I think, effectively unsupported. When one looks at 21 paragraph 50, what the judge says: 22 "Mr Singh has not sought to evidence the actual 23 borrowing of monies." 24 Then the first point taken is paragraph 51: 25 "On the face of Mr Singh's evidence, he said nothing</p> <p style="text-align: center;">Page 113</p>	<p>1 almost any form of debt funding is capable, as a matter 2 of construction, of falling within the clause, equity is 3 not.</p> <p>4 My Lord, we were asked at an earlier stage in this 5 case to provide further information of costs of funding 6 premised upon equity funding rather than debt. My Lord, 7 we gave some further information in volume 7, beginning 8 at page 187.</p> <p>9 MR JUSTICE HILDYARD: In the old days, the US practice for 10 accountancy and our practice with respect to the 11 treatment of preference shares was in fact polar 12 opposites. We counted them as shares and they counted 13 them as debt.</p> <p>14 MR FOXTON: My Lord, yes, and the accounting treatment, one 15 suspects, is capable of changing over time as well.</p> <p>16 MR JUSTICE HILDYARD: I don't know what the position is 17 under IFRS, but there we are, yes. 18 Anyway, your extra evidence?</p> <p>19 MR FOXTON: My Lord, yes. Page 188 is the first example, 20 which was the Goldman Sachs Group preferred equity. 21 My Lord, this was a way in which the Goldman Sachs 22 Group did actually fund itself following the insolvency 23 of Lehman.</p> <p>24 MR JUSTICE HILDYARD: Do I have the right thing? Volume 7 25 is correspondence.</p> <p style="text-align: center;">Page 115</p>
<p>1 about the position on 15 December, which is when the 2 payment date arose."</p> <p>3 MR JUSTICE HILDYARD: You draw the line at "no evidence", 4 not "sufficient evidence for the purpose of settling 5 a certificate"? I know you are going to get on to 6 certificates, but just so I am forewarned.</p> <p>7 MR FOXTON: My Lord, the clause says that no evidence is 8 required, and I suppose the word "certification", one 9 ordinarily contemplates the single piece of paper with 10 the assertion.</p> <p>11 MR JUSTICE HILDYARD: I see.</p> <p>12 MR FOXTON: But it appeared at least that Mr Justice Burton 13 was concerned that the document in its terms wasn't 14 enough to satisfy him that the requirements of 15 the clause had been met, but the conclusion he did 16 arrive at by reference to the 11 per cent source of 17 funding available to the parent under a much larger 18 facility was capable of providing a basis for assessing 19 an interest rate of 11 plus 1, 12 per cent in the end.</p> <p>20 My Lord, debt and equity. Phrases which obviously 21 are very easy to band about in the abstract. It arises, 22 because certainly I think on Wentworth's submission the 23 touchstone for funding that is in and funding that is 24 out is, in part, to be answered by reference to those 25 distinctions. Debt can be in -- as I understand it,</p> <p style="text-align: center;">Page 114</p>	<p>1 MR FOXTON: My Lord, it is an unlikely place for it to 2 appear, but that's how it's been treated.</p> <p>3 MR JUSTICE HILDYARD: It is a letter from Cleary Gottlieb, 4 is it?</p> <p>5 MR FOXTON: My Lord, that's right. The letter begins at 6 187.</p> <p>7 MR JUSTICE HILDYARD: Thank you.</p> <p>8 MR FOXTON: My Lord, there are various examples given of 9 costs of equity funding actually incurred by financial 10 institutions in response to the financial crisis that 11 followed Lehman's insolvency.</p> <p>12 MR JUSTICE HILDYARD: Yes.</p> <p>13 MR FOXTON: Your Lordship will have seen the summary of 14 the provisions there, that you have dividends in a fixed 15 sum of 10 per cent per year.</p> <p>16 MR JUSTICE HILDYARD: Where are you reading now?</p> <p>17 MR FOXTON: Paragraph 1(a) on page 188.</p> <p>18 MR JUSTICE HILDYARD: I have it, yes.</p> <p>19 MR FOXTON: My Lord, as we will see after the shorthand 20 writer's break, if for any reason they weren't paid in 21 a year, they didn't disappear. The entitlement was 22 rolled up to be paid out next time. You had 23 a redemption price, so that rather like capitalising the 24 benefit of the dividends otherwise payable, if the 25 company wanted to redeem the preferred stock, you had to</p> <p style="text-align: center;">Page 116</p>

<p>1 pay 110 per cent plus the value of any accrued but 2 unpaid dividends. 3 My Lord, in addition, Berkshire Hathaway were given 4 warrants enabling them to receive net shares of 5 13.1 million, which plainly was another cost, as it 6 were, to Goldman Sachs of raising this funding. 7 My Lord, if one simply takes the 10 per cent as the 8 obvious example, the distinction between that amount 9 payable on preferred equity funds raised and an interest 10 rate payable on debt funds raised is really very 11 difficult to discern from a commercial perspective. 12 There is both a transaction, you have a fixed and 13 identifiable rate of return, and we would submit that it 14 would strike users of the ISDA master form as wholly 15 uncommercial and absurd if 10 per cent subordinated debt 16 was capable of being a cost of funding, but the amounts 17 payable fixed under these preference shares were not. 18 MR JUSTICE HILDYARD: More limited pool, because it is only 19 out of distributable profits, but you say that makes no 20 difference? 21 MR FOXTON: My Lord, it doesn't, but of course one can have 22 a limited recourse debt where it comes from a limited 23 pool, plus insofar as the pool is limited in one year, 24 as your Lordship says, they accrue and, absent there 25 never coming a point in time when there is enough Page 117</p>	<p>1 I hope my Lord finds Goldman Sachs group form 8K, 2 reporting date 23 September 2008. The document is not 3 paginated, but the third page has a section describing 4 the Berkshire Hathaway issue of cumulative perpetual 5 preferred stock. 6 MR JUSTICE HILDYARD: How does it begin? 7 MR FOXTON: It appears under a heading "Item 3.03. Material 8 modification of the rights of securities holders". It 9 is the first two paragraphs under that heading. 10 My Lord, as well as making good the sort of 11 cumulative nature that although one obviously rightly 12 under English and, it would appear, New York law speak 13 of a dividend as being discretionary, even on 14 a preferred equity, it doesn't go away, it is 15 accumulated, and there are legal consequences of not 16 paying it, in terms of restrictions on the company's 17 ability to take certain steps. That is leaving aside 18 the commercial impact of a company that had issued 19 preferred equity and although it had profits to 20 distribute, did not distribute them. 21 My Lord, in commercial terms, we would say that the 22 position there is really not readily or meaningfully 23 distinguishable from a debt transaction where the debtor 24 had the ability to postpone the payment of interest, for 25 example, by rolling it up into the capital, capitalising Page 119</p>
<p>1 profits to pay them, they will be paid. 2 My Lord, I am conscious we have reached the point 3 when the shorthand writers normally get their break, if 4 that is an otherwise convenient moment. 5 (3.12 pm) 6 (A short break) 7 (3.18 pm) 8 MR FOXTON: I want to show your Lordship just a little bit 9 more about the way in which those preference shares 10 operated, because it, I think, sort of further reveals 11 the difficulties in Mr Zacaroli's binary equity/debt 12 choice when determining what falls within the default 13 rate clause. 14 I identify the volume number with some 15 circumspection, but I am hoping in perhaps 4B of 16 the authorities bundle your Lordship might have a tab 17 143. It is 4A, I am told, my Lord. 18 MR JUSTICE HILDYARD: We looked at it yesterday, didn't we? 19 I have 4A of the authorities. 20 MR FOXTON: My Lord, that will be it, I think. I'm not sure 21 why it is in the authorities bundle. It is in the 22 authorities bundle and I think it is bundle 4A, I am 23 told. 24 MR JUSTICE HILDYARD: Thank you very much. 25 MR FOXTON: It is tab 143. Page 118</p>	<p>1 it, or by deferring it in some way. 2 My Lord, we can put that bundle away and go back to 3 bundle 7, the correspondence bundle. My Lord, it is 4 page 189, the second example we give there of a way in 5 which a financial institution actually did raise funding 6 at this time. These are the MCNs, the mandatorily 7 convertible notes which Barclays Bank issued to Qatar 8 Holding and others. 9 Those obviously carried a fixed annual coupon, as we 10 see, of 9.75 per cent until conversion. If Barclays 11 had, at any stage, wanted to retire any shares obtained 12 as a result of converting the notes, they plainly would 13 have had to have paid a price, a cost, in doing so. 14 It is not clear to me whether Wentworth say, "Well, 15 we accept that up until the point of conversion this 16 would be capable of constituting debt funding", that you 17 ignore any elements of the cost of issuing these MCNs 18 that relate to any equity character, but, my Lord, it is 19 really very difficult looking to extract parts of what 20 are a single commercial transaction. 21 One suspects that the ability to convert into equity 22 is for the purchaser of the notes a benefit that might 23 lead them to accept a lower coupon rate, much as one may 24 go high on the brief and low on the refresher. I see it 25 is clearly a concept not unknown in South Square. Page 120</p>

<p>1 MR JUSTICE HILDYARD: Do you wish a right of reply?</p> <p>2 MR FOXTON: My Lord, it is a general thing. We come on to</p> <p>3 this when we look at Wentworth's response on the hybrid.</p> <p>4 The problem is you get interrelated parts when you get</p> <p>5 a funding package. It is really very difficult to try</p> <p>6 and strip either a single element, or parts of them, in</p> <p>7 isolation. That, we say, is a further difficulty in</p> <p>8 trying to say, well, the debt parts of a hybrid</p> <p>9 transaction are capable of constituting cost of funding</p> <p>10 but the equity parts are not.</p> <p>11 My Lord, the final example that we gave on</p> <p>12 page 189 -- I don't think we need to look at that in any</p> <p>13 detail. That was another financial institution,</p> <p>14 Morgan Stanley, raising funding through perpetual, in</p> <p>15 that case noncumulative, convertible preferred stock.</p> <p>16 Fixed dividend, once again, of 10 per cent, and the</p> <p>17 redemption price, once again, involving a premium over</p> <p>18 the face value to reflect that.</p> <p>19 My Lord, those are only illustrative of the vast</p> <p>20 array of potential financial instruments by which users</p> <p>21 of the ISDA form could fund or plug holes in their</p> <p>22 balance sheets following a default. But, my Lord, we</p> <p>23 say that they do reveal the essentially artificial</p> <p>24 nature of the distinctions which Wentworth and the joint</p> <p>25 administrators are inviting the court to draw when</p> <p style="text-align: center;">Page 121</p>	<p>1 For certain types of subordinated debt, one suspects</p> <p>2 your prospects of receiving your payment will be rather</p> <p>3 greater as the holder of preferred equity than as the</p> <p>4 holder of limited recourse subordinated debt.</p> <p>5 The joint administrators suggest, "Well, is the</p> <p>6 distinction between when you have a fixed amount that</p> <p>7 you are obliged to pay, as opposed to an amount which is</p> <p>8 discretionary?"</p> <p>9 My Lord, the equity or hybrid instruments we have</p> <p>10 looked at do involve a fixed amount, but, again, one</p> <p>11 could have forms of borrowing where, if the amount</p> <p>12 payable is what is left at the bottom of a waterfall,</p> <p>13 there could be a variable amount there, income notes and</p> <p>14 matters of that nature.</p> <p>15 Another suggestion made by the joint administrators</p> <p>16 is, well, if the payment is discretionary, that</p> <p>17 represents the point of distinction. But the</p> <p>18 non-payment of dividends on preferred equity carries</p> <p>19 legal consequences, including the rolling up of</p> <p>20 the dividend, and in due course you can have scenarios</p> <p>21 where if you don't pay dividends for a period of time</p> <p>22 the holders of the preferred stock are able to put their</p> <p>23 own directors on the board and so forth, all matters of</p> <p>24 commercial significance. Equally, borrowing facilities</p> <p>25 may enable the debtor to postpone the point of payment</p> <p style="text-align: center;">Page 123</p>
<p>1 interpreting the phrase "cost of funding" only to</p> <p>2 include cost of funding with a debt character.</p> <p>3 My Lord, it might be worth just picking up some of</p> <p>4 the points of distinction which it is suggested may</p> <p>5 represent, as it were, the means by which the court can</p> <p>6 distinguish what is in from what is out. Wentworth</p> <p>7 says, "Well, only borrowing imposes an obligation to</p> <p>8 repay". My Lord, that is not true of perpetual</p> <p>9 borrowing, such as perpetual subordinated borrowing or</p> <p>10 perpetual notes, perpetual bonds. But in economic</p> <p>11 substance, if a borrower has an unrestricted right to</p> <p>12 defer payment of principal for so long as they are</p> <p>13 paying interest, it is not meaningful to say that there</p> <p>14 is an obligation to repay the amount there at a fixed</p> <p>15 point in time. If one is talking about limited recourse</p> <p>16 borrowing, the repayment obligation will be conditioned</p> <p>17 by the availability from the limited recourse assets of</p> <p>18 funds to do that.</p> <p>19 My Lord, we say that isn't a legitimate way of</p> <p>20 distinguishing between the two. The distinction that</p> <p>21 borrowing carries interest in equity does not -- we have</p> <p>22 just looked at the coupons payable on either preferred</p> <p>23 equity or hybrid instruments, which we would say it is</p> <p>24 very difficult indeed meaningfully to distinguish from</p> <p>25 interest payable on a loan.</p> <p style="text-align: center;">Page 122</p>	<p>1 for a period of time.</p> <p>2 So, my Lord, we submit that none of those provide</p> <p>3 any satisfactory touchstone for distinguishing between</p> <p>4 debt funding and equity funding. It is a distinction</p> <p>5 which, were it to be read into the clause as part of</p> <p>6 the exercise of construction, would generate endless</p> <p>7 dispute and really destroy the predictability and</p> <p>8 certainty which ISDA were looking to achieve.</p> <p>9 MR JUSTICE HILDYARD: This all circles around the notion of</p> <p>10 cost? Wentworths say that the conditional exposure of</p> <p>11 a company to distribute in accordance either with</p> <p>12 a fixed percentage or by reference to ordinary shares is</p> <p>13 not the same as a cost.</p> <p>14 MR FOXTON: I think, my Lord, we would say that if one</p> <p>15 looks, for example, at the 10 per cent payable on the</p> <p>16 Goldman Sachs preference shares issued to Berkshire</p> <p>17 Hathaway, to say that that is not properly described as</p> <p>18 a cost of that funding is really a commercially absurd</p> <p>19 statement. The fact that you do not have an</p> <p>20 unimpeachable right to receive that amount at the same</p> <p>21 point every year, at least under English and I think</p> <p>22 New York preferred equity, does not prevent the right</p> <p>23 accumulating, nor does it prevent the adverse</p> <p>24 consequences for not paying it.</p> <p>25 MR JUSTICE HILDYARD: I think one of the distinctions may</p> <p style="text-align: center;">Page 124</p>

<p>1 be, or may be suggested to be, the right of 2 participation, however measured, is not the same as 3 a cost. The giving of a right is not in exposing 4 a cost -- entitlement to it is not a claim in cost, if 5 you like.</p> <p>6 MR FOXTON: My Lord, I see the point, but we would say that 7 first of all, with limited recourse debt one could 8 describe that as a right of participation in some ways, 9 and yet there is no suggestion that that is not capable 10 of constituting a cost. And that from the commercial 11 perspective, the suggestion that a fixed coupon on 12 preferred equity was not a cost of the funding is one 13 that would strike users of the form as a very technical, 14 uncommercial and absurd distinction, my Lord.</p> <p>15 MR JUSTICE HILDYARD: It is a distinction drawn, isn't it? 16 I mean, for accounting purposes may be equated and 17 brought out all sorts of reasons why they are 18 commercially analogous. A share is a share and debt is 19 debt. There are differences, aren't there?</p> <p>20 MR FOXTON: I suppose it partly comes to this question -- 21 your Lordship mentioned accounting, there are forms of 22 debt which don't take the legal form of a loan at all. 23 Repo agreements with the sale and repurchase are always 24 accounted as loans. They take the legal form of a sale 25 contract, on the one hand, and an obligation to</p> <p style="text-align: center;">Page 125</p>	<p>1 knowledge as to the proper law that will govern the 2 actual or notional funding transaction. There is 3 nothing that requires that to be governed by the same 4 law. Attempting to use refined distinctions under 5 English law as to the form of particular types of 6 contract as opposed to their economic substance would 7 cause very real difficulties if the funding is obtained 8 or would have been obtained not under an English law 9 transaction, but under something very different.</p> <p>10 My Lord, that would be a further reason why we would 11 say that the draftsman uses general language and why the 12 court should not be looking to read it down by reference 13 to either the English law procedural history of court 14 awards of interest or other formal distinctions drawn 15 between loans and sale contracts, for example, when 16 their economic rationale and intent is to achieve the 17 same outcome.</p> <p>18 My Lord, I have mentioned Wentworth's response on 19 hybrid instruments, which is to say, well, the debt 20 parts of them are debt and can fall within the clause, 21 and the rest cannot.</p> <p>22 I think the way in which it is put is that, for the 23 purpose of certifying, you would disentangle the costs 24 of borrowing from the costs of equity.</p> <p>25 My Lord, it is artificial, for reasons we have</p> <p style="text-align: center;">Page 127</p>
<p>1 repurchase on the other. Finance leases, numerous 2 others, where one is able to achieve what is, in 3 economic terms, something that is indistinguishable from 4 borrowing through the legal form of something that is 5 not a loan.</p> <p>6 My Lord, it is not clear to us whether the 7 contention being urged on your Lordship is that the cost 8 of funding falls to be tested by the legal form rather 9 than the commercial character of the instrument. If 10 that is the suggestion being made, I would venture to 11 suggest it would cause consternation in the commercial 12 community using that. It would not accord with their 13 reasonable expectations of how the phrase "cost of 14 funding" would be achieved.</p> <p>15 My Lord, all of this sort of uncommercial 16 distinction has been drawn not to give effect to some 17 words that do appear in the contract which doesn't 18 distinguish between one type of funding and another, but 19 to serve some inherent but unstated limitation.</p> <p>20 MR JUSTICE HILDYARD: You say there are millions of means of 21 funding and you have to pay the cost of it?</p> <p>22 MR FOXTON: My Lord, that is it.</p> <p>23 My Lord, obviously we are concerned with construing 24 an English law, or in the case of others, New York law 25 governed viz the contract. But one has absolutely no</p> <p style="text-align: center;">Page 126</p>	<p>1 already given, when you have a package of rights, to 2 think you can take out one part without allowing for the 3 fact that it was negotiated as part of a greater whole. 4 But, once again, it is very difficult to see how both 5 the draftsman and the users of the form can have 6 contemplated that exercise.</p> <p>7 The idea that the party certifying needs to sit down 8 and engage in some disentangling exercise from the 9 hybrid funding it has used or would have used and the 10 scope for dispute thereafter when the other party says, 11 "Well, I don't accept that the bits you have identified 12 as the debt element really are the debt elements".</p> <p>13 My Lord, we say that would be a recipe for 14 litigation which might have champagne corks popping in 15 the Temple and elsewhere, but would be a source of great 16 dissatisfaction on behalf of those who use the form.</p> <p>17 My Lord, in terms of where this call goes, it almost 18 comes back to where we started, that one has a continuum 19 of methods of funding and of financial instruments 20 available to a party looking to obtain funding. There 21 aren't the clear, bright line divides between debt and 22 equity that Wentworth would suggest. The attempt to 23 draw those divides would lead to transactions which are 24 commercially virtually identical being treated in 25 different ways. Given all those difficulties, and then</p> <p style="text-align: center;">Page 128</p>



<p>1 coming back to the very simple, and we would say wide, 2 wording used in the form, there is simply no proper 3 basis to make the attempt and to seek to read in 4 limitations of that kind within the words "any cost of 5 funding". 6 My Lord, that is, I think, most of what I wanted to 7 say on issue 11. Otherwise, we are very content to 8 adopt the submissions that Mr Dicker has made. 9 I have very few points on issues 12 and 14. There 10 is a notional issue between the joint administrators and 11 Goldman on issue 12, but I think, on analysis, it is one 12 that falls away. 13 My Lord, I wonder if you would take up the joint 14 administrators' skeleton argument to see how the 15 question arises. My Lord, that is in bundle 3, tab 1, 16 page 33. My Lord, paragraphs 121 and 122 identify as 17 the only live issue on issue 12(4) a point taken by 18 Goldman Sachs. The point arises in this way: I think 19 the argument was raised: could it ever be a sort of 20 rational certification to certify funding for the exact 21 period which it is, with the benefit of hindsight, known 22 would have elapsed between the payment date and the date 23 when the relevant amount is actually paid? 24 I think the point that the administrators have taken 25 is that, as no party could have known how long that</p> <p style="text-align: center;">Page 129</p>	<p>1 My Lord, issue 14, the manifest error point. What 2 seems to have happened here is that, in different legal 3 contexts -- both of which involve a party certifying 4 something -- different ways have been arrived at of 5 giving the necessary finality to the certifying process, 6 while leaving some limited scope for objection in 7 appropriate cases. 8 The contractual discretion cases have reached out, 9 as your Lordship mentioned, to Wednesbury 10 unreasonableness and public law concepts to reflect the 11 fact that where there are a series of reasonable 12 choices, you don't trump the decision-maker, provided he 13 is one of them. 14 You have other legal contexts. Certificates of 15 quality, expert determination, where the focus has been 16 rather more on looking at the end result. Can you, on 17 the case of it, show that something has gone wrong? It 18 is in that context, as I say, that one sees language of 19 manifest error much more than in the contractual 20 discretion context. 21 It brings in its wake normally issues about what 22 does "manifest" mean, and does it mean manifest on the 23 face of the certificate and can you compare two 24 different documents for the purpose of showing 25 a manifest error?</p> <p style="text-align: center;">Page 131</p>
<p>1 would take in this case, they could never rationally or 2 in good faith certify on that basis. 3 My Lord, I think the issue between us is not one 4 that in fact arises here, but if one is looking at an 5 exercise of construction, one could see circumstances in 6 which the relevant payee would know how long it would be 7 before they would receive the amount that they were due 8 to be paid. 9 If the defaulting party had said, "I can't pay you 10 now but, because of other matters that are going on, 11 I know I can pay you on this date", then in those 12 circumstances we say there would be nothing 13 objectionable or unlikely in the relevant payee going 14 out and obtaining funding in anticipation for the exact 15 period. But we quite accept, moving from the issue of 16 construction to the issue of where we will be on 17 rationality and certification, no-one here did in fact 18 know at the start how long it would be before any 19 relevant amounts were paid. 20 I hope that that is sufficient to dispose of that 21 last live point on issue 12(4). I think, for all 22 practical purposes, there is no disagreement in this 23 case, and it may be one can leave the issue of theory 24 that might arise in a different case to another 25 occasion.</p> <p style="text-align: center;">Page 130</p>	<p>1 My Lord, it is fair to say, at least in the expert 2 determination context, it is not an opt-out that would 3 be implied, but something that would have to be 4 expressed. 5 My Lord, we are concerned at the sort of 6 mix-and-match approach that might be involved in having 7 the rationality language and then bringing in alongside 8 that a concept of manifest error. 9 As Mr Dicker says, it either adds something, in 10 which case, what and on what basis, and why hasn't this 11 been recognised in Socimer or any previous case? Or it 12 doesn't, in which case one doesn't need it. We would 13 invite your Lordship not to identify that as 14 a freestanding ground of challenge, because it is not 15 one that is stated in the clause at all, it is not one 16 that finds support in authorities on contractual 17 discretions of valuation, and so forth, which are very 18 much close to the context we are looking at here, and, 19 in those areas when the expression has been used, in 20 contracts or has been recognised as a way of objecting 21 to a certificate, it brings in a series of issues in its 22 wake that we shouldn't be looking to import into the 23 certification of an interest rate under the default 24 rate. 25 My Lord, we are going to invite your Lordship simply</p> <p style="text-align: center;">Page 132</p>

<p>1 to stick with the requirements identified in Socimer of 2 rationality and good faith.</p> <p>3 I think Mr Trower mentioned in opening that there 4 was an issue about whether Goldman Sachs were contending 5 that rationality extended to the construction of 6 the clause, such that if the certifying party had taken 7 a reasonable but erroneous view of what the clause 8 meant, was it protected? We don't suggest that is the 9 position. Your Lordship will decide what the clause 10 means, and it will fall to the relevant parties to apply 11 that construction. That is equally true, of course, for 12 those seeking to challenge certificates as it is for 13 those who will be issuing them.</p> <p>14 My Lord, can I briefly just check whether there are 15 any other points I need to raise now?</p> <p>16 MR JUSTICE HILDYARD: Yes.</p> <p>17 MR FOXTON: My Lord, Mr Morrison reminds me that it may be 18 part of the problem on this very last point is the 19 competing language as to how one reflects the fact that 20 it is the court's construction that falls to be applied 21 by the parties when the certification process is 22 undertaken.</p> <p>23 The way in which the issue is formulated at the 24 moment is a certificate won't be conclusive if it is 25 "something other than the relevant payee's costs if it</p> <p style="text-align: center;">Page 133</p>	<p>1 scope of the certification exercise which the contract 2 provides, and we accept that if you --</p> <p>3 MR JUSTICE HILDYARD: Where is the wording?</p> <p>4 MR FOXTON: There are two formulations. Our suggested 5 formulation is in the supplemental skeleton, in 6 volume 3. My Lord, tab 7, page 18, paragraph 36. 7 My Lord, that is competing draft 1. 8 Competing draft 2, one can find it in the same 9 bundle, tab 1, page 38. My Lord, it is the very top of 10 that page. That is the joint administrators' suggested 11 wording.</p> <p>12 MR JUSTICE HILDYARD: Is this something capable of being 13 ironed out between you?</p> <p>14 MR FOXTON: My Lord, I think it is, because actually I don't 15 detect a disagreement of principle. It may be it is one 16 of those scenarios where one is, in a sense, seeing 17 problems where they don't really arise. Perhaps if we 18 can be satisfied that more isn't intended by this than 19 what we understand to be intended, namely, we are all 20 stuck, if I may so put it, with the construction of 21 the clause that the court adopts, then I don't think 22 there ought to be any problem. I will have a word with 23 my learned friend outside court and see if that is where 24 we are.</p> <p>25 My Lord, unless I can assist your Lordship any</p> <p style="text-align: center;">Page 135</p>
<p>1 were to fund or of funding the relevant amount". The 2 concern we have with that formulation is, on one view, 3 it might be said to open up more than simply disputes as 4 to construction of the clause which the court had 5 already ruled upon, and might, if misinterpreted, open 6 up arguments on issues of fact without limiting them by 7 the criteria of good faith and rationality.</p> <p>8 We would suggest that the appropriate formulation 9 should be that a certificate won't be binding when the 10 certification does not fall within the scope of 11 the expression "costs if it were to fund or of funding 12 the relevant amount", as those words have been construed 13 by the court. Hopefully we are shooting at the same 14 target. The legal issue of construction is not to be 15 re-opened thereafter. That is not meant in any way to 16 add any further scope of challenge beyond that of 17 rationality or good faith.</p> <p>18 MR JUSTICE HILDYARD: I'm not sure that I have fully grasped 19 the difference between the wording. But the general 20 import is that if it purports to be but is not according 21 to whatever criteria established by the law in fact, is 22 not a certificate, that concludes the issue.</p> <p>23 MR FOXTON: If what has been certified is not what the court 24 has construed the clause to cover, then effectively you 25 have applied a different meaning, you are not within the</p> <p style="text-align: center;">Page 134</p>	<p>1 further.</p> <p>2 MR JUSTICE HILDYARD: It is only a tiny point, but on 3 manifest error, supposing there was some obvious error 4 on the face of the certificate -- too many naughts, or 5 something like that -- that would be just correctable 6 under what jurisdiction?</p> <p>7 MR FOXTON: My Lord, plainly, the end result has to be 8 rational, and if it's some, you know, figure whereby 9 looking at it you can see something has gone obviously 10 wrong with the thing and therefore the end product is 11 not rational, I would have thought that would be 12 corrected on grounds of irrationality.</p> <p>13 MR JUSTICE HILDYARD: If there were a miscalculation by 14 reference to criteria which were not capable of being 15 disturbed, so that the sum stated in the certificate was 16 simply wrong and exposed as being so, what would that 17 be?</p> <p>18 MR FOXTON: My Lord, you then get into -- I'm not even 19 certain that would be a manifest error, because that 20 would all depend upon what process was inherent within 21 the words "exposed as being so".</p> <p>22 Obviously there is a tension here between finality 23 on the one hand and giving at least some limited scope 24 for challenge on the other. The irrationality test has 25 the benefit, at least, of not confining a party to</p> <p style="text-align: center;">Page 136</p>

<p>1 a particular document for the purposes of demonstrating 2 that irrationality, whereas the concept of manifest 3 error, at least on some interpretations, might do. 4 My Lord, if a party could show this end product does not 5 rationally follow from the preceding stages, that would 6 be a basis on which you could bring an irrationality 7 challenge. 8 MR JUSTICE HILDYARD: If the irrationality challenge were 9 brought and the approach were held to be rational, or 10 not irrational, but the calculation of the sums involved 11 within that approach turned out to be wrong 12 mathematically, or had adopted a premise which was 13 simply wrong? 14 MR FOXTON: My Lord, my understanding is irrationality 15 wouldn't only go to the approach or procedure, but the 16 outcome has to be a rational outcome. If you have some 17 reasonable -- 18 MR JUSTICE HILDYARD: No irrationality in arithmetic, is 19 what you are saying? 20 MR FOXTON: My Lord, it is always difficult with these sort 21 of points to sort of deal with them in the abstract. 22 MR JUSTICE HILDYARD: Yes. That is what you are asking me 23 to do. 24 MR FOXTON: My Lord, I am conscious of that. I suppose the 25 answer that I would put to your Lordship is, at least on</p> <p style="text-align: center;">Page 137</p>	<p>1 Opening submissions by MR ZACAROLI 2 MR ZACAROLI: My Lord, may I begin by offering a small route 3 map of where we are going on submissions on this side. 4 First of all, to make this point, that I shall be 5 conducting the case insofar as it relates to issues 11 6 to 13, and indeed all of the ISDA issues, so far as 7 English and New York law are concerned. In relation to 8 the German issues, my Lord will have the benefit of 9 the A team, and Mr Allison and Mr Al-Attar will be 10 dealing with that aspect of the case. If I disappear at 11 that part, there is no disrespect to the court, the 12 German issues or Germany in general. 13 As far as the English issues are concerned, I will 14 adopt the same order for my Lord's convenience as 15 Mr Dicker adopted, namely, starting with issue 11, in 16 the course of which I will wrap up I suspect most of 17 the points under issues 12 and possibly 13 as well, but 18 I will deal with what is left at the end. I will then 19 deal with issue 10. 20 Turning to issue 11, and, again, a short preview of 21 the subheadings. The first subheading will be related 22 to funding, the word "funding" in its context, properly 23 meaning "borrowing". The second subheading will be 24 "Cost" and what the meaning of "cost" is in context. 25 The third is a subset of that, which is the point that</p> <p style="text-align: center;">Page 139</p>
<p>1 the authorities on contractual discretion, no-one has 2 seen it necessary thus far to identify a separate 3 category of manifest error going beyond whatever follows 4 from a decision being not one reasonably open, and, 5 therefore, it would be a contentious extension of 6 the existing law, we would submit, to do that. 7 The same problems might even arise if an issue of 8 manifest error was included, dependent upon what was 9 relevant for the purposes of showing the error and when 10 an error is and is not manifest. I am not sure that 11 either party would really be offering your Lordship in 12 the abstract a complete answer. 13 What I think one can say is that, where one is able 14 to look at something and see that something has gone 15 obviously wrong in it, so the decision doesn't follow 16 through from the grounds that are supposedly being used 17 to arrive at it, there ought to be the basis of an 18 irrationality challenge of some sort there. 19 MR JUSTICE HILDYARD: I see manifest error can mean either 20 obviously wrong after enquiry or obviously wrong on its 21 face -- 22 MR FOXTON: Or something in between. 23 MR JUSTICE HILDYARD: -- or obviously wrong after a great 24 deal of thought. I can see that there are shadings. 25 You have been very helpful. Thank you very much.</p> <p style="text-align: center;">Page 138</p>	<p>1 "cost" means what has to be paid, as opposed to any 2 amount that the party might choose to pay, in order to 3 anchor the rationality test in concrete. 4 The fourth subheading will then address the question 5 whether equity, cost of equity, is in or outside the 6 definition, and we say, of course, it is outside the 7 definition. I have specific points relating to equity. 8 The fifth subheading then will be responding to 9 particular arguments ranged against us from the SCG and 10 Goldman Sachs, particularly of course focusing on 11 equity, because that is the main challenge there. 12 Then, finally, I will pick up the joint 13 administrators' questions they have posed in their 14 skeleton, including I will deal briefly with their 15 additional question, which is: what happens when the 16 relevant payee cannot borrow? That has been addressed 17 during the course of submissions, and I will pick that 18 up at the end, if I may. 19 Turning then to issue 11. My Lord has seen the 20 relevant expression many times that we are here 21 defining. The expression is, "A rate per annum equal to 22 the cost of the relevant payee if it were to fund or of 23 funding the relevant amount". 24 The preliminary point is this, that the default rate 25 has been defined as the cost of obtaining replacement</p> <p style="text-align: center;">Page 140</p>

<p>1 funding. That is, I think, common ground and it is very 2 clear on the wording of the definition. 3 That is to be contrasted with a possible alternative 4 way of recompensing someone who hasn't been paid, 5 namely, the lost opportunity to make profits if they had 6 been paid the sum. 7 There is an obvious reason for that course being 8 adopted, namely, that if you do go out and replace the 9 sum, you can then make the profits that you would 10 otherwise say you would have made. The draftsman has 11 very clearly chosen the first of those courses, not the 12 second. I will come back to that as one of the points 13 when we consider whether equity is permissible within 14 the meaning of the phrase. 15 Our case distils down, really, to two main points. 16 Firstly, that "funding" in context means borrowing the 17 relevant amount. 18 Secondly, that in context "cost" means the price 19 required to be paid in transacting to borrow the 20 relevant amount. 21 What we seek to do is to define both of those words 22 in their proper context. It is said against us that we 23 are actually taking them out of context and somehow 24 ignoring the context they are in. In fact, it is the 25 reverse as I will show, that in reality my learned Page 141</p>	<p>1 important background to the draftsman of the agreement. 2 Taking the first point, the user guides, and for 3 this, as I say, we need to track the origin of this 4 definition back to when it first emerged. The 5 definition emerged first in a 1987 ISDA agreement. It 6 has remained in exactly the same wording ever since -- 7 the default rate, that is, has had the same wording ever 8 since. 9 Before I take my Lord to the relevant passages in 10 the agreements and the user guides, can I just show 11 my Lord a couple of authorities to make good the point 12 that the user guides, and indeed previous versions of 13 the master agreement, are relevant, admissible evidence 14 for the purpose of construing each of the agreements. 15 The first is the Firth Rixson decision in the Court of 16 Appeal, which is authorities bundle 2 at tab 52. 17 MR JUSTICE HILDYARD: You are dealing only with English law 18 at the moment? 19 MR ZACAROLI: I am dealing with English law, tab 52. 20 My Lord, this was the Court of Appeal decision that 21 my learned friend Mr Foxtton mentioned earlier, being 22 when the Court of Appeal determined what the meaning of 23 clause 2(a)(iii) of the ISDA master agreement was. We 24 don't need to see the totality of the decision. There 25 were a number of issues raised in it. But there is Page 143</p>
<p>1 friends' cases depend on taking words like "cost" out of 2 the context of the clause to, "Well, there is a cost of 3 equity", because we all know that. The important 4 question is: does it have a cost for the purposes of 5 the definition? 6 In relation to the first point, then, "funding means 7 borrowing", we have three points under this heading. 8 The first is, when one looks at the context, the 9 linguistic context, which includes the master agreements 10 themselves, the earlier form of the master agreement, 11 which was 1987 -- I will show my Lord that in 12 a moment -- and the user guides, it is clear that the 13 draftsman intended "funding" to be a proxy for 14 "borrowing". 15 The second point is that in the context of 16 the definition itself, the word "funding" necessarily 17 implies something which has to be repaid, ie, borrowing. 18 The third point is, to refer to one of the background 19 matters or contexts, which is the general law approach 20 to interest -- we have dealt with this briefly in the 21 skeleton, the point being that, as a matter of 22 generality, in the Commercial Court here, certainly, the 23 approach to valuing or identifying the time value of 24 money for the purposes of a rate of interest is by what 25 it would cost you to borrow it. That, we say, is Page 142</p>	<p>1 a particular passage in the judgment of 2 Lord Justice Longmore, which is the judgment of 3 the court, at paragraphs 48 and following, which I want 4 to show my Lord. 5 The background to the point is this: my Lord 6 probably knows that 2(a)(iii) operates as a suspension 7 on an obligation to pay or deliver under 2(a)(i) if one 8 of the parties is suffering an event of default. One of 9 the arguments advanced was that, if by the time you 10 reach maturity of the agreement the default hasn't been 11 remedied, the suspension becomes, as it were, permanent 12 and the obligation is lost, it falls away altogether. 13 That was the argument that was advanced. Indeed, the 14 judge held that. 15 At paragraph 49, then, the judge gave three reasons 16 for coming to this conclusion. The second one is the 17 important one: 18 "On its true construction, section 9(c) of the ISDA 19 master agreement provided for extinction of the payment 20 obligation." 21 9(c) is copied out just below letter F: 22 "Without prejudice to sections 2(a)(iii) and 23 6(c)(ii) the obligations to the parties under this 24 agreement will survive the termination of any 25 transaction." Page 144</p>

<p>1 He then notes at paragraph 50:                  2 "The exclusion of section 6(c)(ii) is readily                  3 understandable since that is the provision stating that                  4 the effect of designating an early termination date is                  5 that no further payment or deliveries are to be made but                  6 that amounts, if any, payable by one party to the other                  7 will be determined pursuant to section 6(e) ..."                  8 Then in 51, Lord Justice Longmore notes:                  9 "The previous form of ISDA agreement published in                  10 1987 under the title 'Interest rate and currency                  11 exchange agreement' had sections 2(a)(iii) and 9(c) in                  12 a slightly different form. Section 2(a)(iii) had no                  13 reference to the second condition precedent in the 1987                  14 form (absence of occurrence or designation of early                  15 termination) and provided simply:                  16 "... (iii) each obligation of each party to pay                  17 any amount due under section 2(a)(i) is subject to                  18 (1) the condition precedent that no event of default or                  19 potential event of default with respect to the other                  20 party has occurred and is continuing and (2) each other                  21 applicable condition precedent specified in this                  22 agreement'.                  23 "Then section 9(c) of the 1987 agreement had no                  24 reference to 2(a)(iii), but simply provided, 'Except as                  25 provided in section 6(c)(ii) the obligations to the</p> <p style="text-align: center;">Page 145</p>	<p>1 came to determining loss, which the court had found                  2 existed in relation to the 1992 agreement. One of                  3 the issues was whether that continued forward into the                  4 2002 agreement.                  5 Again, one doesn't need to know the full background                  6 to get the point, but the relevant point is at                  7 paragraph 51 and following of the judgment of Lady                  8 justice Arden. First of all, my Lord will note at                  9 paragraph 52 -- this is dealing with the question of                  10 construction and interpretation of the agreements.                  11 Paragraph 52, the Lady Justice says:                  12 "The 2002 master agreement must of course be                  13 interpreted in the light of the relevant background,                  14 that includes the 1992 agreement, the prior case law on                  15 the 1992 agreement and the users' guide."                  16 Under the heading "2" on the next page --                  17 MR JUSTICE HILDYARD: I'm just reading 53.                  18 MR ZACAROLI: Yes.                  19 MR JUSTICE HILDYARD: Do you mind if I read 53 and 54?                  20 MR ZACAROLI: No, indeed.                  21 MR JUSTICE HILDYARD: Yes. What was the wrong question that                  22 the judge had asked?                  23 MR ZACAROLI: I think, by reading the second sentence, you                  24 can deduce that it was he thought there would have to be                  25 substantial grounds shown as to why the value clean</p> <p style="text-align: center;">Page 147</p>
<p>1 parties under this agreement will survive the                  2 termination of any swap transaction'.                  3 What is missing is a reference to 2(a)(iii) in the                  4 1987 form. That is the difference.                  5 Could my Lord perhaps read paragraph 52 and the                  6 first seven or so lines of 53.                  7 MR JUSTICE HILDYARD: Yes.                  8 MR ZACAROLI: The short point is this: in the 1987                  9 agreement, section 9(c) could not have had the effect of                  10 extinguishing the obligation under 2(a)(iii) because it                  11 made no reference to it, and the court found that the                  12 change by introduction of 2(a)(iii) in the 1992                  13 agreement cannot have been intended to make such                  14 a significant difference. So direct reliance on the                  15 earlier form in interpreting the new form.                  16 In a sense, we have the opposite position here, at                  17 least on the main point, the default rate has exactly                  18 the same definition throughout the 1987, 1992 and 2002                  19 agreements.                  20 My Lord, the other authority is the next tab in the                  21 same bundle. This is another Court of Appeal decision,                  22 again another Lehmans decision. On this occasion, one                  23 of the issues the Court of Appeal was considering was                  24 the effectiveness or validity or continuing existence of                  25 something called the "value clean principle" when it</p> <p style="text-align: center;">Page 146</p>	<p>1 principle meant something different in the 2002                  2 agreement than the 1992 agreement.                  3 Paragraph 55, to pick up on the way through --                  4 my Lord may have read it -- an important question is:                  5 why were the disclosed changes made?                  6 "For that it is necessary to look closer at a                  7 passage from the users' guide set out in paragraph 21                  8 above."                  9 Direct reference to the users' guide to understand                  10 why changes have been made. Then under the side heading                  11 "2":                  12 "For reason for the changes shown in the 2002 master                  13 agreement given in the users' guide suggest those                  14 changes were regarded as more important than the                  15 preservation of the value clean principle."                  16 So the Lady Justice sets out at 57 the reasons for                  17 the changes set out in the users' guide. At 58:                  18 "Overall, the purpose of the changes on closing-out                  19 appears to have been to reduce avoidable risks of                  20 participants involved in carrying out that operation."                  21 Then there are things absent from the users' guide.                  22 Then 60:                  23 "The conclusion I draw from the explanation in the                  24 users' guide is that the retention of the value clean                  25 principle was not regarded as as important as making the</p> <p style="text-align: center;">Page 148</p>

<p>1 disclosed changes."</p> <p>2 It is a very strong authority for the Court of</p> <p>3 Appeal looking at prior agreement and the users' guide</p> <p>4 explanation for changes between them in construing the</p> <p>5 later agreement.</p> <p>6 MR JUSTICE HILDYARD: In 57 -- don't answer it now, but you</p> <p>7 will come on to that, the overarching principle of using</p> <p>8 commercially reasonable procedures? I think it is</p> <p>9 submitted that that is applicable throughout, including</p> <p>10 into the -- it informs also the default rate. Is that</p> <p>11 right?</p> <p>12 MR ZACAROLI: I didn't understand that submission to be made</p> <p>13 in that way. Perhaps I can clarify it with my learned</p> <p>14 friend overnight. If it is, I will deal with it in due</p> <p>15 course.</p> <p>16 MR JUSTICE HILDYARD: Yes.</p> <p>17 MR ZACAROLI: Those are the authorities. In passing, as</p> <p>18 I said we are dealing with English law, it so happens</p> <p>19 that my Lord has already seen the passage from</p> <p>20 Judge Chapman in the Intel case, where he does exactly</p> <p>21 the same thing, looking at the 1987 agreement and the</p> <p>22 users' guide to interpret the 1992 agreement. My Lord</p> <p>23 was asked to read a passage where that is exactly what</p> <p>24 he is doing there. But that is New York law. We will</p> <p>25 come on to that next week.</p> <p style="text-align: center;">Page 149</p>	<p>1 "Such amount will be paid together with ... interest</p> <p>2 thereon in the termination currency from (and including)</p> <p>3 the relevant early termination date to (but excluding)</p> <p>4 the relevant due date, calculated as follows."</p> <p>5 Then:</p> <p>6 "If it arises as a result of an event of default it</p> <p>7 is payable at the default rate."</p> <p>8 If it is as a result of a termination event, then it</p> <p>9 is the default rate minus 1 per cent. A difference</p> <p>10 there, but it is still anchoring in the default rate.</p> <p>11 Then page 11 is within the definition section, 14,</p> <p>12 you will see:</p> <p>13 "'Default rate' means a rate per annum equal to</p> <p>14 the cost ..."</p> <p>15 You will see the wording there that we recognise</p> <p>16 from the later agreements.</p> <p>17 Effectively, what the agreement has done at 6(d) is</p> <p>18 to say, if it is a default, you pay the default rate</p> <p>19 which has the 1 per cent spread added, but if not it is</p> <p>20 just at the default rate without that spread -- it is</p> <p>21 cost of funding to the relevant payee without that</p> <p>22 spread.</p> <p>23 Then just to note that under the definition of</p> <p>24 "unpaid amounts", you will see concepts similar to those</p> <p>25 which then inform the non-default rate we see later and</p> <p style="text-align: center;">Page 151</p>
<p>1 If my Lord can now pick up bundle 5, tab 1 is the</p> <p>2 1987 interest rate and currency exchange agreement under</p> <p>3 the ISDA heading. I said that the default rate makes</p> <p>4 its first appearance in this agreement, which it does.</p> <p>5 Before we get to that, my Lord, can we first look at</p> <p>6 page 2 of the bundle referencing. At the bottom of that</p> <p>7 is subsection 2(e), default interest:</p> <p>8 "A party that defaults in payment of any amount due</p> <p>9 will ..."</p> <p>10 You will see it is very similar to what we later see</p> <p>11 as 2(e):</p> <p>12 "If you default in payment, you pay interest at the</p> <p>13 default rate."</p> <p>14 It goes on at the top of the next page:</p> <p>15 "Calculated as a daily compound and the actual</p> <p>16 number of days elapsed."</p> <p>17 Moving forward to section 6(d), which mirrors to</p> <p>18 some extent 6(d) in the later agreements, page 7, headed</p> <p>19 "Calculations", first of all there is the obligation to</p> <p>20 give a statement, subparagraph (i). Subparagraph (ii),</p> <p>21 "Due date":</p> <p>22 "The amount calculated as being payable under</p> <p>23 section 6(e) will be due on the day that notice of the</p> <p>24 amount is payable is effective ..."</p> <p>25 Six lines further down:</p> <p style="text-align: center;">Page 150</p>	<p>1 the termination rate. Under "Unpaid amounts" at the</p> <p>2 bottom of the main paragraph, it says interest is</p> <p>3 calculated as follows on the unpaid amounts:</p> <p>4 "In the case of notice of an early termination date</p> <p>5 given as a result of an event of default:</p> <p>6 "(i) interest on such amounts due and payable by</p> <p>7 a defaulting party will be calculated at the default</p> <p>8 rate; and.</p> <p>9 "(ii) interest on such amounts due and payable by</p> <p>10 the other party will be calculated at a rate per annum</p> <p>11 equal to the cost to such other party ... if it were to</p> <p>12 fund such amounts ..."</p> <p>13 Then in the event of an early termination date</p> <p>14 following a termination event, then you have the</p> <p>15 introduction of the arithmetic mean of the cost to each</p> <p>16 party. These concepts we see follow on but obviously</p> <p>17 some different drafting when we get to the 1992</p> <p>18 agreement.</p> <p>19 My Lord, I notice the time, but this is a point</p> <p>20 which probably needs to be finished in one go, if</p> <p>21 my Lord doesn't mind.</p> <p>22 MR JUSTICE HILDYARD: Sure.</p> <p>23 MR ZACAROLI: That, however, was not the only 1987</p> <p>24 agreement. There was a second form of agreement</p> <p>25 introduced at the same time, which you will see in the</p> <p style="text-align: center;">Page 152</p>

<p>1 next tab in the bundle, tab 1A. It is called "Interest 2 rate swap agreement". We will come to the explanation 3 in a while, but the difference between the two is as 4 follows: the one we have just looked at was intended for 5 use with multiple currencies. It envisaged any currency 6 under the transactions.</p> <p>7 This agreement is designed solely for US dollars.</p> <p>8 Picking up the relevant parts of this agreement, the 9 provisions for interest are now very different. At 10 page 20E of the bundle, you will see this is section 11 6(d) in the middle of the page, (d) is part of 12 section 6, calculations similar to what we have seen 13 before, but the second paragraph here:</p> <p>14 "Such amount will be paid together with interest 15 thereon from and including the relevant early 16 termination date to the relevant due date calculated as 17 follows. If notice is given as a result of an event of 18 default then the default rate applies or if notice is 19 given as a result of a termination event, then it is the 20 default rate minus the default spread."</p> <p>21 A similar concept to the one we have seen, but the 22 wording is different.</p> <p>23 Default rate is defined at page 20G:</p> <p>24 "'Default rate' means a rate per annum determined in 25 accordance with the federal funds floating rate option</p> <p style="text-align: center;">Page 153</p>	<p>1 opposite the caption 'Federal Funds (Effective).'</p> <p>2 If you turn on to the next page, there is 3 a definition then of that phrase, H.15 (519):</p> <p>4 "It means the weekly statistical release designated 5 as such published by the board of governors of the 6 Federal Reserve system."</p> <p>7 7.2(a), so it is a benchmark rate. It is basically 8 the federal reserve rate.</p> <p>9 The users' guides explain the reason for the 10 difference. You start with the 1987 users' guide, which 11 you will find at tab 4 of this bundle, the previous tab.</p> <p>12 On page 84 of the bundle, the first page of the text of 13 the users' guide, under the heading "1. Introduction":</p> <p>14 "This guide describes how the standard form 15 agreements published by the ISDA can be used by 16 participants."</p> <p>17 Then it says there are two forms, the fourth line 18 under the first paragraph:</p> <p>19 "There are two forms, entitled interest rate swap 20 agreement and interest rate and currency exchange 21 agreement which differ, principally in the types of 22 transactions of which each is suited."</p> <p>23 Then on the next page, under (a), so heading 2 "The 24 forms and overview", paragraph (a), "Description of 25 the forms". Under the first numbered paragraph:</p> <p style="text-align: center;">Page 155</p>
<p>1 [capitalised term] plus the default spread, using daily 2 reset dates."</p> <p>3 Then it mentions wording we have seen before:</p> <p>4 "It is payable on the basis of compounding using 5 daily compounding rates."</p> <p>6 Then "default spread" is defined immediately below:</p> <p>7 "...will have the meaning specified in the 8 schedule."</p> <p>9 Ie, it is a number, it is plus a percentage rate.</p> <p>10 The "federal funds floating rate option" is defined 11 in a document called -- it is the code of standard 12 wording assumptions of provisions for swaps, 1986 13 edition, which you will find at tab 4A of the same 14 bundle.</p> <p>15 Article 7 at page 101Y is headed "Calculation of 16 rates for certain floating rate options", so section 7.1 17 involved floating rate options. Then it gives a whole 18 load of different types of floating rate options, from 19 LIBOR onwards. The relevant one is on page 101AA, 20 subparagraph (k). You will see the reference there to 21 federal funds and the reference across was to federal 22 funds floating rate options. This is the relevant 23 subparagraph:</p> <p>24 "[It] means that the rate for a reset date will be 25 the rate set fourth in H.15 (519) ... for that day</p> <p style="text-align: center;">Page 154</p>	<p>1 "The code based form, the interest rate swap 2 agreement, is an agreement for US dollar denominated 3 interest rate swaps. It incorporates by reference the 4 1986 edition of the code with certain modifications and 5 is intended to be used with the code."</p> <p>6 Number 2, the multicurrency form:</p> <p>7 "This is an agreement for interest rate swaps in any 8 currency as well as currency swaps and cross-currency 9 interest rate swaps. It does not incorporate the code 10 by reference but contains provisions virtually identical 11 to the code. Provisions contained in the code-based 12 form, except that it refers to the differences."</p> <p>13 The paragraph immediately below that:</p> <p>14 "There are no substantive differences in the two 15 forms other than minor ones necessitated by the 16 multicurrency aspects of the multicurrency form and 17 differences in the jurisdiction and governing law 18 sections. These differences are noted in part 3 of this 19 guide."</p> <p>20 Turning on to part 3, which begins on the next page, 21 and turning through to page 97, which explains the 22 default rate provisions, paragraph 2, "Default rate and 23 interest and unpaid amounts and termination payments", 24 subparagraph 1, "Default rate":</p> <p>25 "The default rate ..."</p> <p style="text-align: center;">Page 156</p>

<p>1 MR JUSTICE HILDYARD: Where are you looking now?</p> <p>2 MR ZACAROLI: Page 97, paragraph 2 in the middle of</p> <p>3 the page, subparagraph 1, explaining what the default</p> <p>4 rate is. It says:</p> <p>5 "The default rate in the code-based form is equal to</p> <p>6 the rate determined in accordance with the federal funds</p> <p>7 floating rate option plus the default spread. The</p> <p>8 default spread must be specified in the schedule. In</p> <p>9 the multicurrency form the rate is equal to the payee's</p> <p>10 cost of funding plus 1 per cent, since no published</p> <p>11 index exists covering all possible currencies."</p> <p>12 The 1992 ISDA guide repeats much of that history.</p> <p>13 If I can turn just to one reference in it. It is tab 5</p> <p>14 in the same bundle. At page 119, the heading is "B.</p> <p>15 The pre 1992 architecture", it sets out some of</p> <p>16 the history there, but the relevant passage is the</p> <p>17 sentence at the top of page 120. Four lines down,</p> <p>18 towards the end of the line, having referred to the</p> <p>19 earlier agreements:</p> <p>20 "... the only substantive difference between the</p> <p>21 1987 agreements and the 1987 interest rate swap</p> <p>22 agreement were minor differences necessitated by the</p> <p>23 multicurrency aspects of the 1987 agreement."</p> <p>24 My Lord, we submit that that explanation in the</p> <p>25 users' guide for why there was a difference between the</p> <p style="text-align: center;">Page 157</p>	<p>1 if that is a convenient moment.</p> <p>2 MR JUSTICE HILDYARD: 10.30, then. I have to give judgment</p> <p>3 earlier, but it is only a formal matter, so that should</p> <p>4 be okay.</p> <p>5 I did have a word with Mr Justice David Richards</p> <p>6 this morning. I don't think I need bother you with it,</p> <p>7 but if any of you have the -- I think there was an email</p> <p>8 from Linklaters of 28 October to</p> <p>9 Mr Justice David Richards' clerk, and there were four</p> <p>10 questions identified.</p> <p>11 Provisionally, and subject to discussion with you</p> <p>12 and with him, it may be that I should do 1 and he should</p> <p>13 do 2, 3 and 4, assuming there to be a linkage between 1</p> <p>14 and the issues of German law which have been raised, or</p> <p>15 a potential linkage. If I were to do that and if he</p> <p>16 were to do that, we would give York also the opportunity</p> <p>17 to make submissions, since it is only fair that they</p> <p>18 should, if oral submissions are required at all.</p> <p>19 MR ZACAROLI: I'm grateful.</p> <p>20 (4.30 pm)</p> <p>21 (The hearing was adjourned until</p> <p>22 Wednesday, 11 November 2015 at 10.30 am)</p> <p>23 I N D E X</p> <p>24</p> <p>25 Opening submissions by MR DICKER .....1</p> <p style="text-align: center;">Page 159</p>
<p>1 "cost of funding" language and the benchmark rate in the</p> <p>2 two 1987 agreements, as followed through in the</p> <p>3 explanation of the 1992 guide, is a convincing</p> <p>4 explanation of the "cost of funding" language which does</p> <p>5 not permit that language to be expanded beyond the</p> <p>6 concept of borrowing. It shows that, essentially, the</p> <p>7 draftsman was thinking of borrowing, what it would cost</p> <p>8 to borrow the funds. In the one sense, he had</p> <p>9 a benchmark rate because it was just US dollars, in the</p> <p>10 other he didn't, because it could be any currency, so he</p> <p>11 used the phrase "cost of funding" for that reason alone.</p> <p>12 My learned friend described the drafting of the ISDA</p> <p>13 master agreements as flawless, the draftsman meant what</p> <p>14 he said and said what he meant. We say in the light of</p> <p>15 the users' guide and the different versions it is very</p> <p>16 clear what he meant in this context.</p> <p>17 It is important to note that the language then</p> <p>18 remains the same thereafter. We submit -- we will come</p> <p>19 on to this later -- that when you look at the later</p> <p>20 forms there is no justification for finding any</p> <p>21 different meaning in the phrase "cost of funds, cost of</p> <p>22 funding the relevant amount" to what it would have had</p> <p>23 in the 1987 agreement.</p> <p>24 My Lord, that is my first point. I will come on to</p> <p>25 the context within the clause itself tomorrow morning,</p> <p style="text-align: center;">Page 158</p>	<p>1 (continued)</p> <p>2</p> <p>3 Opening submissions by MR FOXTON .....76</p> <p>4</p> <p>5 Opening submissions by MR ZACAROLI .....139</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 160</p>



A				
<b>ability</b> 99:4 119:17 119:24 120:21	125:16,21	<b>addressing</b> 88:22	56:12,18 60:6,23	<b>Al-Attar</b> 139:9
<b>able</b> 26:14 35:14 71:17 74:1 95:25 100:9,11 101:25 110:11 112:24 123:22 126:2 138:13	<b>accrue</b> 117:24	<b>adds</b> 46:13 56:19 132:9	61:10 62:5,8 63:21,23 65:4 70:10,10 71:14 72:15 73:24 76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>amalgamation</b> 60:19
<b>absence</b> 32:3 46:18 71:2 113:2 145:14	<b>accrued</b> 88:1 117:1	<b>adequacy</b> 85:19	70:10,10 71:14 72:15 73:24 76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>amalgamations</b> 45:18
<b>absent</b> 9:12 23:24 117:24 148:21	<b>accruing</b> 7:22	<b>adjoined</b> 159:21	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>ambit</b> 23:13 86:18
<b>absolutely</b> 106:25 126:25	<b>accumulated</b> 119:15	<b>adjourned</b> 159:21	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>ambitious</b> 86:10
<b>abstract</b> 114:21 137:21 138:12	<b>accumulating</b> 124:23	<b>adjournment</b> 80:2	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>amended</b> 62:23
<b>absurd</b> 71:8,20 117:15 124:18 125:14	<b>accuracy</b> 75:8	<b>administrators</b> 78:3 83:10 84:25 97:4 98:19 121:25 123:5,15 129:10,14,24 135:10 140:13	104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>amount</b> 3:25 5:4 5:10 6:14,21 7:15,22,24 8:21 12:1,10 15:7 22:8 24:3 27:13 31:19 33:23 35:7 35:9,9 37:15 44:22 45:6,21,25 46:3,11,24 47:4 48:12 49:14,16 50:1,9,14,18 53:4 53:6,19,19 54:4,9 54:18 55:14,24 55:25 56:14,17 56:21,24 62:11 62:20 63:1 66:16 70:18,19 72:6 88:1,11,12 89:2 101:11,13 103:16 103:25 110:12,14 112:19 113:9 117:8 122:14 123:6,7,10,11,13 124:20 129:23 130:7 134:1,12 140:2,23 141:17 141:20 145:17 150:8,22,24 151:1 153:14 158:22
<b>abuse</b> 72:5,18 73:12	<b>accurate</b> 9:23 36:15	<b>admissible</b> 85:4 143:13	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>ambitions</b> 86:10
<b>academic</b> 16:24 17:12	<b>achieve</b> 21:6 23:24 43:1 93:21 124:8 126:2 127:16	<b>adopt</b> 1:24 77:4 82:15 129:8 139:14	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>amounts</b> 7:3 46:14 47:22 49:8 56:20 117:16 130:19 145:6 151:24 152:1,3,6,9,12 156:23
<b>accept</b> 14:15 22:3 22:6,14 66:8 75:13 80:15 83:21 94:6 96:15 105:11,23 120:15 120:23 128:11 130:15 135:2	<b>achieved</b> 10:15 20:23 126:14	<b>adopted</b> 137:12 139:15 141:8	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>analogous</b> 63:18 125:18
<b>accepted</b> 3:7 12:8 12:13 89:12 90:21 112:9 113:15	<b>acknowledgement</b> 16:11	<b>adopts</b> 68:18 135:21	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>analyses</b> 74:6 91:21
<b>accepts</b> 57:19 105:22	<b>acquired</b> 40:8 70:17	<b>advance</b> 78:3 91:10	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	<b>analysis</b> 92:10 107:10 129:11
<b>accord</b> 126:12	<b>acted</b> 39:1 106:10	<b>advanced</b> 144:9,13	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
<b>account</b> 5:8 12:11 14:2 28:7,17,25 30:6,24 31:3 37:7 38:3,15,17 38:18 39:20 63:6 69:17	<b>acting</b> 33:25 86:2 88:15 89:14	<b>advancing</b> 86:9	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
<b>accountancy</b> 115:10	<b>actual</b> 20:20,23 27:12,24 31:3 47:20 48:10 77:18 78:19,23 101:9 106:12 113:22 127:2 150:15	<b>advised</b> 68:3	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
<b>accounted</b> 125:24	<b>advisers</b> 26:25 27:1	<b>advisory</b> 17:12	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
<b>accounting</b> 115:14	<b>advised</b> 68:3 27:1	<b>affording</b> 93:23	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
	<b>add</b> 3:22 69:5 77:10 99:9 134:16	<b>agencies</b> 82:20	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
	<b>added</b> 52:24 56:19 105:10 112:10 151:19	<b>aggregate</b> 101:19	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
	<b>addition</b> 87:7 117:3	<b>ago</b> 56:2	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
	<b>additional</b> 15:3 28:22,23 34:23 35:4,9,17 43:11 77:6 81:2 83:1 140:15	<b>agree</b> 23:1 57:10 107:9	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
	<b>address</b> 23:17,18 43:25 51:12 68:21 140:4	<b>agreed</b> 11:15 16:24 31:6,7 33:18 38:4	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
	<b>addressed</b> 140:16	<b>agreement</b> 2:11 5:4 8:9 9:3,4 10:4,7,10,17 23:7 23:8,12 24:3,4,7 42:19 44:11 45:12,13,15 46:5 46:13,20,22 47:2 47:16 48:8,16 49:6,19 50:7 51:15,17 55:10 55:11,21,21,22	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>agreements</b> 3:25 14:3,7 53:5 65:7 105:7,8 125:23 142:9 143:10,14 146:19 147:10 150:18 151:16 155:15 157:19,21 158:2,13	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>aimed</b> 77:9	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>albeit</b> 14:11 36:15 37:8 104:17	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>algorithms</b> 99:22	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>Allison</b> 139:9	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>allocate</b> 52:20 103:20 107:23	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>allocation</b> 102:1 103:9 104:2	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 112:5 142:10 143:1,5 143:13,23 144:10 144:19,24 145:9 145:11,22,23 146:1,9,13 147:2 147:4,12,14,15 148:2,2,13 149:3 149:5,21,22 150:2,4 151:17 152:18,24,24 153:2,7,8 155:20 155:21 156:2,2,7 157:22,23 158:23	
		<b>allotted</b> 76:10	76:11 77:14 79:2 81:12 92:3 98:20 104:20 107:13 110:23 1	

<b>analysts</b> 82:20	119:7 148:19	<b>argument</b> 26:21	157:23	58:5,23,25 59:23
<b>anchor</b> 140:3	<b>appendix</b> 32:8,9	46:20 60:11	<b>asserted</b> 27:12,25	63:18 66:6 67:24
<b>anchoring</b> 151:10	<b>applicable</b> 12:5	64:12,15 67:7	31:4	68:11,17,20
<b>ancillary</b> 25:25	49:24 50:15,19	70:16 73:18	<b>assertion</b> 114:10	71:11 72:9 73:12
<b>and/or</b> 28:1,2,2,4	50:22 80:5 82:11	75:17 84:6,14	<b>asserts</b> 57:19	<b>assignor's</b> 58:13
<b>annual</b> 120:9	145:21 149:9	85:15,24,25	<b>assess</b> 31:19,20	59:22 64:5
<b>annum</b> 47:18 48:9	<b>application</b> 6:17	86:10 93:15	35:5,8 82:18	<b>assigns</b> 44:10
140:21 151:13	27:9 65:13 83:24	113:13 129:14,19	<b>assessed</b> 30:16	59:18
152:10 153:24	<b>applications</b> 84:6	144:13	33:18 58:12	<b>assist</b> 135:25
<b>answer</b> 23:19	<b>applied</b> 18:9	<b>arguments</b> 3:6	<b>assessing</b> 12:10	<b>assistance</b> 5:2
27:15,21 28:9	133:20 134:25	31:8 73:14 77:2	114:18	69:21 87:23
29:1,18,19 30:16	<b>applies</b> 8:6 38:17	97:7 134:6 140:9	<b>assessment</b> 8:17	96:22
33:10 34:8 38:23	52:13 56:16	144:9	22:9,10 23:5,22	<b>associated</b> 46:15
40:12,13,19	153:18	<b>arises</b> 39:15 44:11	30:15	56:22
43:25 52:17	<b>apply</b> 11:1 23:10	54:17 114:21	<b>assessments</b> 23:11	<b>associates</b> 13:18
65:20 70:21	24:1 71:25 74:18	129:15,18 130:4	<b>asset</b> 28:1,3,5 34:2	14:16
75:23 89:13	98:4 133:10	151:6	34:16,23 37:12	<b>assume</b> 10:20
97:22 108:15,18	<b>applying</b> 69:14,22	<b>arising</b> 1:6	<b>assets</b> 18:7 33:16	13:24 39:17
108:20,25 109:1	<b>appreciate</b> 33:21	<b>arithmetic</b> 47:19	33:19,24 34:5,5	64:16 65:3,21
109:6,7 110:23	94:21	48:4 137:18	34:10,21 122:17	67:10
137:25 138:12	<b>appreciation</b>	152:15	<b>assign</b> 72:11 73:19	<b>assumed</b> 33:14
149:6	97:25	<b>arose</b> 31:8 114:2	<b>assigned</b> 59:8,11	<b>assuming</b> 33:10
<b>answered</b> 114:24	<b>approach</b> 5:3 7:17	<b>arranged</b> 101:24	72:7	159:13
<b>answering</b> 27:8	9:14 24:2 31:23	<b>arrangement</b>	<b>assignee</b> 44:18	<b>assumption</b> 15:9
<b>answers</b> 35:2	32:25 40:17 42:9	19:25 107:19	45:4 52:20 54:21	64:14,24 94:16
108:24	42:19 54:4,6	<b>arrangements</b>	55:3,19 57:13,16	<b>assumptions</b> 14:25
<b>anterior</b> 102:15	64:3 65:1 68:19	99:5	57:17,25 58:1,4,6	96:17 154:12
<b>anticipate</b> 98:23	69:22 77:15	<b>arranging</b> 107:19	58:16,22 59:12	<b>attached</b> 32:22
<b>anticipation</b>	87:15 90:17 91:8	<b>array</b> 121:20	59:19,20 61:6	<b>attacks</b> 79:11
106:10 130:14	91:9,11 93:14,17	<b>arrive</b> 97:1 99:23	62:2 63:13,17	<b>attempt</b> 5:22
<b>anticipatory</b> 79:11	94:15 132:6	99:25 112:11	64:2,10 66:17	25:13 90:19
<b>anyway</b> 105:14	137:9,11,15	114:16 138:17	67:13,22 68:10	106:15 128:22
111:20 115:18	142:19,23	<b>arrived</b> 102:12	68:15 69:13,19	129:3
<b>apart</b> 9:15	<b>approaches</b> 1:17	131:4	70:17,20,23	<b>Attempting</b> 127:4
<b>apologies</b> 9:19	3:15,17 97:8	<b>Article</b> 154:15	71:11 72:5,9,19	<b>Attempts</b> 17:9
111:18	<b>approaching</b>	<b>artificial</b> 62:4	73:9,12,19,20	<b>attention</b> 17:6
<b>apparent</b> 20:10	12:17	121:23 127:25	74:1	85:1 111:10
<b>Appeal</b> 85:15	<b>appropriate</b> 11:21	<b>artificially</b> 34:13	<b>assignees</b> 70:15	<b>attorneys</b> 63:12,15
143:16,20,22	18:19,23 21:19	<b>ascertainable</b> 22:8	71:23 72:2	63:16,17
146:21,23 149:3	52:7 94:8 131:7	<b>ascribe</b> 95:18	<b>assignment</b> 45:1,3	<b>attributable</b> 37:4
<b>appear</b> 70:22 71:7	134:8	<b>aside</b> 82:13 119:17	45:8 52:12,18	<b>attribute</b> 15:16
103:3 116:2	<b>arbitrary</b> 3:6	<b>asked</b> 115:4	58:14 60:7,20	<b>authorities</b> 4:4 8:7
119:12 126:17	106:3,19	147:22 149:23	63:14 64:1,9,14	8:21 11:19,23
<b>appearance</b> 150:4	<b>architecture</b> 87:11	<b>asking</b> 2:13 28:6	64:19,21 65:2	16:6 43:12 63:10
<b>appeared</b> 114:12	102:21 157:15	57:21 59:9	66:4,10,17 67:8	66:18,22 70:6
<b>appears</b> 41:14	<b>Arden</b> 147:8	137:22	67:11,16,19 69:9	85:9 91:13 111:7
63:12,25 64:7,15	<b>area</b> 21:20 96:7	<b>asks</b> 27:10 34:19	71:10 73:9 74:2	118:16,19,21,22
66:8,23 72:6	<b>areas</b> 77:5 132:19	<b>aspect</b> 29:8 30:23	<b>assignor</b> 45:2	132:16 138:1
74:18 92:21	<b>argues</b> 57:7 60:7	139:10	52:19 54:21 55:1	143:11,16 149:17
94:10 111:17	<b>arguing</b> 111:8	<b>aspects</b> 156:16	55:18 57:17,22	<b>authority</b> 69:24

146:20 149:2 <b>authors</b> 16:15 19:7 <b>author's</b> 16:11 <b>availability</b> 122:17 <b>available</b> 21:5 81:21 101:21 104:3 112:9,23 113:4 114:17 128:20 <b>average</b> 20:25 34:24 35:14,15 35:23 36:13,14 97:9 <b>avoidable</b> 148:19 <b>awards</b> 127:14 <b>aware</b> 15:24 65:4 65:5 84:1 86:15 86:22,23	<b>base</b> 34:23 80:16 <b>based</b> 2:12 4:1 17:11 65:23 70:12,18 97:9 156:1 <b>Basel</b> 84:18 86:10 <b>bases</b> 31:13 <b>basically</b> 91:25 155:7 <b>basis</b> 13:4 15:12 15:14 19:18 23:9 31:15 32:14,14 32:24 33:2 38:14 38:22 39:13,18 39:20,22,24 41:7 41:11,18 42:12 62:16 66:13 72:15 80:12 82:12 86:2 90:10 99:24 111:2 113:7 114:18 129:3 130:2 132:10 137:6 138:17 154:4 <b>baulk</b> 94:25 95:4 <b>bear</b> 53:5 55:5 63:5 105:21 <b>bearing</b> 19:22 59:24 <b>beginning</b> 16:18 115:7 <b>begins</b> 92:10 116:5 156:20 <b>begun</b> 94:14 <b>behalf</b> 128:16 <b>believe</b> 68:3 79:21 <b>benchmark</b> 155:7 158:1,9 <b>benefit</b> 38:16 67:13 70:2 72:8 73:21 103:17 116:24 120:22 129:21 136:25 139:8 <b>benefited</b> 16:19 <b>benefiting</b> 66:12 <b>Berkshire</b> 117:3 119:4 124:16 <b>bespoke</b> 103:15 <b>best</b> 30:20	<b>better</b> 102:22 109:2 <b>beyond</b> 80:16 134:16 138:3 158:5 <b>big</b> 12:3 102:18 <b>binary</b> 108:17 118:11 <b>binding</b> 134:9 <b>bit</b> 9:19 22:2 36:6 50:12 118:8 <b>bits</b> 128:11 <b>board</b> 123:23 155:5 <b>body</b> 65:24 <b>bona</b> 1:18 <b>bonds</b> 25:1,6,9,16 25:19 122:10 <b>bonkers</b> 11:9,17 108:6,22 109:2 <b>book</b> 16:7,10,13 17:8 18:20 86:11 <b>borrow</b> 37:14 99:7 109:18 110:20 140:16 141:19 142:25 158:8 <b>borrowed</b> 84:19 100:11 108:8,9 <b>borrower</b> 95:17 122:11 <b>borrowing</b> 1:11 3:4,5,5 9:22 13:19 22:6,7,16 27:14 33:8,14 37:5,19 92:18 97:3,9,10,10 99:2 99:7 100:2 107:19 112:17 113:23 122:7,9,9 122:16,21 123:11 123:24 126:4 127:24 139:23 141:16 142:7,14 142:17 158:6,7 <b>borrowings</b> 28:4 34:25 35:15 36:14 <b>bother</b> 159:6 <b>Bottlers</b> 15:20 <b>bottom</b> 18:4,17	123:12 150:6 152:2 <b>bound</b> 9:15,19 <b>breach</b> 67:14 <b>break</b> 15:15 44:7 116:20 118:3,6 <b>brief</b> 120:24 <b>briefing</b> 102:10 <b>briefly</b> 81:17 133:14 140:14 142:20 <b>Briggs</b> 85:2 86:17 <b>bright</b> 128:21 <b>bring</b> 137:6 <b>bringing</b> 68:1 132:7 <b>brings</b> 20:20 131:21 132:21 <b>broad</b> 2:18 24:12 80:20 90:7 93:24 <b>broader</b> 74:23 <b>broadly</b> 33:20 34:8 94:20 95:5 <b>Brothers</b> 102:11 <b>brought</b> 125:17 137:9 <b>building</b> 59:12 86:12 <b>built</b> 96:17 <b>bundle</b> 5:5 16:7 24:22 27:10 31:11 45:10 66:22,24 70:6 81:17,20 85:9 87:19 91:13 111:7 118:16,21 118:22,22 120:2 120:3,3 129:15 135:9 143:16 146:21 150:1,6 153:1,10 154:14 155:11,12 157:14 <b>burden</b> 55:5 <b>Burton</b> 102:9 112:8,24 114:12 <b>Burton's</b> 111:6 <b>business</b> 6:4,22 7:5 17:15,21,22 18:14 21:1,4 25:3 28:13 98:1	<b>businesses</b> 12:18 18:13 <b>bust</b> 62:10 <b>buyer</b> 25:4 <b>buy-in</b> 25:1,10,13 25:15,16,17,17 25:19
<b>C</b>				
<b>B</b>				<b>case</b> 65:8 <b>calculate</b> 38:20 41:9 89:4 92:1 92:24 <b>calculated</b> 31:14 38:7,12 41:7 50:9 88:9 150:15 150:22 151:4 152:3,7,10 153:16 <b>calculating</b> 28:8 39:19 70:11 88:6 <b>calculation</b> 4:21 28:24 36:20 53:20 88:21 89:1 90:14 92:2,4,14 94:14 99:6 111:10 137:10 154:15 <b>calculations</b> 150:19 153:12 <b>call</b> 110:13 128:17 <b>called</b> 11:8 13:22 16:8 25:10 31:15 66:20 69:25 87:10 146:25 153:1 154:11 <b>cap</b> 86:2 <b>capable</b> 27:11,18 27:24 31:3 38:7 59:15 63:3 66:12 73:11,15 78:4,10 82:24 105:23 114:18 115:1,15 117:16 120:16 121:9 125:9 135:12 136:14 <b>capital</b> 15:22 16:8 16:13,14,21 17:11,14,17,18 17:20,24 18:1,5,6

18:9,11,12,18,20 18:24 19:1,12,13 20:3,3,7,16,25 21:2,12,18 28:4 35:23 36:14 37:4 81:1,1,2,2,7 82:5 82:11 83:1 84:12 85:4,19,25 86:23 104:11 119:25 <b>capitalised</b> 154:1 <b>capitalising</b> 116:23 119:25 <b>CAPM</b> 16:1 21:17 21:17 <b>capped</b> 64:4 <b>caption</b> 155:1 <b>captured</b> 36:19 <b>careful</b> 76:3 <b>carefully</b> 79:9 <b>Carlton</b> 85:7 <b>carried</b> 22:22 120:9 <b>carries</b> 122:21 123:18 <b>carry</b> 94:8 <b>carrying</b> 28:1 148:20 <b>carve-out</b> 60:17,18 <b>case</b> 3:14 8:5 13:8 15:20 34:4 35:2 37:12 38:18 43:21 44:18 51:22 58:9,22 59:17 65:24 66:20 69:25 70:4 70:9,9,16 71:6 80:12 85:15 88:24 89:5 91:6 91:7 93:18 94:24 97:11,13 103:12 104:1 105:12 107:7 111:6,9 113:14 115:5 121:15 126:24 130:1,23,24 131:17 132:10,11 132:12 139:5,10 141:15 147:14 149:20 152:4 <b>cases</b> 4:16 11:10	34:3 36:2,7,16 67:17 68:13,20 69:8 101:15 109:4 131:7,8 142:1 <b>categorisation</b> 26:13 <b>category</b> 138:3 <b>cause</b> 126:11 127:7 <b>caused</b> 99:12 <b>caveat</b> 35:1 <b>cent</b> 95:19 98:22 109:16 110:21 112:8,10,11,11 114:16,19 116:15 117:1,7,15 120:10 121:16 124:15 151:9,19 157:10 <b>centred</b> 67:12 <b>certain</b> 19:10 21:11 68:25,25 80:6 85:12 86:24 90:24 119:17 123:1 136:19 154:16 156:4 <b>certainly</b> 23:24 38:5 41:1,25 42:18 63:6 65:2 65:19 71:20 81:14 82:21 97:11 99:6 101:14 102:2 113:7 114:22 142:22 <b>certainty</b> 3:2 23:24 93:20 94:18 124:8 <b>certificate</b> 9:17 42:1,13 98:2 113:15 114:5 131:23 132:21 133:24 134:9,22 136:4,15 <b>certificates</b> 41:15 42:16 114:6 131:14 133:12 <b>certification</b> 7:9 7:21,24 8:1,5,23	9:16 29:22 40:20 41:21 42:5 43:6 72:16 90:12 104:24 106:1 114:8 129:20 130:17 132:23 133:21 134:10 135:1 <b>certifications</b> 41:22 <b>certified</b> 47:20 48:11 98:16 134:23 <b>certifies</b> 100:8 <b>certify</b> 40:25 41:5 42:12,17 44:18 58:17 78:21 79:12 129:20 130:2 <b>certifying</b> 93:24 94:2 98:23 108:24 127:23 128:7 131:3,5 133:6 <b>cetera</b> 6:7 <b>CFO</b> 15:23 <b>challenge</b> 132:14 133:12 134:16 136:24 137:7,8 138:18 140:11 <b>challenged</b> 1:16 9:17 <b>champagne</b> 128:14 <b>change</b> 46:7 67:20 69:9 71:22 146:12 <b>changed</b> 12:11 41:14 48:17 106:6 <b>changes</b> 38:15,17 39:20 148:5,10 148:12,14,17,18 149:1,4 <b>changing</b> 115:15 <b>Chapman</b> 91:19 91:20 92:21 93:14 149:20 <b>Chapman's</b> 92:9 <b>chapter</b> 17:3 21:11	<b>chapters</b> 21:15,16 <b>character</b> 120:18 122:2 126:9 <b>characteristics</b> 83:12 <b>charge</b> 26:18 28:11 <b>charged</b> 17:25 35:12 37:24 <b>charges</b> 26:1,20 35:13 <b>check</b> 133:14 <b>choice</b> 38:24 82:9 82:21,24 84:22 107:8 108:17 118:12 <b>choices</b> 131:12 <b>choose</b> 40:14 41:2 61:13 140:2 <b>choosing</b> 53:17 <b>chose</b> 3:16 39:22 <b>chosen</b> 29:18 39:23 60:10 141:11 <b>Circle</b> 66:21 <b>circles</b> 124:9 <b>circumspection</b> 118:15 <b>circumstance</b> 74:15 <b>circumstances</b> 9:16 10:23 11:1 35:24 38:7,13,16 38:21 39:21 40:15,17 72:18 73:6 79:17 104:5 130:5,12 <b>claim</b> 31:5 33:15 36:23 44:20 59:18 63:14 69:14,19 70:17 72:11 73:9,19 110:11 125:4 <b>claimant</b> 111:25 112:23 <b>claims</b> 46:22 53:7 63:13 <b>clarify</b> 149:13 <b>clarity</b> 93:20 <b>classifiable</b> 80:22	<b>clause</b> 6:18,19 51:2 85:16,17 86:1 87:22 88:15 98:18 106:15 107:6 114:7,15 115:2 118:13 124:5 127:20 132:15 133:6,7,9 134:4,24 135:21 142:2 143:23 158:25 <b>clean</b> 146:25 147:25 148:15,24 <b>clear</b> 2:16 4:3 9:7 11:7 20:5 21:24 56:18 59:4 63:13 79:20 107:6 120:14 126:6 128:21 141:2 142:12 158:16 <b>clearer</b> 56:11 <b>clearly</b> 17:9 19:11 65:25 90:7 120:25 141:11 <b>Cleary</b> 116:3 <b>clerk</b> 159:9 <b>close</b> 25:7 94:5 99:20 105:12 132:18 <b>closely</b> 89:9 105:15 <b>closeout</b> 3:25 5:4 5:10 6:14,21 7:2 7:15,24 8:5,21 12:1,9 22:23 24:3 46:3,24 52:3 53:3,7,18,19 54:4,9,18 55:24 56:17 61:20 62:19 72:6 88:25 113:10 <b>closer</b> 148:6 <b>closing-out</b> 148:18 <b>code</b> 154:11 156:1 156:4,5,9,11 <b>code-based</b> 156:11 157:5 <b>coerced</b> 31:16 <b>Coleman</b> 69:24 <b>combination</b> 87:22
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>combinations</b> 14:15	17:23 20:1 21:3 36:9 102:16 103:6 104:3	62:3,13 82:17 134:2	<b>consequences</b> 1:25 28:17 37:18 65:2 78:6 97:6 99:10 105:7 119:15 123:19 124:24	134:12,24 <b>construing</b> 14:4 73:24 85:5 126:23 143:14 149:4
<b>combine</b> 2:17	105:16 112:10 116:25 119:18 124:11	<b>concerned</b> 1:25 10:8,19 12:4 24:8,18 33:2 38:6 44:9 45:17 45:24 46:1 48:24 55:23 56:8 60:5 60:25 61:5,8 62:5,8,9 64:1 69:1,19 81:15 82:18 83:11 84:8 89:11 90:7 96:7 98:8,15 99:3,11 100:2 103:13 114:13 126:23 132:5 139:7,13	<b>consider</b> 5:11 9:20 18:23 103:24 141:13	<b>contain</b> 65:10 <b>contained</b> 70:11 156:11
<b>come</b> 40:21 46:8 48:1 51:8 79:24 90:11 93:16 107:5 109:13 110:11 121:2 141:12 149:7,25 153:2 158:18,24	<b>company's</b> 30:12 119:16	<b>concerns</b> 1:9 2:1 20:11 25:25 43:10 48:22 62:21	<b>consideration</b> 83:10	<b>contains</b> 60:17,18 156:10
<b>comes</b> 2:21 68:13 69:13 93:21,23 96:1 117:22 125:20 128:18	<b>comparable</b> 51:14	<b>concluded</b> 18:19	<b>considering</b> 37:21 111:14 146:23	<b>contemplate</b> 101:2 102:22
<b>coming</b> 78:21 83:16 117:25 129:1 144:16	<b>compare</b> 131:23	<b>concludes</b> 134:22	<b>considers</b> 8:11	<b>contemplated</b> 128:6
<b>commercial</b> 8:14 11:20 57:5,6 59:16 60:2 64:6 74:8 103:2 117:11 119:18,21 120:20 123:24 125:10 126:9,11 142:22	<b>compensate</b> 4:10 57:8,20 72:23 99:14	<b>conclusion</b> 114:15 144:16 148:23	<b>consistent</b> 66:3	<b>contemplates</b> 83:4 114:9
<b>commercially</b> 6:13 7:11,12 8:3,4,16 8:17,18 9:8 23:3 71:8 102:18 124:18 125:18 128:24 149:8	<b>compensation</b> 57:12,15 72:22	<b>conclusions</b> 78:15 3:12 43:6 133:24	<b>consisting</b> 5:16	<b>contemplating</b> 113:6
<b>commit</b> 19:9	<b>compensating</b> 96:6	<b>concrete</b> 140:3	<b>consolidation</b> 60:19	<b>contemplation</b> 69:16 80:9
<b>committed</b> 18:21	<b>compensatory</b> 99:12	<b>condition</b> 145:13 145:18,21	<b>consolidations</b> 45:17	<b>contend</b> 29:3 41:14
<b>common</b> 1:23 8:10 11:12 12:8 19:13 43:6 46:21 64:17 64:19 65:1,14,15 65:24 66:3 69:21 95:25 141:1	<b>competing</b> 133:19 135:7,8	<b>conditional</b> 124:10	<b>consternation</b> 126:11	<b>contended</b> 41:5
<b>commonsense</b> 57:5 59:16 60:2	<b>complain</b> 111:2	<b>conditioned</b> 82:6 122:16	<b>constitute</b> 26:21	<b>contending</b> 28:21 31:24 32:15 84:10 92:3 133:4
<b>Communications</b> 85:7	<b>complaint</b> 105:20	<b>conditions</b> 38:19 85:12 95:21	<b>constitutes</b> 48:17	<b>content</b> 16:4 129:7
<b>community</b> 126:12	<b>complete</b> 138:12	<b>conducting</b> 88:19 139:5	<b>constituting</b> 120:16 121:9 125:10	<b>contention</b> 83:7 126:7
<b>companies</b> 12:24 13:1 14:8,20,25 15:9 18:1,25 19:9,14,14,21 20:6 101:25	<b>completely</b> 104:6	<b>confined</b> 74:14 94:6	<b>constraint</b> 7:7	<b>contentions</b> 41:25
<b>company</b> 14:6	<b>complex</b> 18:25	<b>confining</b> 136:25	<b>constraints</b> 2:20 8:7 90:13,22	<b>contentious</b> 138:5
	<b>complexities</b> 22:21	<b>confounded</b> 113:17	<b>construct</b> 106:21	<b>context</b> 2:10,11 4:6,19 5:3 6:9 7:2,15,19 9:2,3,4 10:9,16 11:8 14:1 18:11,20 23:14 24:6 48:1 52:1,6,17 53:3 54:20 75:11 85:10 89:23 90:16 94:14 131:18,20 132:2 132:18 139:22,24 141:16,18,22,23 141:24 142:2,8,9 142:15 158:16,25
	<b>complexity</b> 19:9 22:13,20	<b>confronted</b> 104:12	<b>construction</b> 2:21 3:3,8 12:17 44:17,23 53:13 54:1,13 57:6,7 60:3 65:17 66:2 66:7,21 71:13 74:13 77:15 78:17 79:10,21 83:13 84:2 87:24 91:9 93:19 94:16 106:16 115:2 124:6 130:5,16 133:5,11,20 134:4,14 135:20 144:18 147:10	<b>contexts</b> 8:6 42:4 131:3,14 142:19
	<b>complicated</b> 22:15 99:21	<b>confused</b> 58:9	<b>construe</b> 2:19 24:11 44:15,21 72:15	
	<b>component</b> 70:12	<b>conscious</b> 30:17 76:15 118:2 137:24	<b>construed</b> 44:15 65:11 87:5	
	<b>compound</b> 112:12 150:15			
	<b>compounding</b> 154:4,5			
	<b>conceivably</b> 105:19			
	<b>concept</b> 1:11,12 3:24 18:16 20:12 20:15 47:25 54:15 120:25 132:8 137:2 153:21 158:6			
	<b>concepts</b> 96:1 131:10 151:24 152:16			
	<b>concern</b> 61:1,15			

<b>contingent</b> 81:1	<b>convert</b> 120:21	39:19 40:9,25	115:5 116:9	127:12,13 134:4
<b>continue</b> 42:14	<b>convertible</b> 14:14	41:9 42:16,17	127:23,24 133:25	134:13,23 135:21
58:12 73:20	120:7 121:15	44:18 45:1,1,3,3	134:11	135:23 139:11
<b>continued</b> 1:4	<b>converting</b> 120:12	47:19,20,25	<b>couched</b> 43:13	142:22 143:15,20
147:3 160:1	<b>convincing</b> 158:3	48:10,10 52:20	<b>counted</b> 115:12,12	143:22 144:3
<b>continues</b> 21:11	<b>Cooke</b> 15:19	54:24,24,25 55:2	<b>counterfactual</b>	146:11,21,23
<b>continuing</b> 58:21	<b>copied</b> 144:21	55:2 57:15,23	102:25	147:1 149:2
145:20 146:24	<b>copy</b> 16:3 24:23	58:13,17,18,24	<b>counterparties</b>	<b>court's</b> 83:10,13
<b>continuum</b> 128:18	<b>core</b> 5:5 27:9	59:6,10,10,18,19	44:16 53:18	84:2 85:1 98:17
<b>contract</b> 22:17	31:11 45:10	59:21,21,22,23	61:13 63:15	133:20
65:10,15,18 66:7	87:19	62:2,11,12,18	82:17 106:24	<b>covenants</b> 84:18
66:10,15 67:13	<b>corks</b> 128:14	63:3 64:1,3,5	<b>counterparty</b>	84:24
67:14 71:25	<b>corporate</b> 17:12	70:12,13,24,25	44:19 53:16 54:3	<b>cover</b> 101:3 102:5
108:9 125:25	17:22,23 32:1	71:9,10 72:7,10	56:7 58:19,20	102:21 104:16
126:17,25 127:6	84:16 101:20,23	72:19,20,21,25	59:5,9 60:10	110:6 134:24
135:1	103:19 109:10	73:1,10,17,19	61:9,15 73:17,18	<b>coverage</b> 104:11
<b>contracting</b> 59:17	<b>corporates</b> 78:25	74:2 77:15 78:11	104:22	<b>covered</b> 32:19
64:20	<b>Corporation</b> 91:6	78:17 79:12 83:5	<b>counterparty's</b>	<b>covering</b> 157:11
<b>contracts</b> 127:15	<b>correct</b> 8:12,13	83:18 84:2 87:1	58:18	<b>covers</b> 51:2
132:20	32:10 33:20 58:7	88:5,12,16,22	<b>counting</b> 29:20,25	<b>created</b> 85:12
<b>contractual</b> 19:12	68:8 77:14 91:8	89:7,24 90:19,24	30:23	<b>credit</b> 24:19,23
19:18,25 23:5	107:9 112:16	92:5,6,17 93:25	<b>couple</b> 3:22 143:11	25:8 60:6,8,15,25
44:16,19 53:16	<b>correctable</b> 136:5	94:8 97:9,14	<b>coupon</b> 35:12	61:6,7,8,14,16,24
54:3 56:7 61:13	<b>corrected</b> 136:12	99:13,15,15	120:9,23 125:11	61:25 62:3,9,16
88:15 93:22	<b>correlations</b> 5:20	100:13 103:13,15	<b>coupons</b> 122:22	109:17 111:25
96:23 109:4	<b>correspondence</b>	103:23 105:21	<b>course</b> 6:4,22 7:5	112:5
131:8,19 132:16	115:25 120:3	106:12 107:10	30:21 32:19	<b>Creditor</b> 38:5
138:1	<b>cost</b> 1:9,12,12,13	110:11 111:1	35:10 40:2 46:9	44:24 57:6 60:10
<b>contractually</b>	2:5,12,18 4:9,10	113:5 117:5,16	62:24 63:10,20	63:11 66:2 77:3
19:15 21:3 22:8	4:17,19 6:9	120:13,17 121:9	64:11 67:19	<b>creditors</b> 30:19
<b>contrary</b> 59:16	15:17,18,22,23	122:1,2 124:10	68:24 69:4,13	<b>creditworthiness</b>
64:18 65:25	16:8,13,14,21	124:13,18 125:3	73:5 81:6 82:16	62:6
68:12	17:11,13,17,18	125:4,4,10,12	83:21 92:16	<b>credit-related</b>
<b>contrast</b> 47:14	17:20,24 18:1,11	126:7,13,21	93:14 94:22	61:10
50:3	18:18,23 19:4,5	129:4 139:24,24	96:25 101:18	<b>crisis</b> 110:3,18
<b>contrasted</b> 141:3	19:12,23 20:3,5	140:1,5,22,25	117:21 123:20	116:10
<b>control</b> 98:2 108:4	20:12,16,21,25	141:18 142:1,2,4	133:11 139:16	<b>criteria</b> 134:7,21
109:7,15	21:1,2,10,12,13	142:25 151:14,21	140:6,10,17	136:14
<b>controls</b> 8:19	21:24 22:8,15,16	152:11,15 157:10	141:7 147:12	<b>criticise</b> 58:4
109:16	22:20 26:4,14,17	158:1,4,7,11,21	149:15	<b>cross-claims</b> 53:8
<b>convenience</b>	26:22 27:4,12,18	158:21	<b>courses</b> 141:11	<b>cross-currency</b>
139:14	27:20,25 28:3,8	<b>costs</b> 15:15 25:25	<b>court</b> 1:21 2:4,19	156:8
<b>convenient</b> 44:4	28:19 29:8,9	26:5,7,10,11 31:4	2:21 3:18 4:3 8:2	<b>crystallises</b> 88:11
118:4 159:1	30:3,7 31:13,20	34:22 38:6 63:14	8:11 12:21 23:21	<b>cumulative</b> 119:4
<b>conventionally</b>	31:21 33:8 34:21	77:19 78:8,20,24	24:11 40:24 41:1	119:11
83:18	34:24 35:3,5,8,14	96:25 97:3 99:1	77:14 85:14	<b>curious</b> 88:18
<b>Conversely</b> 11:3	35:16,16,23 36:4	104:23 106:24	90:24 91:5 93:15	<b>currencies</b> 153:5
65:21	36:5,13,14 37:3,3	107:4,22 109:8	97:5,16,17 107:3	157:11
<b>conversion</b> 120:10	37:6,8,9,19,20	109:24 110:7	107:7 108:16	<b>currency</b> 49:15
120:15	38:1,2,12 39:3,8	111:23 112:14	121:25 122:5	50:17 51:3,6

74:17 145:10 150:2 151:2 153:5 155:20 156:8,8 158:10 <b>current</b> 106:4 <b>curves</b> 5:19 6:7 99:22 100:6 <b>cushion</b> 110:6,7 <b>customarily</b> 83:19 <b>cut</b> 85:18 <b>cutting</b> 73:15 90:9 <b>cutting-edge</b> 17:12	93:6 110:1 137:21 138:24 139:18,19 140:14 149:14 <b>dealers</b> 25:14 <b>dealing</b> 2:8 4:13 33:8 40:2 46:2 49:20 50:3 53:18 54:17 55:20 59:7 63:11 67:11 68:21 93:18 100:10,12 139:10 143:17,19 147:9 149:18 <b>dealt</b> 6:12 41:19 56:3 60:22 142:20 <b>debt</b> 12:24 13:4 19:2,4,19,20,22 21:2 33:23 34:23 35:4,16,17,25 36:6,8 37:11,16 55:4 59:2,8,11 70:12,20 78:2 80:7,21 81:9 82:16,21 83:4 84:15,23 86:25 87:2 100:19,25 101:18,19,23 102:5,8,12,15 103:18 105:18 106:5,7 110:19 114:20,25 115:1 115:6,13 117:10 117:15,22 119:23 120:16 121:8 122:2 123:1,4 124:4 125:7,18 125:19,22 127:19 127:20 128:12,12 128:21 <b>debtor</b> 66:5 68:8 69:12,16 70:19 112:5 119:23 123:25 <b>debt/equity</b> 84:20 <b>December</b> 114:1 <b>decide</b> 133:9 <b>decided</b> 1:21 25:21 109:15	<b>deciding</b> 13:10 28:11 <b>decision</b> 39:14 66:20 82:12 85:2 85:7 91:4 102:9 104:21 138:4,15 143:15,20,24 146:21,22 <b>decisions</b> 17:15 18:2 79:15 <b>decision-maker</b> 131:12 <b>declaration</b> 43:9 <b>declarations</b> 29:25 <b>deduce</b> 147:24 <b>default</b> 4:19 7:9,13 7:19 8:23 12:4 12:17 13:10 14:5 23:15 24:1,6 41:6 44:13 47:24 48:22,24 49:8,17 50:4,23 51:22 56:10 57:2,8 62:19 70:11 77:24 78:10,12 78:20 82:9 83:6 87:15,24 88:16 88:23 89:10 90:17 91:2 94:5 94:9,12 95:5 100:24 101:8 102:3,6,14 105:6 110:3 111:3,10 111:21,25 112:11 112:24 118:12 121:22 132:23 140:24 143:7 144:8,10 145:18 145:19 146:17 149:10 150:3,7 150:12,13 151:6 151:7,9,10,13,18 151:18,20 152:5 152:7 153:18,18 153:20,20,23,24 154:1,6 156:22 156:22,24,25 157:3,5,7,8 <b>defaulted</b> 28:8,14 29:11 30:5 49:22	<b>defaulting</b> 45:22 46:2,4,12 52:1,4 52:14 54:19 55:15 56:15 61:5 61:19 62:21 105:20 109:21 110:19 130:9 152:7 <b>defaults</b> 49:11,23 110:3 150:8 <b>defer</b> 122:12 <b>deferring</b> 120:1 <b>define</b> 4:14 141:21 <b>defined</b> 19:12,15 20:21 21:2 47:1 60:16 140:25 153:23 154:6,10 <b>defining</b> 140:21 <b>definition</b> 4:8 5:4 7:13 12:9 13:10 15:5 17:17 18:9 18:19 22:18 24:19 36:7 44:13 47:24 48:18 51:22 56:9 57:2 59:23 70:14 83:6 87:17 88:3,7 94:7 101:7 140:6 140:7 141:2 142:5,16 143:4,5 146:18 151:11,23 155:3 <b>definitions</b> 24:23 <b>definitively</b> 85:3 <b>delayed</b> 18:22 <b>deliver</b> 144:7 <b>deliverable</b> 25:5 <b>delivered</b> 25:2,5 <b>deliveries</b> 145:5 <b>demand</b> 49:15 <b>demands</b> 104:13 <b>demonstrating</b> 137:1 <b>denominated</b> 156:2 <b>denominations</b> 74:17 <b>depend</b> 4:23 22:11 33:12 136:20 142:1	<b>depended</b> 10:1 <b>dependent</b> 102:1 138:8 <b>depending</b> 10:3 29:4 38:6 <b>depends</b> 12:19 38:24 66:16 95:20 <b>deposited</b> 2:14 <b>deposits</b> 70:14,24 71:9,11 <b>derivative</b> 4:24 14:7 22:23,25 25:8 <b>derivatives</b> 24:19 24:23 <b>derive</b> 70:3,9 <b>deriving</b> 20:21 71:1 <b>describe</b> 63:21,22 125:8 <b>described</b> 6:1 89:15 91:17 108:23 124:17 158:12 <b>describes</b> 155:14 <b>describing</b> 119:3 <b>Description</b> 155:24 <b>descriptions</b> 80:23 <b>designated</b> 82:3 155:4 <b>designating</b> 145:4 <b>designation</b> 49:4,9 50:5 52:2 88:2 145:14 <b>designed</b> 60:8 153:7 <b>desire</b> 94:18 <b>destroy</b> 124:7 <b>detail</b> 7:16 121:13 <b>detailed</b> 32:11 70:3 <b>detect</b> 135:15 <b>determination</b> 1:15 2:22 6:21 23:20 35:18 39:7 39:8 42:4 108:19 131:15 132:2 <b>determine</b> 2:5
<b>D</b>				
<b>d</b> 153:11 159:23 <b>daily</b> 150:15 154:1 154:5 <b>damage</b> 68:2,2,6 <b>damages</b> 66:14,16 67:14,14,23 68:7 68:10,12,14 69:2 69:19 96:1 <b>danger</b> 12:17 14:4 33:10 <b>dangerous</b> 78:22 <b>dangers</b> 64:23 <b>data</b> 5:16,20 6:17 <b>date</b> 25:3,4,13 29:10,10 38:14 38:21 39:12 41:8 41:11,22 42:7 45:2 48:23,25 49:4,10 50:5,8,10 50:18,18 52:2 88:2,6,21 114:2 119:2 129:22,22 130:11 145:4 150:21 151:3,4 152:4,13 153:16 153:16 154:24 <b>dates</b> 154:2 <b>David</b> 31:12 76:24 159:5,9 <b>day</b> 39:15,15 110:10,25 150:23 154:25 <b>days</b> 25:4 115:9 150:16 <b>deal</b> 21:11 33:5 41:20 55:8 83:8				

3:10 6:8 17:22 70:24 89:17,23 112:24 <b>determined</b> 19:18 19:24 20:4 70:13 143:22 145:7 153:24 157:6 <b>determines</b> 35:15 35:24 36:13 <b>determining</b> 5:8 5:10,10 6:3,14,22 6:24 8:10 9:8 89:7 95:13 118:12 147:1 <b>develop</b> 77:7,22 87:12 <b>developed</b> 79:6 94:4 <b>developing</b> 79:1 <b>Dicker</b> 1:4,5 7:13 7:25 8:6,20 9:2 10:2,6 11:10,18 11:23 12:1,15 13:25 14:21 22:14,19 23:6 24:22 29:1,17,21 30:2,13,16,23 31:7 32:10,14,17 32:22 33:4 34:15 36:24 37:1 38:10 40:21 44:3,9 51:8,10,12 57:18 58:7,11 65:17 69:22 70:2,6 71:15,18 74:20 75:13,19 76:1,5 76:12 80:4 87:7 87:13,21 90:1 91:4 94:21 95:8 97:17 100:21 107:9,13 129:8 132:9 139:15 159:25 <b>Dicker's</b> 77:4 <b>differ</b> 99:8 155:21 <b>difference</b> 36:22 48:1 75:1 100:19 117:20 134:19 146:4,14 151:9 153:3 155:10	157:20,25 <b>differences</b> 125:19 156:12,14,17,18 157:22 <b>different</b> 10:3,14 10:17 11:4 14:24 22:12,20 23:23 24:10 27:22 35:10 43:17,21 52:8 68:11,16 79:17 84:10 86:20 88:19 91:3 96:19 99:15 107:18 127:9 128:25 130:24 131:2,4,24 134:25 145:12 148:1 152:17 153:9,22 154:18 158:15,21 <b>difficult</b> 4:21,22 22:3,24 40:11 65:6,12 117:11 120:19 121:5 122:24 128:4 137:20 <b>difficulties</b> 61:24 95:13 118:11 127:7 128:25 <b>difficulty</b> 108:16 121:7 <b>direct</b> 17:5 146:14 148:9 <b>direction</b> 21:21 43:10 <b>directly</b> 7:13 <b>directors</b> 123:23 <b>disadvantaged</b> 84:9 <b>disagreement</b> 130:22 135:15 <b>disappear</b> 116:21 139:10 <b>disaster</b> 104:7 <b>discern</b> 117:11 <b>discharge</b> 85:17 <b>disclosed</b> 148:5 149:1 <b>discount</b> 70:17 <b>discounted</b> 70:19	<b>discretion</b> 81:4 93:24 109:4 131:8,20 138:1 <b>discretionary</b> 119:13 123:8,16 <b>discretions</b> 132:17 <b>discussing</b> 81:20 <b>discussion</b> 1:6 31:25 67:12 68:4 70:4 71:4 92:20 159:11 <b>disentangle</b> 127:23 <b>disentangling</b> 128:8 <b>dispose</b> 130:20 <b>disposed</b> 58:19 <b>dispute</b> 91:18,22 91:24 101:14 124:7 128:10 <b>disputes</b> 134:3 <b>disrespect</b> 139:11 <b>dissatisfaction</b> 128:16 <b>distils</b> 141:15 <b>distinction</b> 26:23 56:24 68:1,6,25 74:24 78:2,4 79:14,20,22 117:8 122:4,20 123:6,17 124:4 125:14,15 126:16 <b>distinctions</b> 106:3 114:25 121:24 124:25 127:4,14 <b>distinguish</b> 79:8 106:14 122:6,24 126:18 <b>distinguishable</b> 119:23 <b>distinguishing</b> 122:20 124:3 <b>distributable</b> 117:19 <b>distribute</b> 119:20 119:20 124:11 <b>District</b> 91:5 <b>disturbed</b> 136:15 <b>divide</b> 63:7 <b>dividend</b> 30:10 119:13 121:16	123:20 <b>dividends</b> 19:10 100:14 116:14,24 117:2 123:18,21 <b>divides</b> 106:19 128:21,23 <b>document</b> 75:11 114:13 119:2 137:1 154:11 <b>documents</b> 75:9 91:14 131:24 <b>doing</b> 10:21 14:9 28:18 39:1 65:22 68:5 74:21 90:25 90:25 99:18,22 103:8,13 120:13 149:24 <b>dollar</b> 70:14,24 71:9,10 156:2 <b>dollars</b> 153:7 158:9 <b>double</b> 29:20,25 30:23 110:6 <b>doubling</b> 110:7 <b>doubt</b> 9:12 15:8 17:20 28:17 42:3 60:5 73:6 99:23 100:5 109:19 <b>draft</b> 135:7,8 <b>drafting</b> 75:9,24 152:17 158:12 <b>draftsman</b> 1:17 2:12,17 3:16 5:3 5:7 6:11 7:15 9:2 9:10,20 10:11,21 23:3,17 24:2 25:21 40:22 42:2 43:2 47:11,14 48:2,13,20 49:2 51:23 52:8,16,24 54:2,5,6,22 55:17 59:13 60:5,11,22 60:24 61:7 64:16 64:24 65:22 74:1 74:4,14 75:4,7 79:19 127:11 128:5 141:10 142:13 143:1 158:7,13 <b>draw</b> 1:7 78:16	85:1 114:3 121:25 128:23 148:23 <b>drawing</b> 56:24 68:5 102:7 103:8 <b>drawn</b> 79:19 81:13 125:15 126:16 127:14 <b>driven</b> 100:16 103:23 <b>due</b> 46:8 50:9 63:9 63:20 64:11 68:24 69:3 94:22 123:20 130:7 145:17 149:14 150:8,21,23 151:4 152:6,9 153:16
<b>E</b>				
<b>E</b> 159:23 <b>earlier</b> 98:18 115:4 142:10 143:21 146:15 157:19 159:3 <b>early</b> 39:12 41:8 42:7 48:23,25 49:4,9 50:5,10,17 52:2 56:14 82:1 88:2 92:25 96:3 145:4,14 151:3 152:4,13 153:15 <b>easily</b> 107:20 <b>easy</b> 98:4 114:21 <b>economic</b> 20:11 58:21 122:10 126:3 127:6,16 <b>economists</b> 16:23 18:6,10 <b>economy</b> 109:15 <b>edition</b> 154:13 156:4 <b>effect</b> 53:12 74:3 78:8 79:10 86:1 94:18 109:21 126:16 145:4 146:9 <b>effective</b> 49:9 108:4 150:24 155:1				



<b>effectively</b> 4:14 10:6,8 13:4 31:18 39:18 42:22,25 53:8 55:5 58:23 64:4 64:25 103:19 113:20 134:24 151:17	<b>engage</b> 128:8 <b>engaged</b> 89:12 100:2 <b>engaging</b> 100:17 <b>English</b> 14:1,6,20 63:22 64:14,17 64:19 65:1 96:8 96:20 119:12 124:21 126:24 127:5,8,13 139:7 139:13 143:17,19 149:18 <b>enhanced</b> 81:1 <b>enlarging</b> 84:5 <b>enquiry</b> 138:20 <b>ensure</b> 23:19 61:13,15 <b>ensured</b> 3:2 <b>enter</b> 62:8,15 <b>entered</b> 101:10 110:22 112:5 <b>entering</b> 62:14 103:7 113:8 <b>enterprise</b> 13:19 14:16 18:14,22 101:4 <b>enters</b> 62:4 <b>enthusiasm</b> 16:19 <b>entirely</b> 14:15 40:1 75:13 89:18 <b>entities</b> 14:23 15:12 101:17 105:9 <b>entitle</b> 29:25 <b>entitled</b> 7:3,8 26:4 26:7 35:21,22 38:3 44:22 45:5 47:3 53:25 54:4 57:9,14,20,22,24 58:1 59:3,20 61:12 67:23 70:23 72:19 104:1 155:19 <b>entitlement</b> 98:19 116:21 125:4 <b>entitlements</b> 46:22 46:23 <b>entity</b> 30:4 37:23 105:16 <b>entity's</b> 29:8	<b>envelope</b> 2:22 3:9 24:14 <b>envisage</b> 102:25 <b>envisaged</b> 153:5 <b>equal</b> 37:15 47:18 48:9 73:21 140:21 151:13 152:11 157:5,9 <b>equally</b> 8:22 23:14 97:2 99:1,4 123:24 133:11 <b>equated</b> 125:16 <b>equation</b> 21:10 <b>equity</b> 12:25 13:1 13:5,18,20 14:11 14:12 15:17,23 19:3,6,8,13,16,17 19:18,20,21,23 20:1,2,6,15,17,21 21:4,5,10,13,25 22:15,20 28:4 30:9 35:25 37:4 37:10,20,22,22 78:2 80:7,21 81:9 82:16,21 84:15,23 86:25 96:25 97:12,13 97:14 100:13,19 101:1,3,20,21,24 102:5,8 103:18 105:5,13,19 106:8,16 107:5 112:15 114:20 115:2,6,20 116:9 117:9 119:14,19 120:18,21 121:10 122:21,23 123:3 123:9,18 124:4 124:22 125:12 127:24 128:22 140:5,5,7,11 141:13 142:3 <b>equity/debt</b> 118:11 <b>equivalent</b> 35:16 50:3 109:10 <b>erroneous</b> 133:7 <b>error</b> 43:11,14 131:1,19,25 132:8 136:3,3,19 137:3 138:3,8,9	138:10,19 <b>especially</b> 77:7 <b>essentially</b> 2:19,25 3:13 4:1 7:16 18:15 19:1 28:6 31:17,21 32:14 33:2 38:24 39:14 40:13 41:16 42:10,14 48:4 53:17 54:23 65:17,21 69:1 71:1,23 72:9 74:21 90:17 95:10 121:23 158:6 <b>established</b> 134:21 <b>estimate</b> 22:24 <b>estimated</b> 5:24 <b>estimates</b> 17:24 <b>et</b> 6:7 <b>euros</b> 112:20 <b>event</b> 44:10 62:4 62:19 66:1 82:1 144:8 145:18,19 151:6,8 152:5,13 152:14 153:17,19 <b>events</b> 97:21 99:19 <b>eventually</b> 42:16 85:14 89:6 <b>evidence</b> 12:21 21:21 32:3 47:20 48:10 63:9 68:25 77:1 86:4 111:22 112:3 113:16,17 113:19,22,25 114:3,4,7 115:18 143:13 <b>exact</b> 129:20 130:14 <b>exactly</b> 65:23 90:25 97:4 143:6 146:17 149:20,23 <b>example</b> 7:10 12:23 14:24 22:23 25:20 26:19 34:4 35:11 36:13,19 37:8 42:5 51:1 63:12 74:17 75:2 98:5 99:21 100:5	105:15 106:3,21 109:9 115:19 117:8 119:25 120:4 121:11 124:15 127:15 <b>examples</b> 2:9 20:6 32:22 33:1 77:25 113:12 116:8 <b>exceeding</b> 112:16 <b>exception</b> 52:11 61:2 <b>exceptional</b> 34:3 <b>excess</b> 67:14 <b>exchange</b> 145:11 150:2 155:20 <b>excluding</b> 50:18 151:3 <b>exclusion</b> 145:2 <b>exercise</b> 3:3 9:25 25:7 36:18 79:21 88:11,13,14 89:16 90:18 91:1 94:11 96:15 100:3,18 124:6 128:6,8 130:5 135:1 <b>exercises</b> 88:19 <b>existed</b> 147:2 <b>existence</b> 69:17 146:24 <b>existing</b> 11:5 34:23 36:8 102:7 138:6 <b>exists</b> 103:10 157:11 <b>expand</b> 105:1 <b>expanded</b> 5:2 158:5 <b>expansive</b> 97:18 <b>expect</b> 58:25 <b>expectation</b> 21:4 22:9,11 30:9 98:22 106:5 <b>expectations</b> 126:13 <b>expected</b> 20:17,20 20:22 <b>expenses</b> 26:1 27:6 <b>expensive</b> 19:20 36:7 97:22 104:17
--------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>experience</b> 14:20	<b>extinction</b> 144:19	<b>fair</b> 14:18 75:22	157:6	17:4 20:4,11
<b>expert</b> 21:20 32:3	<b>extinguishing</b>	95:24 98:7 111:7	<b>feeding</b> 89:1	21:9 25:12 31:15
63:9,11 68:25	146:10	132:1 159:17	<b>feel</b> 95:8	32:23 39:14
86:4 131:15	<b>extra</b> 72:8 115:18	<b>fairly</b> 14:12 33:5	<b>fees</b> 26:20,21,24	40:15 44:15
132:1	<b>extract</b> 15:20 16:1	83:24 89:15	27:6 63:12,15,16	47:10,15 48:5
<b>experts</b> 64:2	16:3 120:19	<b>fairness</b> 104:25	63:17 107:11,19	57:17 58:5,16
<b>explain</b> 52:5 70:4	<b>extracted</b> 17:3	<b>faith</b> 2:3,23 3:11	<b>felt</b> 100:24 112:24	60:14 66:20
70:8 79:19 155:9	<b>extracts</b> 21:23	3:17 4:2 7:7,17	<b>fide</b> 1:19	78:17 81:21
<b>explaining</b> 157:3	<b>extraordinarily</b>	8:8,19,25 9:14	<b>fifth</b> 140:8	82:10 89:5 98:4
<b>explains</b> 156:21	72:10	10:8,12,14,16,22	<b>figure</b> 35:20 136:8	101:8 103:5
<b>explanation</b> 20:10	<b>extraordinary</b>	10:25 11:4,13	<b>final</b> 25:24 42:17	105:4 113:24
52:9 75:1 81:22	9:13	23:8,13 24:9,13	71:12 72:3	115:19 119:9
148:23 149:4	<b>extrapolate</b> 71:17	29:21 33:25 34:6	121:11	125:7 139:4,21
153:2 157:24	<b>extremely</b> 17:21	34:16,18 35:18	<b>finality</b> 3:2 23:24	141:11 142:6,8
158:3,4	76:8	35:20 39:1,6	131:5 136:22	143:2,4,5,15
<b>explicitly</b> 92:13,18		40:5,16 42:20	<b>finally</b> 20:24 78:13	146:6 147:8
<b>expose</b> 60:5	<b>F</b>	43:7,14,15,23	96:14 99:17	150:4,5,19
<b>exposed</b> 60:8 61:5	<b>F</b> 144:21	72:17 89:14	140:12	155:12,18,25
136:16,21	<b>face</b> 84:17 113:25	90:10,22 91:11	<b>finance</b> 18:25	158:24
<b>exposing</b> 60:25	121:18 131:23	92:2 94:2 98:5	19:16,20,21 32:1	<b>firstly</b> 1:18 19:2
125:3	136:4 138:21	105:25 106:13	69:25 126:1	63:8 141:16
<b>exposure</b> 60:15	<b>faced</b> 36:11 61:8	107:25 130:2	<b>financial</b> 15:24	<b>Firth</b> 143:15
98:6 102:20	<b>facie</b> 95:4	133:2 134:7,17	16:23 17:21	<b>Fisher</b> 75:16
103:4 109:24,25	<b>facilities</b> 101:18	<b>fall</b> 19:11 107:4	18:10,12,21 30:3	<b>fit</b> 92:1
110:2,5 124:10	102:8 123:24	127:20 133:10	77:8,23 78:9,25	<b>five</b> 25:3,14 44:5
<b>exposures</b> 104:9	<b>facility</b> 102:5,13	134:10	79:6 80:6,14,16	50:12
104:13	102:13,15 103:9	<b>fallback</b> 81:25	80:20,21 81:5	<b>fixed</b> 41:20 42:22
<b>express</b> 7:2 9:24	103:20 104:3	<b>falling</b> 78:11 84:7	82:15,18,19,25	42:24 116:14
23:2 93:1	112:18,20 114:18	84:23 115:2	83:19,23 97:19	117:12,17 120:9
<b>expressed</b> 61:1	<b>fact</b> 13:25 28:7,23	<b>falls</b> 84:13 86:18	102:2 109:17	121:16 122:14
132:4	30:4 43:20 53:11	118:12 126:8	110:18 116:9,10	123:6,10 124:12
<b>expression</b> 12:13	59:6 60:18 72:16	129:12 133:20	120:5 121:13,20	125:11
132:19 134:11	80:5 86:21 90:23	144:12	128:19	<b>flawless</b> 158:13
140:20,21	94:11 103:16	<b>false</b> 38:24 74:12	<b>find</b> 2:7 34:1 45:11	<b>flexibility</b> 92:24
<b>expressly</b> 7:19	111:23 112:4	<b>familiar</b> 96:5	51:18 65:12,24	<b>flexible</b> 93:24
25:23 90:2	113:3 115:11	<b>fantastically</b> 22:24	68:23 72:10	<b>floating</b> 9:18
<b>extend</b> 107:11	124:19 128:3	<b>far</b> 10:7,18 19:8	79:16 97:19 99:3	153:25 154:10,16
<b>extended</b> 84:5	130:4,17 131:11	20:6 33:1 38:5	99:11 106:7	154:17,18,22
133:5	133:19 134:6,21	52:23 56:8 64:5	135:8 154:13	157:7
<b>extension</b> 138:5	141:24	69:1 71:3 81:14	155:11	<b>floor</b> 20:17
<b>extent</b> 1:15 10:11	<b>factor</b> 97:15	82:17 83:11	<b>finding</b> 158:20	<b>flow</b> 99:10
10:13 12:23,25	<b>factors</b> 9:13	88:14 89:10 90:6	<b>finds</b> 8:20 119:1	<b>fluctuating</b> 38:14
29:5 30:6 31:9	104:21	95:15 96:6 98:15	132:16	38:21 39:20,22
43:14 46:1 49:12	<b>facts</b> 12:20	99:2 100:1 138:2	<b>finish</b> 27:7	39:24 41:7,11,18
49:24 50:15	<b>factual</b> 30:24	139:6,13	<b>finished</b> 152:20	41:19
60:24 67:20	66:17 69:2 77:12	<b>favour</b> 73:3	<b>finishing</b> 94:13	<b>focus</b> 17:8 55:11
68:20 69:10	79:17,24 84:8	<b>fear</b> 84:23	<b>firm</b> 20:2 25:14	131:15
75:14 89:15	85:24 86:7,18	<b>federal</b> 91:4	<b>firms</b> 86:12	<b>focusing</b> 5:14 6:16
100:15 101:22	87:3,8	153:25 154:10,21	<b>first</b> 1:8,25 5:6 9:6	51:13 52:23
150:18	<b>fail</b> 62:7 82:1	154:21 155:1,6,8	12:14 14:23 16:9	140:10

<b>follow</b> 137:5 138:15 152:16	86:21 97:13 104:4 123:11 125:21 155:17,19 155:24,25 156:15 158:20	137:24 138:22 143:21 160:3	15:18 22:9 26:5 26:10,14,15,19 26:22 27:2,4,13 27:20 28:1,9,12 28:19 29:9,9 30:3 31:5,13,20 31:21 33:23 34:21 35:8 36:4 36:5 38:2,12 39:1,3,5,7,9,19 40:3,8,8,9,25 41:9 42:16,17,21 42:22,23 44:19 45:1,2,3,3 47:21 47:25 52:21 54:24,25,25 55:2 55:2 57:15,23 58:13,17,18,24 59:6,10,11,18,19 59:21,22,22,23 62:3,11,12,18 63:3 64:1,4,5 70:12 72:7,11,19 72:21,22,25 73:1 73:10,17,20 77:15,18 78:8,11 78:18,19,24 79:13 81:5,8 82:14 83:4,5,18 84:3,21 86:24 87:1 88:5,12,16 88:22 89:7 90:19 92:6,7,17 93:25 94:9 97:3,14 99:13 100:19 101:1,10,11,19 101:21,24 102:5 102:12,14,19,23 103:3,7,18,20,23 105:5,17,24 106:5,7,8,12,17 106:18 107:5,10 107:22 110:12,14 110:19 111:1,24 112:9,23 113:2,3 113:5,7,9 114:17 114:23,23 115:1 115:5,6 116:9 117:6,16 120:5 120:16 121:5,9	121:14 122:1,2 124:4,4,18 125:12 126:8,14 126:18,21 127:2 127:7 128:9,19 128:20 129:5,20 130:14 134:1,11 139:22,22 140:23 141:1,16 142:6 142:13,16 151:21 157:10 158:1,4 158:11,22
<b>followed</b> 19:5 75:4 116:11 158:2	<b>formula</b> 21:8,8 <b>formulated</b> 133:23 <b>formulation</b> 43:9 43:22 134:2,8 135:5	<b>fraction</b> 111:9,13 <b>framing</b> 82:24 <b>frankly</b> 96:19 <b>free</b> 11:16 19:16 <b>freestanding</b> 132:14 <b>fresh</b> 36:6 77:21 <b>friend</b> 43:8 49:6 76:13 135:23 143:21 149:14 158:12	<b>fund</b> 12:18,24,24 14:12,23,24 15:8 15:14 27:13,25 28:11 30:9 31:4 37:13 39:13,22 39:23 47:21,25 48:12 77:16 78:25 80:20 100:23 101:17 103:15,17,23,25 109:13 113:6 115:22 121:21 134:1,11 140:22 152:12	<b>funds</b> 2:14 15:1 18:12 29:14 33:23 74:2 77:23 117:9,10 122:18 153:25 154:10,21 154:22 155:1 157:6 158:8,21 <b>further</b> 9:4 37:19 39:15 52:22 55:7 75:5 76:6 77:7 77:11 80:25 109:12 115:5,7 118:10 121:7 127:10 134:16 136:1 145:5 150:25
<b>following</b> 5:12 6:15 9:9 39:11 58:13 63:14,25 64:8,22 71:9 74:2 115:22 121:22 144:3 147:7 152:14	<b>formulations</b> 135:4 <b>forth</b> 123:23 132:17 <b>fortune</b> 110:7 <b>forward</b> 69:13 71:25 83:9,16 85:15 98:19 100:1 111:23 112:3 147:3 150:17	<b>friends</b> 16:2 142:1 <b>front</b> 87:19 <b>fruits</b> 16:25 <b>full</b> 147:5 <b>fully</b> 134:18 <b>function</b> 94:13 98:2 <b>functions</b> 92:25	<b>future</b> 22:24 99:19	
<b>follows</b> 37:14 66:11 78:16 111:3 138:3 151:4 152:3 153:4,17	<b>foul</b> 84:24 <b>found</b> 52:15 65:6 146:11 147:1 <b>founded</b> 22:8 <b>four</b> 157:17 159:9 <b>fourth</b> 140:4 154:25 155:17	<b>fund</b> 12:18,24,24 14:12,23,24 15:8 15:14 27:13,25 28:11 30:9 31:4 37:13 39:13,22 39:23 47:21,25 48:12 77:16 78:25 80:20 100:23 101:17 103:15,17,23,25 109:13 113:6 115:22 121:21 134:1,11 140:22 152:12	<b>gap</b> 26:4,5 36:21 37:13 95:14 <b>general</b> 32:7 45:16 52:11 64:13 79:7 79:9,20 90:18 101:18,20 102:7 103:19 104:2 121:2 127:11 134:19 139:12 142:19 <b>generality</b> 80:9 142:22 <b>generally</b> 12:8 13:16 89:11 <b>generate</b> 73:7 124:6 <b>generated</b> 73:3 <b>generates</b> 73:11 <b>generation</b> 73:2	
<b>foot</b> 93:11 <b>footing</b> 22:17 32:6 32:12 <b>force</b> 60:13 <b>forced</b> 31:19 <b>foreclosed</b> 8:4 <b>foreseen</b> 110:22 <b>forewarned</b> 114:6 <b>form</b> 42:21,22,23 79:15 80:10,15 80:18 81:5,9,12 81:14 82:8 83:4 83:12,22,25 84:16 85:5,13 86:5,14,25 87:11 87:18 89:17 90:4 91:18 92:6,12 96:3 115:1 117:14 119:1 121:21 125:13,22 125:24 126:4,8 127:5 128:5,16 129:2 142:10 145:9,12,14 146:4,15,15 152:24 155:14 156:1,6,12,16 157:5,9	<b>Foxton</b> 30:21 76:15,17,21,22 80:4 91:20,22 93:9,13 95:24 96:11 98:7,11,15 99:1 103:5 104:25 105:4 107:3,14,17,25 108:2,7,11,14 109:3,12 110:10 110:15 111:13,17 111:21 113:19 114:7,12 115:14 115:19 116:1,5,8 116:13,17,19 117:21 118:8,20 118:25 119:7 121:2 124:14 125:6,20 126:22 133:17 134:23 135:4,14 136:7 136:18 137:14,20	<b>fundamental</b> 17:14 100:18 <b>fundamentally</b> 101:16 <b>funded</b> 35:25 39:17 101:3 103:6 <b>funder</b> 28:10 <b>funder's</b> 28:16 <b>funding</b> 1:10,10,11 2:5,12,18 3:3,4 4:9,10,18,19 6:9 13:4,5,18,19,20 13:21 14:11,16 14:17 15:10,11	<b>generation</b> 73:2	
<b>forms</b> 19:1 27:3				

<b>generic</b> 95:11	107:15 110:9	<b>greater</b> 99:12	<b>happy</b> 3:10 61:14	28:22 29:15,18
<b>German</b> 63:21,24	111:5 112:15	104:9,11 123:3	76:17 77:4	30:1,8,14,20 31:6
64:7 69:1 139:8	114:5 130:10,13	128:3	<b>harder</b> 34:1	32:6,11,16,21
139:12 159:14	132:25 138:3	<b>greatest</b> 72:13	<b>harmless</b> 104:22	33:3 34:13 36:18
<b>Germany</b> 139:12	139:3	<b>ground</b> 1:23 8:10	<b>Hathaway</b> 117:3	36:25 38:9 40:19
<b>getting</b> 22:5	<b>Goldman</b> 76:11,22	11:12 12:8,11	119:4 124:17	44:2,5 51:1,9,11
105:12	80:11 109:8	43:6 46:21	<b>headed</b> 150:18	57:17 58:3,9
<b>ginormous</b> 106:25	115:20,21 117:6	132:14 141:1	154:15	65:6 69:21 70:1
<b>give</b> 2:4 34:7 66:25	119:1 124:16	<b>grounds</b> 136:12	<b>heading</b> 17:7,17	70:5 71:13,16
74:9 94:17 120:4	129:11,18 133:4	138:16 147:25	18:4,17 19:4,5,23	74:12 75:5,18,22
126:16 150:20	140:10	<b>group</b> 6:25 16:20	20:14,24 25:1	76:3,8,16 91:19
159:2,16	<b>Goldmans</b> 83:21	38:6 44:24 66:2	119:7,9 142:7	91:21 93:7,11
<b>given</b> 20:8 46:18	98:8,16	77:3 80:14,17	147:16 148:10	94:20 96:9 97:15
55:3 59:7 76:23	<b>good</b> 1:3 2:3,23	83:25 84:7	150:3 155:13,23	98:9,14,24
80:11 84:11 94:9	3:11,16,20 4:2	101:24,25 103:18	157:14	102:17 104:5
116:8 117:3	7:7,17 8:8,19,25	104:3 107:19	<b>headline</b> 26:2	105:3 106:20
128:1,25 148:13	9:14 10:8,12,14	115:20,22 119:1	91:23	107:12,15,24
152:5 153:17,19	10:16,22,25 11:4	<b>groups</b> 101:23	<b>heads</b> 68:2,6,10	108:1,3,10,12
<b>gives</b> 154:17	11:13 21:5 23:7	<b>Group's</b> 57:6	<b>heard</b> 67:7	109:2,6,22
<b>giving</b> 84:5 125:3	23:13 24:9,13	60:11 63:11	<b>hearing</b> 76:24	110:14 111:12,16
131:5 136:23	29:21 33:25 34:6	<b>guide</b> 81:16,18	96:16 159:21	111:19 113:13
<b>glance</b> 20:4 75:20	34:16,17 35:18	92:19 93:7,9	<b>heavily</b> 16:15	114:3,11 115:9
<b>glancing</b> 51:2	35:20 39:1,6	147:15 148:7,9	<b>hedge</b> 14:24 15:1	115:16,24 116:3
<b>global</b> 15:12,14	40:5,16 42:20	148:13,17,21,24	15:12	116:7,12,16,18
16:14	43:13,23 72:17	149:3,22 155:10	<b>hedging</b> 99:5	117:18 118:18,24
<b>go</b> 9:3 11:10 15:2	75:10 89:14	155:13,14 156:19	<b>held</b> 85:3 104:22	119:6 121:1
15:10 16:23	90:10,22 91:11	157:12,25 158:3	106:10 137:9	124:9,25 125:15
19:11 50:22	92:2 94:2 98:4	158:15	144:14	126:20 133:16
53:12 55:9 58:23	105:25 106:13	<b>guides</b> 142:12	<b>help</b> 17:22 18:2	134:18 135:3,12
62:10,12 73:16	107:25 119:10	143:2,10,12	76:6	136:2,13 137:8
99:19 102:20	130:2 133:2	155:9	<b>helped</b> 16:25	137:18,22 138:19
104:16 106:8	134:7,17 143:11	<b>Gul</b> 15:20	<b>helpful</b> 76:8 86:5	138:23 143:17
109:3,12 113:11	<b>gotten</b> 66:24		87:13 91:6 93:13	146:7 147:17,19
119:14 120:2,24	<b>Gottlieb</b> 116:3	<b>H</b>	95:24 138:25	147:21 149:6,16
137:15 141:8	<b>govern</b> 127:1	<b>habit</b> 95:8	<b>heresy</b> 83:20	152:22 157:1
152:20	<b>governed</b> 65:8	<b>half</b> 79:16	<b>hesitation</b> 30:17	159:2
<b>gobbled</b> 76:10	126:25 127:3	<b>hand</b> 56:25 69:2	<b>high</b> 11:6 59:18,21	<b>hindsight</b> 38:17
<b>goes</b> 5:5 6:10 8:22	<b>governing</b> 156:17	74:5,5 125:25	72:7,10,19,20,21	129:21
12:6 17:16 20:13	<b>Government</b>	136:23	72:25 73:1,9,17	<b>historic</b> 29:5
23:6 24:22 35:4	109:14	<b>hands</b> 63:2	99:2 112:17	<b>historical</b> 29:3
46:6 48:7,18	<b>governments</b>	<b>hanging</b> 36:20	120:24	96:14
49:5 50:6 69:6	17:24 18:2,13	<b>happen</b> 75:9	<b>higher</b> 19:22 37:23	<b>history</b> 96:8,20
81:2 91:16 92:20	<b>governors</b> 155:5	103:11	62:18 71:19	127:13 157:12,16
128:17 150:14	<b>grandly</b> 87:10	<b>happened</b> 4:24	107:21	<b>hitherto</b> 85:21
<b>going</b> 8:25 11:22	<b>grasped</b> 134:18	40:7 97:21	<b>HILDYARD</b> 1:3	<b>hold</b> 107:15
16:3 24:15 27:5	<b>grateful</b> 58:7	100:10 103:16	7:9,23 8:1,13,24	<b>holder</b> 123:3,4
39:12 42:15 43:1	159:19	131:2	9:15 10:5 11:6	<b>holders</b> 119:8
53:19 67:1 69:18	<b>great</b> 84:15 93:6	<b>happens</b> 74:17	11:14,20,25 12:6	123:22
70:3 75:6 77:11	109:18 128:15	140:15 149:18	13:14 14:9 22:2	<b>Holding</b> 120:8
79:8 97:1 102:4	138:23	<b>happiest</b> 96:8	22:17 23:1 24:21	<b>holds</b> 86:17

<b>hole</b> 5:6,9 103:12 103:21 105:18	150:20 152:9	122:2	<b>individuals</b> 18:2 18:13 32:2	<b>instrument</b> 126:9
<b>holes</b> 121:21	<b>iii</b> 5:15,25 6:19 84:18 145:16	<b>included</b> 15:9 43:18 70:15 138:8	<b>industries</b> 17:25	<b>instruments</b> 79:6 80:22 121:20 122:23 123:9 127:19 128:19
<b>honour</b> 21:3 79:22	<b>illustrate</b> 37:7	<b>includes</b> 4:8 72:4 142:9 147:14	<b>infinite</b> 95:13	<b>Intel</b> 91:5,25 149:20
<b>hope</b> 96:2 119:1 130:20	<b>illustrates</b> 113:5	<b>including</b> 5:11,18 6:9 15:22 21:12 27:11,18,20,24 28:3 30:4 50:17 123:19 140:14 149:9 151:2 153:15	<b>influence</b> 84:1	<b>Intel's</b> 93:19
<b>hopefully</b> 76:14 134:13	<b>illustrative</b> 121:19	<b>incoherent</b> 3:15	<b>influencing</b> 82:24	<b>intend</b> 2:17 40:23 41:1 77:5
<b>hopeless</b> 97:19	<b>imagine</b> 59:16 109:13	<b>income</b> 123:13	<b>inform</b> 151:25	<b>intended</b> 4:10 11:1 40:22 41:3 42:3 43:2,20 60:12 62:2 64:16,25 74:1 92:23 135:18,19 142:13 146:13 153:4 156:5
<b>hoping</b> 118:15	<b>imagines</b> 37:11	<b>inconsistent</b> 42:18 68:18	<b>information</b> 5:7 5:11,13,16 6:1,2 6:12,18 13:1,7,9 13:12 29:4,5 80:25 115:5,7	<b>intending</b> 66:11
<b>horrible</b> 104:8	<b>immediately</b> 84:8 106:9 154:6 156:13	<b>incorporate</b> 64:25 156:9	<b>informs</b> 149:10	<b>intent</b> 127:16
<b>huge</b> 109:19	<b>impact</b> 28:3,15 29:12 37:3 119:18	<b>incorporates</b> 156:3	<b>informs</b> 149:10	<b>interest</b> 7:21 12:4 26:2,6 45:14,21 46:11,15,16,19 46:23 49:8,13,20 49:22,25 50:4,15 51:13 55:14 56:1 56:2,5,6,8,14,21 56:22,25 57:1 58:20,21 59:2 70:18 74:22 88:5 95:4,5 96:10,21 98:21 99:22 100:6 107:21 109:15,19 112:12 114:19 117:9 119:24 122:13,21 122:25 127:14 132:23 142:20,24 145:10 150:2,7 150:12 151:1 152:2,6,9 153:1,9 153:14 155:19,20 156:1,3,7,9,23 157:21
<b>hurdle</b> 2:4	<b>implement</b> 18:14 94:17	<b>incorrect</b> 29:7 43:18	<b>inherent</b> 126:19 136:20	
<b>hybrid</b> 81:1 121:3 121:8 122:23 123:9 127:19 128:9	<b>implemented</b> 86:13	<b>increase</b> 37:16,18 37:20	<b>inherently</b> 66:15 71:24	
<b>hypothetical</b> 5:23 104:6	<b>implication</b> 7:5 23:2	<b>increasing</b> 36:9	<b>initial</b> 80:16	
<b>hypotheticals</b> 4:23 59:12,13	<b>implications</b> 82:23 82:23	<b>incremental</b> 34:22 35:3,8,16 36:5 97:10	<b>initially</b> 16:14 41:4 41:10 52:19 55:1 57:22 65:7	
<b>H.15</b> 154:25 155:3	<b>implicit</b> 12:14 90:4	<b>incurred</b> 26:5 28:2 59:6,10 63:16,18 78:9,20 90:24 106:12 107:18 111:1 116:9	<b>initiatives</b> 16:25	
<b>I</b>	<b>implied</b> 90:22 132:3	<b>incurring</b> 34:22 35:4,17 36:6	<b>injustice</b> 99:14	
<b>idea</b> 16:13 71:24 102:4 128:7	<b>implies</b> 142:17	<b>independent</b> 26:11	<b>inputs</b> 99:23 100:6	
<b>identical</b> 128:24 156:10	<b>import</b> 7:11 8:24 9:21 132:22 134:20	<b>index</b> 157:11	<b>insists</b> 26:19	
<b>identifiable</b> 117:13	<b>importance</b> 17:14	<b>indicate</b> 103:3	<b>insofar</b> 82:8 98:7 117:23 139:5	
<b>identified</b> 17:2 19:2 21:9 38:8 51:15,21 75:23 95:12 128:11 133:1 159:10	<b>important</b> 17:21 33:21 53:4 79:14 80:17 142:3 143:1 144:17 148:4,14,25 158:17	<b>indicated</b> 43:8 64:17 65:25	<b>insolvency</b> 115:22 116:11	
<b>identifies</b> 5:7 6:11	<b>importantly</b> 18:1	<b>indication</b> 36:15	<b>instances</b> 95:3	
<b>identify</b> 15:6 16:10 24:25 41:2 46:8 47:9 50:21 52:7 53:2 56:8 73:6 102:20 118:14 129:16 132:13 138:2	<b>imported</b> 7:12 8:14 12:9	<b>indistinguishable</b> 126:3	<b>instinct</b> 94:25	
<b>identifying</b> 1:18 86:6 142:23	<b>impose</b> 84:20	<b>individual</b> 13:21 95:16 104:8	<b>instinctively</b> 13:18 94:24	
<b>IFRS</b> 115:17	<b>imposed</b> 84:12 85:20		<b>institution</b> 15:24 81:5 82:25 98:25 104:12 105:6 120:5 121:13	
<b>ignore</b> 120:17	<b>imposes</b> 122:7		<b>institutions</b> 77:8 77:23 78:9,25 80:6,14,16,20 82:15,19 83:19 83:23 84:17 102:3,18,19 116:10	
<b>ignoring</b> 18:24 141:24	<b>impossible</b> 40:12		<b>institution's</b> 106:23	
<b>ii</b> 5:14,15 6:1,18 50:8 84:18 86:10	<b>improbable</b> 102:6		<b>instructions</b> 13:8	
	<b>include</b> 4:17 6:14 9:9 34:21,24 35:3 37:3 43:11		<b>instructive</b> 4:1	

66:20 76:23	<b>in-depth</b> 111:15	108:16 110:17	69:7,21,22,24	79:1 80:13 86:25
<b>interpret</b> 149:22	<b>iron</b> 95:12 98:3	129:9 131:21	70:1,5 71:13,16	95:9,15,22 98:2,9
<b>interpretation</b>	<b>ironed</b> 135:13	132:21 134:6	74:12 75:5,18,22	98:25 100:3
94:7 96:22	<b>irony</b> 83:15	139:5,6,8,12,13	76:3,8,16,24 85:2	101:13,14 107:18
147:10	<b>irrational</b> 11:7	139:17 143:25	86:17 91:19,21	109:15 110:20,25
<b>interpretations</b>	43:7 137:10	146:23 147:3	93:7,11 94:20	114:5 115:16
137:3	<b>irrationality</b> 8:19	159:14	96:9 97:15 98:9	130:6,11,18
<b>interpreted</b> 65:15	8:25 11:16,17	<b>issuing</b> 19:13	98:14,24 102:9	136:8 142:3
85:14,16,21	43:15 98:3 109:7	120:17 133:13	102:17 104:5	147:5
147:13	110:8 136:12,24	<b>item</b> 21:9 119:7	105:3 106:20	<b>knowledge</b> 17:11
<b>interpreting</b> 96:1	137:2,6,8,14,18	<b>iterations</b> 79:2	107:12,15,24	100:9 127:1
122:1 146:15	138:18		108:1,3,10,12,12	<b>known</b> 129:21,25
<b>interrelated</b> 121:4	<b>irrationally</b> 108:1	<b>J</b>	109:2,6,22	<b>knows</b> 15:18 26:3
<b>interrelationship</b>	<b>ISDA</b> 63:23 77:13	<b>joint</b> 78:3 83:10	110:14 111:6,12	31:7,23 44:24
87:14	79:2,15 81:12	84:25 97:4 98:18	111:16,19 112:8	46:25 48:16
<b>interrupt</b> 28:23	83:3 85:5,13,20	121:24 123:5,15	112:24 113:13	76:22 100:13
<b>intervention</b> 80:12	86:14 87:11	129:10,13 135:10	114:3,11,12	144:6
<b>interventions</b>	93:21 102:3	140:12	115:9,16,24	<b>L</b>
96:12	105:6,8 110:22	<b>judge</b> 91:19,20	116:3,7,12,16,18	<b>labour</b> 16:25
<b>intricate</b> 55:9	117:14 121:21	92:9,12,21 93:14	117:18 118:18,24	<b>lack</b> 99:5
<b>introduce</b> 93:22	124:8 139:6	93:19 113:21	119:6 121:1	<b>Lady</b> 147:7,11
<b>introduced</b> 109:16	143:5,23 144:18	144:14,15 147:22	124:9,25 125:15	148:16
152:25	145:9 150:3	149:20	126:20 133:16	<b>language</b> 47:3
<b>introduces</b> 19:8	155:15 157:12	<b>judges</b> 96:4	134:18 135:3,12	57:3 74:3 77:16
<b>introduction</b> 17:7	158:12	<b>judgment</b> 49:14	136:2,13 137:8	78:11,18 83:5
81:23 146:12	<b>ISDA's</b> 80:13	50:1,16 67:2,3	137:18,22 138:19	87:2,2,4 89:8
152:15 155:13	94:18	69:7 111:6 144:1	138:23 143:17	90:2,8,8,19 92:17
<b>investment</b> 15:4	<b>isolation</b> 121:7	144:2 147:7	144:2 145:8	93:23 94:9,10
18:3,14 20:18,22	<b>issue</b> 14:13 29:2	159:2	146:7 147:8,11	108:8,9 113:6
86:12	30:25 32:5 43:9	<b>Judgments</b> 112:16	147:17,19,21	127:11 131:18
<b>investor</b> 95:17	44:11 46:17 64:2	<b>judicial</b> 108:18	148:16 149:6,16	132:7 133:19
<b>investors</b> 15:2	76:14 77:10	<b>June</b> 76:25	152:22 157:1	158:1,4,5,17
19:17,19,21,22	79:25 85:2 94:4	<b>jurisdiction</b> 136:6	159:2,5,9	<b>large</b> 16:19 28:14
20:1,7	98:8,11 100:21	156:17	<b>justification</b>	98:24 101:5
<b>investor's</b> 20:15	106:22 109:9	<b>Judgments</b> 112:16	158:20	104:12 105:11
<b>invite</b> 79:8 93:3	111:21 119:4	<b>judicial</b> 108:18	<b>justify</b> 34:1	107:18 109:9
132:13,25	129:7,10,11,17	<b>June</b> 76:25		<b>larger</b> 102:15
<b>inviting</b> 78:15	129:17 130:3,15	<b>jurisdiction</b> 136:6	<b>K</b>	114:17
121:25	130:16,21,23	156:17	<b>k</b> 154:20	<b>law</b> 49:12,24 50:15
<b>involve</b> 7:17 97:12	131:1 133:4,23	<b>judgments</b> 112:16	<b>KE</b> 21:10	63:24 64:7,14,17
123:10 131:3	134:14,22 138:7	<b>jurisdictions</b> 63:7	<b>keen</b> 87:12	64:19 65:12,14
<b>involved</b> 16:15	139:15,19,20	<b>justice</b> 1:3 7:9,23	<b>keep</b> 43:1	65:16,24,25 66:3
31:16 70:9 98:11	140:19	8:1,13,24 9:15	<b>kept</b> 57:9,12,14,23	69:1,21 95:9,14
113:3 132:6	<b>issued</b> 119:18	10:5 11:6,14,20	57:25	96:1,8,20 119:12
137:10 148:20	120:7 124:16	11:25 12:6 13:14	<b>key</b> 17:14	126:24,24 127:1
154:17	<b>issues</b> 3:8 11:11	14:9 15:19 22:2	<b>kind</b> 105:24	127:4,5,8,13
<b>involves</b> 57:21	21:12,17,17	22:17 23:1 24:21	107:11 129:4	131:10 134:21
61:18	23:16 37:9,25	28:22 29:15,18	<b>kindly</b> 16:24	138:6 139:7
<b>involving</b> 61:25	40:23 60:21	30:1,8,14,20 31:6	<b>know</b> 9:18 17:11	142:19 143:17,19
121:17	61:17 78:14 79:9	31:12 32:6,11,16	31:10 53:21 57:1	
		32:21 33:3 34:13		
		36:18,25 38:9		
		40:19 44:2,5		
		51:1,9,11 57:17		
		58:3,9 65:6 67:3		
		67:5 68:5,19		

147:14 149:18,24 156:17 159:14 <b>laws</b> 65:9 <b>lawyers</b> 108:9 <b>law's</b> 65:1 <b>LBIE</b> 31:19,22 33:15 37:12 <b>lead</b> 106:2,18 120:23 128:23 <b>leads</b> 43:14 <b>learned</b> 16:2 43:8 49:6 76:13 135:23 141:25 143:21 149:13 158:12 <b>leases</b> 126:1 <b>leave</b> 130:23 <b>leaves</b> 82:13 103:11 <b>leaving</b> 89:3 119:17 131:6 <b>left</b> 53:9 89:4 123:12 139:18 <b>legacy</b> 96:14 <b>legal</b> 26:20,25,25 69:1 90:22 106:17 119:15 123:19 125:22,24 126:4,8 131:2,14 134:14 <b>legally</b> 111:4 <b>legitimate</b> 82:16 105:20 111:2 122:19 <b>legitimately</b> 79:9 <b>Lehman</b> 92:3 102:11 105:9 115:23 <b>Lehmans</b> 97:21 146:22 <b>Lehman's</b> 77:24 78:10,20 93:18 116:11 <b>lend</b> 31:19 <b>lender</b> 28:10 34:7 70:13 <b>lenders</b> 36:10 <b>lender's</b> 28:15 <b>lending</b> 34:1 112:7 <b>lengthy</b> 21:16	<b>lesser</b> 99:15 101:6 <b>letter</b> 116:3,5 144:21 <b>let's</b> 109:13 <b>level</b> 19:10,22 20:1 22:19 80:8 101:24 103:10,18 104:11 106:16 107:20 113:4 <b>levels</b> 112:17 <b>leverage</b> 36:9 37:17 <b>leveraged</b> 37:23 <b>liability</b> 69:2 <b>liable</b> 66:5,6 68:9 68:10 69:18 <b>LIBOR</b> 95:19 154:19 <b>lie</b> 80:13 <b>life</b> 40:7 79:3,16 108:14 <b>light</b> 28:4 147:13 158:14 <b>limit</b> 90:19 <b>limitation</b> 5:12,18 78:23 87:2 126:19 <b>limitations</b> 23:10 93:22 129:4 <b>limited</b> 52:12 60:16 66:21 70:25 77:1 92:4 92:6 117:18,22 117:22,23 122:15 122:17 123:4 125:7 131:6 136:23 <b>limiting</b> 134:6 <b>limits</b> 3:5 61:1,2 <b>line</b> 99:24 114:3 128:21 155:17 157:18 <b>lines</b> 36:3 50:12 62:22 146:6 150:25 157:17 <b>linguistic</b> 55:7 60:2 142:9 <b>link</b> 105:5 <b>linkage</b> 159:13,15 <b>Linklaters</b> 159:8	<b>listed</b> 14:6 <b>literally</b> 113:16 <b>litigation</b> 23:25 128:14 <b>little</b> 7:16 15:25 17:20 44:3 77:10 80:11 96:21 105:1 110:21 118:8 <b>live</b> 129:17 130:21 <b>load</b> 154:18 <b>loan</b> 31:17,22 70:10,10,18 122:25 125:22 126:5 <b>loans</b> 125:24 127:15 <b>lock</b> 64:25 <b>logic</b> 31:17 34:11 57:10,21 75:4 <b>logically</b> 54:5,6 61:1 <b>long</b> 32:8 79:3,4,5 79:16 92:1 96:10 101:15 122:12 129:25 130:6,18 <b>longer</b> 31:24 32:9 63:2 83:20 104:19 <b>Longmore</b> 144:2 145:8 <b>long-term</b> 97:10 <b>look</b> 29:8 32:16,18 32:25 57:2 64:9 71:4 77:22 86:7 95:16 100:9,11 104:2 109:3 113:12 121:3,12 138:14 148:6 150:5 158:19 <b>looked</b> 31:10 103:17 118:18 122:22 123:10 153:4 <b>looking</b> 29:9 39:18 40:6 45:4 56:9 74:21 77:12 87:1 93:21 100:1,13 102:2,10 120:19 124:8 127:12	128:20 130:4 131:16 132:18,22 136:9 149:3,21 157:1 <b>looks</b> 39:3 43:12 76:17 78:1 113:20 124:15 142:8 <b>loosely</b> 63:19 <b>Lord</b> 1:5,23 2:24 3:13,21 4:7 10:2 10:19 11:10 12:16 13:25 14:21 15:17 16:7 17:4 21:11,18,22 22:14 24:15 25:24 26:22 27:7 29:1,7 32:17 33:4,7,17,22 34:8 34:19 35:17 36:1 36:12,17 37:2,6 38:4,22 42:13,18 43:3,12,24 44:9 58:11 64:22 66:1 66:23 67:1,3,5 68:5,19,23 69:5,7 69:22,24 70:8 71:12 72:3,13 73:14 74:20 75:2 75:13,16 76:15 76:17,25 77:9,11 77:12,21 78:1,13 78:15,22 79:7,14 79:23 80:4,19,24 81:3,14,18,19 82:13 83:2,7,11 83:14 84:4,13,25 85:8,10,22,23 86:4,9,16,20 87:6 87:9,17,20 88:18 89:9,19 90:6,15 91:13,14,16,20 92:8,11,16,19 93:3,10,13 94:3 95:24 96:11,15 96:24 97:8 98:7 98:15 99:1,16 100:1,20,24 101:7,16 102:9 103:5,22 104:25	105:22 106:2 107:3 108:12,14 109:3,12 110:10 110:17 111:7,17 111:21,22 112:1 112:13 113:1,11 113:19 114:7,20 115:4,6,14,19,21 116:1,5,8,19 117:3,7,21 118:2 118:17,20 119:1 119:10,21 120:2 120:3,18 121:2 121:11,19,22 122:3,8,19 123:9 124:2,14 125:6 125:14 126:6,15 126:22,23 127:10 127:18,25 128:13 128:17 129:6,13 129:15,16 130:3 131:1 132:1,5,25 133:14,17 135:6 135:7,9,14,25 136:7,18 137:4 137:14,20,24 139:2,8 140:19 142:11 143:9,11 143:20 144:2,4,5 145:8 146:5,20 147:8 148:4 149:19,22 150:1 150:5 152:19,21 157:24 158:24 <b>Lordship</b> 1:8 2:9 4:5,9 5:1,5 12:20 13:2,3,7,11 14:22 14:25 15:18,21 15:25 16:3,4,6 17:16 20:13 21:9 21:14,16,19,22 21:23 24:18,22 24:25 26:3 27:9 28:20 29:24 31:7 31:9,10,23 32:5 32:17,25 37:11 40:12,13 43:22 44:23 45:7,9,11 46:6,25 47:10,13 47:16 48:7,16,18
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

48:19 49:5,7 50:6 51:16,18,25 52:10 56:2 58:7 58:8 63:5,8,20 64:10 66:19,25 67:2 68:23 69:3 70:3 71:3,4 74:9 74:10 75:19 76:6 76:22 77:17 78:16 79:8,19 80:13 81:17,23 85:6 87:12 90:1 91:7,22,25 93:3,4 97:2 100:20 105:1 108:21 109:20 111:5,11 116:13 117:24 118:8,16 125:21 126:7 131:9 132:13,25 133:9 135:25 137:25 138:11 <b>Lordship's</b> 17:5 29:23 <b>Lordsvale</b> 69:25 <b>Lord's</b> 105:15 139:14 <b>lose</b> 24:19 <b>loss</b> 3:24 4:6,8,11 4:14,17,21 6:8 8:21 9:3 12:1 23:11 24:4 67:24 77:13 81:9 87:15 87:17 88:3,4,7,9 88:13,14,21,22 89:1,10,11,17,20 89:24 90:7,14 91:1,8 92:1,20,23 94:1,4,7,14 95:1 95:1 96:2 99:6 109:14 147:1 <b>losses</b> 28:2 <b>lost</b> 72:24 141:5 144:12 <b>lot</b> 111:19 <b>lots</b> 14:7 32:11,11 <b>low</b> 59:19 73:19 120:24 <b>lower</b> 36:16 120:23	<b>lowest</b> 1:13 25:16 25:22 <b>lunch</b> 79:25 <b>L/M</b> 66:20 <hr/> <b>M</b> <hr/> <b>magical</b> 73:2 <b>main</b> 140:11 141:15 146:17 152:2 <b>maintain</b> 75:6 80:6 <b>maintained</b> 78:4 <b>majority</b> 101:14 <b>making</b> 36:1 44:20 45:8 77:1 119:10 148:25 <b>managed</b> 24:19 <b>mandate</b> 23:4 91:10 <b>mandates</b> 92:13 92:18 <b>mandatorily</b> 120:6 <b>manifest</b> 43:11,14 131:1,19,22,22 131:25 132:8 136:3,19 137:2 138:3,8,10,19 <b>manifestation</b> 81:15 <b>map</b> 139:3 <b>marked</b> 66:24 <b>markedly</b> 99:8 <b>market</b> 5:16,17,20 5:21 6:17 25:21 38:19 82:17,22 89:20 93:2 95:20 99:19 104:17 106:6 109:17 <b>master</b> 2:11 14:3 42:19 44:11 47:2 53:5 55:10 60:6 62:5,8 63:21,23 65:4 72:15 73:24 79:2,15 80:18 81:12 83:4,22 85:5 86:14 92:3 104:20 105:6,8 110:22 117:14 142:9,10 143:13	143:23 144:19 147:12 148:12 158:13 <b>match</b> 73:2 <b>matched</b> 15:11 <b>matching</b> 15:7 <b>material</b> 12:23 65:5 119:7 <b>materially</b> 99:9 <b>mathematically</b> 137:12 <b>matrix</b> 77:12 79:24 84:4,8 85:24 86:7,19 87:4,8 <b>matter</b> 22:5 31:24 34:11 47:2 64:6 78:17 81:4 82:16 84:15 85:14 89:18 95:2,3 115:1 142:21 159:3 <b>matters</b> 17:18 21:25 41:17,23 42:13 54:11 83:2 83:24 86:13 94:23 123:14,23 130:10 142:19 <b>maturity</b> 144:10 <b>McKee</b> 31:11 <b>McKee's</b> 31:25 32:7,23 <b>MCNs</b> 120:6,17 <b>mean</b> 3:4,5 11:7 19:16 28:24 29:19 44:25 47:19 48:4 65:7 83:24 108:8 110:2 125:16 131:22,22 138:19 152:15 <b>meaning</b> 1:9,10 18:21 47:5,7 74:3 83:19,22 84:5 92:15 134:25 139:23,24 141:14 143:22 154:7 158:21 <b>meaningful</b> 122:13 <b>meaningfully</b>	119:22 122:24 <b>meaningless</b> 53:14 <b>means</b> 1:11,12 3:4 11:8 27:19 43:17 45:9 47:18 48:9 55:17 75:5 86:23 100:25 105:18 122:5 126:20 133:10 140:1 141:16,18 142:6 151:13 153:24 154:24 155:4 <b>meant</b> 18:23 74:16 133:8 134:15 148:1 158:13,14 158:16 <b>measure</b> 5:23 66:14 68:2,7,12 68:14,14 95:21 <b>measured</b> 4:18,20 22:1 125:2 <b>measurement</b> 22:10 23:16 38:1 <b>measuring</b> 4:16 22:15,16,20 37:9 <b>mechanism</b> 1:22 3:19 8:14 23:23 99:12 109:7 <b>mechanisms</b> 1:24 5:22 8:24 9:7 <b>meet</b> 101:19 <b>mega</b> 106:22 <b>members</b> 72:1,1 101:22 <b>mentioned</b> 52:25 80:24 91:4 94:20 125:21 127:18 131:9 133:3 143:21 <b>mentions</b> 154:3 <b>merely</b> 26:6 <b>merger</b> 60:19 <b>mergers</b> 45:18 <b>merit</b> 68:1 <b>met</b> 114:15 <b>Metals</b> 96:13 <b>method</b> 73:23 81:22,22,23,25 82:3,7,10 88:3 92:14,24	<b>methodology</b> 82:2 92:4 93:1 <b>methods</b> 128:19 <b>metric</b> 15:23 <b>middle</b> 17:18 153:11 157:2 <b>militate</b> 83:2 <b>Miller</b> 32:2 <b>Millett</b> 67:3,5 68:5 68:19 <b>Millett's</b> 69:7,22 <b>million</b> 112:18,20 117:5 <b>millions</b> 14:14 126:20 <b>mind</b> 23:3 53:5 55:17 59:14 62:15 63:5 95:6 147:19 152:21 <b>minimum</b> 112:7 <b>minor</b> 156:15 157:22 <b>minus</b> 151:9 153:20 <b>minutes</b> 43:5 44:5 <b>mirrors</b> 150:17 <b>miscalculation</b> 136:13 <b>misinterpreted</b> 134:5 <b>missing</b> 146:3 <b>mix</b> 82:14 <b>mixing</b> 3:15 <b>mixture</b> 35:25 <b>mix-and-match</b> 132:6 <b>model</b> 9:22 10:1 10:12,15,22,22 10:24 11:4,5 23:4 29:15,19 41:8 89:21,22 90:4 97:1,14 <b>modelling</b> 95:2,3,4 <b>models</b> 6:6,20 7:4 9:23 17:22 22:11 23:4 89:17,23 90:3 95:1 97:3 97:12 99:18 100:16 <b>modification</b>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



119:8 <b>modifications</b> 156:4 <b>modifies</b> 92:14 <b>Modigliani</b> 32:2 <b>moment</b> 44:4 66:25 74:9 107:16 118:4 133:24 142:12 143:18 159:1 <b>moments</b> 56:2 <b>monetary</b> 18:15 18:20 <b>money</b> 4:12 15:1 22:4,5 27:19 30:9 37:15 57:10 57:12,14,14,24 58:1 72:23 76:18 76:19 84:19 96:6 100:23 104:17 109:18 110:5 142:24 <b>monies</b> 113:23 <b>monitor</b> 42:15 <b>monitoring</b> 43:1 <b>Morgan</b> 121:14 <b>morning</b> 1:3 158:25 159:6 <b>Morrison</b> 86:5 133:17 <b>Morrison's</b> 86:8 <b>motivated</b> 104:21 <b>move</b> 100:4 105:15 <b>moved</b> 100:12 <b>moving</b> 87:23 130:15 150:17 <b>much-litigated</b> 85:11 <b>mulling</b> 97:16 <b>multicurrency</b> 156:6,16,16 157:9,23 <b>multiple</b> 153:5 <b>mundane</b> 94:23 <b>mustn't</b> 11:17 34:13 95:16,16 <b>mystery</b> 20:11	<b>narrowed-down</b> 24:14 <b>narrower</b> 1:11,12 83:19 84:11 <b>narrowly</b> 87:4 <b>Nash's</b> 85:23 <b>nationally</b> 14:10 <b>natural</b> 1:10 74:3 101:1 <b>naturally</b> 100:25 <b>nature</b> 28:5 67:20 69:9 91:17,24 96:19 119:11 121:24 123:14 <b>naughts</b> 136:4 <b>necessarily</b> 7:3 15:15 26:24 33:11 59:8 60:16 66:10 76:2 107:4 142:16 <b>necessary</b> 13:11 40:24 47:8 72:2 72:22 131:5 138:2 148:6 <b>necessitated</b> 156:15 157:22 <b>necessity</b> 100:15 <b>need</b> 2:4,7 13:12 13:16 17:10 18:13 19:21 36:21,22 41:20 43:16 48:4 51:12 55:8 92:9 101:5 105:5 107:23 110:1,4,6 121:12 132:12 133:15 143:3,24 147:5 159:6 <b>needs</b> 31:9 44:18 52:20 53:2 58:22 60:14 101:4 102:1 128:7 152:20 <b>negative</b> 20:8 71:1 <b>negotiated</b> 128:3 <b>neither</b> 8:9 45:13 103:11 <b>net</b> 53:6 89:3 117:4 <b>netted</b> 53:8 89:3	<b>netting</b> 82:5 <b>neutral</b> 82:22 <b>never</b> 11:1 16:21 34:12 106:16 110:21 117:25 130:1 <b>nevertheless</b> 3:9 41:16 104:18 <b>new</b> 15:2 49:19 63:8,10,23 71:23 72:1 91:5 119:12 124:22 126:24 139:7 146:15 149:24 <b>newly</b> 37:23 <b>Nobel</b> 32:2 <b>noncumulative</b> 121:15 <b>nonexclusive</b> 90:2 <b>non-bank</b> 86:13 <b>non-default</b> 2:10 48:6,9,17,19 151:25 <b>non-defaulting</b> 46:4 48:11,14,20 52:4 61:19,21,22 85:17 <b>non-financial</b> 84:17 <b>non-payment</b> 123:18 <b>non-performance</b> 62:17 <b>non-technically</b> 17:10 <b>norm</b> 13:4 <b>normal</b> 43:22 61:6 61:25 67:11 69:14 73:8 <b>normally</b> 9:13 10:24 14:16 18:6 118:3 131:21 <b>note</b> 32:13 45:23 47:11 49:1 147:8 151:23 158:17 <b>noted</b> 93:20 156:18 <b>notes</b> 92:12,22 120:7,12,22 122:10 123:13	145:1,8 <b>notice</b> 25:6 150:23 152:4,19 153:17 153:18 <b>notification</b> 88:10 <b>notified</b> 88:13 <b>notify</b> 88:21 <b>notion</b> 94:25 124:9 <b>notional</b> 77:18 101:10 102:13 103:13,14 127:2 129:10 <b>notionally</b> 41:3 113:8 <b>notorious</b> 83:24 <b>notwithstanding</b> 104:20 <b>November</b> 1:1 159:22 <b>no-one</b> 10:2 28:21 71:19 130:17 138:1 <b>number</b> 1:16 58:14 68:16,16 80:24 96:17 101:12 106:2,18 107:22 113:1 118:14 143:25 150:16 154:9 156:6 <b>numbered</b> 155:25 <b>numerous</b> 99:23 126:1	<b>obligations</b> 4:25 25:5 61:10,21,23 62:17 85:13 144:23 145:25 <b>obliged</b> 111:4 123:7 <b>observed</b> 28:20 <b>obtain</b> 13:16 15:11 25:13 26:14,15 38:25 128:20 <b>obtained</b> 39:4 120:11 127:7,8 <b>obtaining</b> 21:1 26:5 31:21 70:14 70:24 102:4 103:9 130:14 140:25 <b>obtains</b> 25:17 <b>obvious</b> 47:23 52:9 52:18 67:19 69:9 76:19 117:8 136:3 141:7 <b>obviously</b> 1:18 2:10,15 7:6 13:12 14:1,12 21:21 29:23 35:22 39:2 51:12 61:17 62:22 85:10 98:17 99:17 108:7 114:20 119:11 120:9 126:23 136:9,22 138:15 138:20,20,23 152:16 <b>occasion</b> 105:4 130:25 146:22 <b>occur</b> 88:25 <b>occurred</b> 88:6 145:20 <b>occurrence</b> 49:9 145:14 <b>October</b> 159:8 <b>odd</b> 20:4 106:10 <b>offer</b> 21:4 25:16,17 25:18 74:13 <b>offered</b> 15:25 98:21 <b>offering</b> 98:12 138:11 139:2
<hr/> <b>N</b> <hr/> N 159:23			<hr/> <b>O</b> <hr/> <b>objecting</b> 132:20 <b>objection</b> 131:6 <b>objectionable</b> 130:13 <b>objective</b> 1:20 3:18 4:2 9:21 <b>objectively</b> 8:11 8:13 <b>obligation</b> 45:14 49:12,23 67:20 69:10 85:18 122:7,14,16 125:25 144:7,12 144:20 145:16 146:10 150:19	

<b>official</b> 63:23	154:18,22	62:17 70:18	113:24 116:17	110:5 127:5
<b>Ogier</b> 16:8	<b>opt-out</b> 132:2	<b>owes</b> 63:1	135:6 144:15	137:1 140:9
<b>Oh</b> 24:21 70:6	<b>oral</b> 159:18	<b>owing</b> 62:10	145:1 146:5	144:1
<b>okay</b> 159:4	<b>order</b> 7:11 18:13		147:7,9,11 148:3	<b>particularly</b> 26:17
<b>old</b> 72:1 115:9	22:12 76:24	<b>P</b>	148:7 152:2	87:12 97:23
<b>omit</b> 50:5	104:16 110:10	<b>package</b> 121:5	153:13 155:18,24	140:10
<b>once</b> 3:8 86:25	139:14 140:2	128:1	155:25 156:13,22	<b>parties</b> 1:23 4:25
88:13 107:23	<b>ordinarily</b> 108:17	<b>page</b> 5:6 6:11 16:9	157:2	5:18 6:18,24
121:16,17 128:4	114:9	16:12,22 17:7,16	<b>paragraphs</b> 5:14	11:12 14:2,2,7
<b>ones</b> 34:10 156:15	<b>ordinary</b> 47:2,5,7	17:19 18:4,17	6:11 75:17 86:17	29:25 30:18
<b>one-size-fits-all</b>	67:21 69:11	19:3 20:9,24	119:9 129:16	53:21,24 60:5,7,8
95:18	101:17 102:3	24:24 25:11	144:3	60:9 61:12 65:3
<b>one-way</b> 53:25	124:12	27:10 45:12 46:7	<b>parallels</b> 94:3	66:11,11 74:18
<b>ongoing</b> 41:15	<b>origin</b> 143:3	47:17 48:7,8,18	<b>parameters</b> 23:7	78:21 82:1 90:25
42:16	<b>original</b> 44:19	49:6,21 50:7	<b>parent</b> 102:16	92:23 93:15
<b>onwards</b> 154:19	53:17 54:3 56:7	51:17 55:11 56:4	103:10 112:1,6	133:10,21 144:8
<b>open</b> 14:18 41:12	58:17,19,20 59:5	56:12 58:3 67:3	112:21 113:3	144:23 146:1
87:19 105:18	59:9,17 63:15	67:4,5 81:19,21	114:17	<b>partly</b> 82:3 91:1,2
134:3,5 138:4	70:25 73:17,18	87:20 91:15,16	<b>part</b> 15:16 26:22	125:20
<b>opening</b> 1:4 28:21	97:23	91:17 92:10,20	27:3 35:18 45:20	<b>Partnership</b> 66:21
33:17 49:7 76:21	<b>originally</b> 80:14	93:5,10 115:8,19	46:11 55:14	<b>parts</b> 120:19 121:4
133:3 139:1	83:17	116:17 119:3	56:13 74:23	121:6,8,10
159:25 160:3,5	<b>origins</b> 80:13	120:4 121:12	76:12,13 88:13	127:20 153:8
<b>open-textured</b> 2:7	<b>ought</b> 31:20 57:23	129:16 135:6,9	88:19,20 92:12	<b>party</b> 4:11 5:8,11
<b>operate</b> 24:10,13	80:9,19 84:1	135:10 147:16	103:5,20 104:4	6:3,6,22,24 7:3
40:23	86:14 135:22	150:6,14,18	104:23 105:20	8:10 11:20 25:22
<b>operated</b> 118:10	138:17	151:11 153:10,11	114:24 124:5	40:24 42:20,25
<b>operates</b> 144:6	<b>outcome</b> 10:17	153:23 154:15,19	128:2,3 133:18	44:10 45:20,22
<b>operation</b> 21:16	127:17 137:16,16	155:2,12,12,23	139:11 153:11	46:2,4,4,10,12
148:20	<b>outcomes</b> 59:16	156:20,21 157:2	156:18,20	47:12,14,20,21
<b>opinion</b> 86:8	98:15	157:3,14,17	<b>participants</b>	48:2,3,11,14,20
<b>Oppenheim</b>	<b>output</b> 89:21	<b>pages</b> 17:5 71:5	148:20 155:16	49:11,15,18,22
102:11 111:6	<b>outside</b> 84:7 86:18	<b>paginated</b> 119:3	<b>participate</b> 76:23	50:2,6,21 51:5,6
<b>opportunities</b> 21:6	135:23 140:5,6	<b>pagination</b> 91:15	<b>participating</b>	51:19,20,24 52:1
<b>opportunity</b> 20:12	<b>outstanding</b> 25:15	<b>paid</b> 45:5 50:14,19	85:20	52:4,5,6,14,24
20:16 141:5	25:18 63:2	50:20 51:7,19	<b>participation</b>	54:7,9,11,19
159:16	101:15	53:21 55:4,6,6	76:25 125:2,8	55:13,15 56:13
<b>opposed</b> 33:12	<b>Overall</b> 148:18	56:5 70:20	<b>particular</b> 14:20	56:15 59:17 61:5
52:24 71:11	<b>overarching</b> 149:7	100:14 116:20,22	17:6 29:10 38:14	61:19,20,21,23
123:7 127:6	<b>overdue</b> 49:14,16	118:1 120:13	38:20,21 40:9	62:4,6,11,14,21
140:1	50:1	129:23 130:8,19	47:24 69:14 73:6	64:20 72:7 73:4
<b>opposite</b> 146:16	<b>overnight</b> 2:14	140:1 141:4,6,19	74:15 75:11	74:5,11,16,16,25
155:1	39:13,17 149:14	151:1 153:14	77:13 78:18 79:2	76:1 83:17 85:17
<b>opposites</b> 115:12	<b>overriding</b> 7:6	<b>paper</b> 114:9	79:11,21 81:8	89:14 90:14
<b>optimal</b> 21:18	<b>overstate</b> 36:3	<b>paragraph</b> 6:16	83:12 84:7 89:22	93:24,25 100:10
<b>option</b> 41:12	<b>overview</b> 155:24	16:12,18,22 18:8	90:20 91:10 92:4	103:10 105:21
153:25 154:10	<b>owe</b> 62:19	25:12 50:13 67:5	92:6,14 100:5	106:10 108:24
157:7	<b>owed</b> 37:11 52:13	69:6 85:23 86:4	102:1 103:21	110:9,19 128:7
<b>options</b> 40:14 41:2	53:9 54:9,18	86:8,11 111:22	104:13,14 105:6	128:10,20 129:25
107:3 154:16,17	55:3 61:19,21	112:8 113:19,21	106:20 109:24,25	130:9 131:3

133:6 136:25	48:21 49:2 50:25	<b>perfection</b> 75:23	54:23 69:8 84:2	74:12 75:13 76:5
137:4 138:11	51:6,24 52:6,15	<b>perfectly</b> 56:18	84:5 122:1	77:17 79:7 83:15
140:2 145:6,16	52:23,25 53:14	63:12 66:3 74:7	126:13 141:14	84:13,25 85:22
145:20 150:8	53:15,25 54:3,13	108:3	155:3 158:11,21	86:6 87:11,13
152:7,10,11,16	54:16,17,23,25	<b>perform</b> 61:9,16	<b>Phrases</b> 114:20	96:24 99:16
<b>party's</b> 26:25	56:10 72:4 74:6	61:23 62:7	<b>physical</b> 18:7,16	100:20 111:9,14
<b>pass</b> 19:4	74:7,15,25 76:4	<b>performance</b>	25:4,6	113:24 117:25
<b>passage</b> 67:1,4	79:12 97:24	22:25 49:11,23	<b>pick</b> 77:17 81:19	118:2 120:15
81:19 144:1	101:12 111:1	<b>performed</b> 4:25	140:12,17 148:3	122:15 123:17,25
148:7 149:19,23	112:21 113:8	<b>period</b> 29:10,11	150:1	124:21 125:6
157:16	130:6,13 140:16	35:13 40:4,10	<b>picked</b> 111:22	129:17,18,24
<b>passages</b> 17:6	140:22 151:21	41:6 42:2 44:25	<b>picking</b> 1:5 3:21	130:21 131:1
143:9	<b>payees</b> 47:8 52:19	54:24 55:1 58:24	24:15 122:3	133:18 136:2
<b>passing</b> 112:13	53:23 74:19	59:1,3,7,7,24	153:8	139:4,25 140:24
149:17	<b>payee's</b> 1:15 28:7	88:8 89:5 100:5	<b>picks</b> 69:7	142:6,15,18,21
<b>paths</b> 96:5	28:13 33:15,16	100:8,14 110:15	<b>piece</b> 114:9	143:2,11 144:5
<b>pausing</b> 89:19	33:19 34:9,20	123:21 124:1	<b>piecemeal</b> 102:19	146:8,17 147:6,6
<b>pay</b> 22:4 26:7,13	37:4 38:13	129:21 130:15	<b>place</b> 116:1	152:19 158:24
49:13,25 62:12	133:25 157:9	<b>periods</b> 91:3	<b>placed</b> 97:5	<b>pointed</b> 87:25
85:18 110:9	<b>paying</b> 19:10 20:6	<b>permanent</b> 144:11	<b>placing</b> 106:24	<b>points</b> 1:6 14:23
111:4 117:1	62:25 110:16	<b>permissibility</b> 90:3	<b>plain</b> 9:11 92:15	24:1 45:23 60:2
118:1 123:7,21	111:3 119:16	<b>permissible</b> 23:13	<b>plainly</b> 10:23	77:7,11 78:16
126:21 130:9,11	122:13 124:24	86:18 141:13	22:14,22 23:16	109:20 112:1
140:2 144:7	<b>payment</b> 26:20,24	<b>permissibly</b> 12:10	23:25 28:9 30:13	122:4 129:9
145:16 150:12	47:4,6 49:11,23	<b>permission</b> 76:23	69:12 74:24	133:15 137:21
151:18	50:4,8,23 51:21	<b>permit</b> 106:4	112:16 117:5	139:17 140:7
<b>payable</b> 45:21	52:13 53:11 54:1	158:5	120:12 136:7	141:12,15 142:7
46:2,4,11,14	57:9,20,22,25	<b>permits</b> 42:20	<b>play</b> 13:9 90:11	<b>polar</b> 115:11
48:23,25 49:4,17	58:2 59:3 72:8	66:10 71:22	<b>plug</b> 26:5 36:21	<b>policy</b> 66:8
50:11,21 52:1,4	81:25 82:2 85:12	<b>permitted</b> 7:18	37:13 95:14	<b>politics</b> 79:5
53:6,20 55:14,16	114:2 119:24	23:21 46:19	103:12,20 105:18	<b>pool</b> 117:18,23,23
55:18,25 56:6,9	122:12 123:2,16	49:12,24 50:15	121:21	<b>popping</b> 128:14
56:14,16,20,25	123:25 129:22	105:17	<b>plugging</b> 26:4	<b>portion</b> 25:7 86:24
57:1 89:6,6	144:19 145:5	<b>permitting</b> 42:11	<b>plural</b> 105:7	<b>posed</b> 140:13
113:10 116:24	150:8,12	<b>perpetual</b> 119:4	<b>plus</b> 114:19 117:1	<b>position</b> 30:4 32:4
117:9,10,17	<b>payments</b> 19:14	121:14 122:8,9	117:23 154:1,9	36:10 39:2 40:25
122:22,25 123:12	19:17,19,19 21:3	122:10,10	157:7,10	41:13 44:10
124:15 145:6	45:24 46:1 49:22	<b>person</b> 26:18	<b>pm</b> 79:23 80:1,3	56:11 63:6,6,8,25
150:22,24 151:7	51:3 92:25	37:21 47:3,6	118:5,7 159:20	64:9,13,20 66:17
152:6,9 154:4	156:23	51:21 52:21	<b>point</b> 1:8 3:21,22	67:7 68:15 85:4
<b>payback</b> 18:22	<b>penultimate</b> 16:22	53:25 57:9,11,13	9:6,18 12:7,14,16	97:20 99:20,25
<b>payee</b> 2:22 3:10	67:5	57:20	14:17 15:5,17	102:2 107:17
26:3 27:13,19,25	<b>people</b> 13:16 16:20	<b>perspective</b> 64:9	24:16 25:1 27:22	114:1 115:16
31:4,18 33:22	22:4 29:13 95:14	77:8 117:11	29:23 30:2 35:5	119:22 133:9
34:22 35:3,5,7	102:18	125:11	36:1 41:4,20	146:16
36:12 37:13,14	<b>percentage</b> 124:12	<b>phrase</b> 1:9 10:16	44:2 48:15 49:1	<b>possession</b> 112:5
38:2,25 39:5,25	154:9	26:12 27:11	51:18 52:22 55:7	<b>possibilities</b>
41:5,9 42:11,14	<b>perception</b> 28:15	43:13 48:14,20	56:4 60:14 61:4	102:22
44:2,12 45:9	28:16	51:24 52:5,15,16	62:1 65:19 71:2	<b>possibility</b> 10:19
47:1,6,11 48:3,13	<b>perfect</b> 104:8	53:13 54:7,13,20	71:7,12 72:3	39:24,25 54:16

61:22 62:23 98:1	115:11 117:17	107:12	<b>production</b> 8:16	60:17 65:22
<b>possible</b> 1:16	118:9 124:16	<b>principal</b> 25:15,18	<b>professional</b> 26:1	112:22 131:12
17:10 31:13	<b>preferred</b> 80:25	77:21 80:18	<b>Professor</b> 86:5,8	144:19 145:15,24
39:10 53:22,25	115:20 116:25	110:12 122:12	<b>profits</b> 28:2	145:25
73:7 75:24	117:9 119:5,14	<b>principally</b> 77:9	117:19 118:1	<b>providers</b> 20:2
102:20 107:8	119:19 121:15	155:21	119:19 141:5,9	<b>provides</b> 20:17
141:3 157:11	122:22 123:3,18	<b>principle</b> 64:18	<b>progress</b> 76:20	34:16 45:19 56:5
<b>possibly</b> 76:18	123:22 124:22	88:20 135:15	<b>prohibition</b> 45:16	65:20 66:16
104:10 139:17	125:12	146:25 148:1,15	52:11 60:7 61:3	90:15 135:2
<b>post</b> 57:24 66:17	<b>prejudice</b> 144:22	148:25 149:7	<b>project</b> 15:3 18:15	<b>providing</b> 26:18
<b>postpone</b> 119:24	<b>preliminary</b>	<b>principles</b> 64:13	18:22	37:22 114:18
123:25	140:24	64:17 65:14 66:4	<b>project-specific</b>	<b>provision</b> 46:7
<b>potential</b> 21:17	<b>premise</b> 105:22	<b>prior</b> 48:23,25	13:19	51:14 70:11
47:8 52:19 54:17	137:12	49:8 88:1,6 89:2	<b>promised</b> 30:10	71:22 81:25
64:23 72:5 78:24	<b>premised</b> 115:6	112:6 147:14	<b>prompted</b> 2:1	88:23 91:1,2
84:1,6 121:20	<b>premium</b> 121:17	149:3	<b>proof</b> 47:19 48:10	96:2,23 113:10
145:19 159:15	<b>prepared</b> 29:13	<b>priori</b> 90:9	<b>proper</b> 72:14	145:3
<b>potentially</b> 36:16	<b>present</b> 45:19	<b>prize</b> 32:2	108:5 127:1	<b>Provisionally</b>
42:15 58:18	61:18,18 68:3	<b>probably</b> 89:19	129:2 141:22	159:11
62:18	81:3 99:25	97:25 100:2	<b>properly</b> 40:25	<b>provisions</b> 12:3
<b>power</b> 2:4	<b>presented</b> 82:10	110:18 144:6	65:11 107:23,24	45:8,11 47:13
<b>practicable</b> 42:8	97:11 107:7	152:20	108:23 124:17	49:1 50:3 51:13
<b>practical</b> 17:8	<b>presents</b> 108:16	<b>problem</b> 75:23	139:22	57:4 69:17 74:22
130:22	<b>preservation</b>	108:15 121:4	<b>proposal</b> 98:20	89:8,10 94:16
<b>practice</b> 17:12	148:15	133:18 135:22	<b>propose</b> 24:11	116:14 153:9
78:5,6 115:9,10	<b>Presumably</b> 59:5	<b>problems</b> 30:11	79:24	154:12 156:10,11
<b>practitioners</b>	<b>presumptively</b>	95:12 96:13	<b>proposing</b> 16:2	156:22
17:10 18:10	9:12	97:20 106:23,23	21:13	<b>proxies</b> 36:2
<b>pre</b> 64:21 157:15	<b>pretty</b> 105:12	135:17 138:7	<b>proposition</b> 65:6	<b>proxy</b> 35:19 89:15
<b>precedent</b> 85:12	<b>prevent</b> 60:8	<b>procedural</b> 96:16	66:4	142:13
145:13,18,21	124:22,23	127:13	<b>prorate</b> 107:1	<b>Prudential</b> 86:11
<b>preceding</b> 137:5	<b>preview</b> 139:20	<b>procedure</b> 137:15	<b>prospect</b> 73:21	<b>public</b> 66:8 131:10
<b>precisely</b> 23:21	<b>previous</b> 36:10	<b>procedures</b> 6:12	<b>prospective</b> 4:22	<b>published</b> 12:22
<b>preclude</b> 78:18,19	132:11 143:12	6:13 7:11 8:2 9:8	100:17	145:9 155:5,15
91:10	145:9 155:11	149:8	<b>prospects</b> 123:2	157:10
<b>precluded</b> 61:16	<b>previously</b> 37:24	<b>proceed</b> 13:3 23:9	<b>protect</b> 62:25	<b>pulls</b> 87:20
106:11	73:16	<b>proceeding</b> 64:24	<b>protected</b> 62:22	<b>punch</b> 5:6,9
<b>preconception</b>	<b>price</b> 16:16 25:19	<b>proceedings</b> 23:20	68:9 133:8	<b>purchase</b> 25:8
12:18	25:22 29:13	<b>process</b> 1:22 13:17	<b>protection</b> 60:15	70:19
<b>preconceptions</b>	70:20 116:23	104:24 108:19	60:16 65:13	<b>purchaser</b> 120:22
94:23	120:13 121:17	131:5 133:21	68:20 69:12	<b>purports</b> 134:20
<b>predict</b> 99:19	141:18	136:20	104:10	<b>purpose</b> 57:8,20
<b>predictability</b>	<b>prices</b> 5:19 6:7	<b>produce</b> 7:12	<b>provide</b> 21:19	100:23 101:11
93:20 94:18	17:25 19:10	29:24 35:20 53:6	29:14 37:22	102:8 103:8
124:7	<b>Pricewaterhous...</b>	<b>produced</b> 42:1	41:15 42:15	104:2 105:14
<b>predicted</b> 99:24	16:16	89:13	92:23 115:5	114:4 127:23
<b>prediction</b> 100:15	<b>pricing</b> 6:20,23 7:4	<b>produces</b> 65:23	124:2	131:24 143:14
<b>predictive</b> 100:3	89:22	<b>producing</b> 59:15	<b>provided</b> 1:22	148:18
<b>prefer</b> 108:25	<b>prima</b> 95:4	<b>product</b> 136:10	2:23 3:11 13:13	<b>purposes</b> 26:15
<b>preference</b> 14:13	<b>primary</b> 17:8	137:4	21:15 54:14	44:20 45:19

78:21 81:3 82:6 85:5 86:2 101:21 103:19 125:16 130:22 137:1 138:9 142:4,24 <b>purpose-built</b> 103:24 <b>pursuant</b> 6:18,19 46:16 56:23 145:7 <b>pursue</b> 18:14 32:4 <b>pursued</b> 83:20 <b>pursuing</b> 46:20 <b>put</b> 9:25 16:10 22:9 24:5,12 34:15 64:19 71:18 77:19 83:9 85:15 95:22 98:19 109:15 111:22 112:3 120:2 123:22 127:22 135:20 137:25 <b>putting</b> 36:9 67:25 109:20 <b>puzzling</b> 110:8 <b>PwC</b> 16:20,21	140:13 159:10 <b>quickest</b> 75:19 <b>quickly</b> 33:5 51:5 <b>quite</b> 3:9 9:15 12:7 12:14 22:3,6 32:11 40:11 65:10 79:3 80:15 86:6 89:9 96:15 97:17 98:4,5 101:23 102:17 130:15 <b>quotation</b> 25:21 89:20 92:11,21 93:2 99:20 <b>quotations</b> 25:14 <b>quote</b> 93:10	48:24 49:17 50:4 50:19,22,23 51:22 56:10 57:2 57:8 70:11 72:20 78:12 83:6 87:15 87:24 88:17,23 89:10 90:17 94:5 94:9,12 98:16,22 99:22 100:4,4,6 100:11,12 101:8 107:21 109:19 110:16 111:11,21 112:4,8,11,16,25 114:19 117:10,13 118:13 120:23 132:23,24 140:21 140:24 142:24 143:7 145:10 146:17 149:10 150:2,3,13 151:7 151:9,10,13,13 151:18,20,25 152:1,8,10 153:2 153:18,20,23,24 153:24,25 154:9 154:10,16,17,18 154:22,24,25 155:7,8,19,20 156:1,3,7,9,22,22 156:24,25 157:4 157:5,6,7,9,21 158:1,9 <b>rates</b> 5:18 6:6 95:5 98:21 109:16 154:5,16 <b>rating</b> 82:19 <b>ratio</b> 84:15,20 <b>rational</b> 2:23 7:17 9:13 10:12,14,16 10:22,25 11:4 29:21 34:6,16,17 35:18 39:6 40:16 72:17 107:1 108:4 129:20 136:8,11 137:9 137:16 <b>rationale</b> 127:16 <b>rationality</b> 1:19 2:3 3:16 4:2 7:7 8:8,8 10:8 11:13	11:15,25 23:8,13 24:9,13 40:16 43:13,23 90:11 90:23 91:11 105:25 106:13 108:7 130:17 132:7 133:2,5 134:7,17 140:3 <b>rationally</b> 3:11 33:25 35:19 39:1 40:5 42:20 89:14 94:1 107:25 130:1 137:5 <b>ratios</b> 80:7 81:7 <b>reach</b> 8:11 144:10 <b>reached</b> 23:19 93:11 118:2 131:8 <b>read</b> 10:6,9 51:4 78:23 93:5,12 124:5 127:12 129:3 146:5 147:19 148:4 149:23 <b>readily</b> 80:22 119:22 145:2 <b>reading</b> 17:4 75:20 116:16 147:17,23 <b>real</b> 4:11 16:8 18:7 26:23 87:23 127:7 <b>realise</b> 13:15 <b>realistically</b> 26:13 <b>reality</b> 103:2 141:25 <b>really</b> 24:8 38:22 75:11 90:15 96:21 99:9,13 107:17 108:22 109:4,25 117:10 119:22 120:19 121:5 124:7,18 128:12 135:17 138:11 141:15 <b>realms</b> 105:25 <b>real-world</b> 20:5 113:12 <b>reason</b> 2:25 3:20 24:5 28:10 30:17 34:6 35:4 53:1	54:14 59:20 60:3 61:16 65:3 94:15 95:7 108:11 110:20 116:20 127:10 141:7 148:12 155:9 158:11 <b>reasonability</b> 8:15 <b>reasonable</b> 6:13 7:11,12 8:3,4,16 8:17,18 9:8 11:20 23:3 108:5 108:15,24,25 109:1 126:13 131:11 133:7 137:17 149:8 <b>reasonableness</b> 11:15 <b>reasonably</b> 11:21 42:8 65:5 69:15 86:15,21 92:2 98:24 138:4 <b>reasons</b> 34:17 58:15 61:11 84:21 94:4 101:12 109:14 125:17 127:25 144:15 148:16 <b>recalls</b> 24:18 <b>receivable</b> 28:8,14 29:11 30:5 <b>receive</b> 19:17,19 44:22 47:4 59:21 72:21 73:20 117:4 124:20 130:7 <b>received</b> 2:13 <b>receiving</b> 111:11 123:2 <b>recipe</b> 128:13 <b>reckons</b> 104:15 <b>recognise</b> 96:9 151:15 <b>recognised</b> 132:11 132:20 <b>recognising</b> 33:12 <b>recognition</b> 7:2 82:5 <b>recompensing</b> 141:4
<hr/> <b>Q</b> <hr/> <b>Qatar</b> 120:7 <b>quality</b> 131:15 <b>question</b> 1:14,20 2:15 3:10 4:3,16 9:16 12:19 15:15 23:17 25:25 27:7 27:8,10,10,17,22 28:20 33:4,7,13 38:22 39:15 40:11,12 43:5,25 44:1,9 53:22 65:17 66:7,12 68:11 73:25 74:10,16 82:13 85:11 87:8 107:4 107:5 109:24 125:20 129:15 140:4,15 142:4 147:9,21 148:4 <b>questions</b> 27:8 33:5,7,11 79:10	<hr/> <b>R</b> <hr/> <b>raise</b> 13:1 15:1 18:25 35:6 37:9 37:10 39:5 74:10 77:23 84:21,22 104:17 105:5,17 106:4,7,8 120:5 133:15 <b>raised</b> 27:8 35:6 77:18 83:9 85:1 101:20 103:18,19 111:24 113:3 117:9,10 129:19 143:25 159:14 <b>raises</b> 27:22 33:7 <b>raising</b> 19:12 27:19,20 82:25 85:2 100:22,25 105:13 106:17 117:6 121:14 <b>range</b> 14:2 80:21 98:23 108:23 <b>ranged</b> 140:9 <b>rare</b> 88:24 <b>rarely</b> 13:20 <b>rate</b> 2:10 4:19 7:9 7:14,19 8:23 9:22 12:4,5,18 13:10 14:5 23:15 24:2,7 26:2,6 41:6 44:13 47:15 47:18,18,24 48:5 48:6,9,9,17,19,22			

<b>recondite</b> 86:6	<b>reflected</b> 28:19 75:15 107:20	142:6 147:2	82:10 84:4	<b>requirement</b> 82:14		
<b>recourse</b> 33:14 34:7 117:22 122:15,17 123:4 125:7	<b>reflection</b> 70:2	<b>relationship</b> 3:24	<b>remain</b> 80:17	<b>requirements</b> 10:7 80:5 81:7,10,16 84:12,18,20 85:19,25 86:24 90:10 91:12 101:19 104:14 106:4 110:4 114:14 133:1		
<b>recover</b> 26:7 67:13 67:23 74:1 109:8	<b>reflects</b> 30:3 133:19	<b>relative</b> 82:15	<b>remained</b> 143:6	<b>requires</b> 4:18,19 8:10 23:20 26:20 35:7 101:9 127:3		
<b>recoverable</b> 67:15	<b>refrain</b> 98:11	<b>release</b> 155:4	<b>remaining</b> 61:20	<b>requiring</b> 42:11 94:1 99:14 104:9 104:20 113:7		
<b>recovered</b> 63:4 112:19	<b>refresher</b> 120:24	<b>relevance</b> 112:2	<b>remains</b> 158:18	<b>requisite</b> 92:12		
<b>recovering</b> 106:11	<b>reg</b> 86:2	<b>relevant</b> 1:15 2:22 3:10 5:11,16,17 5:18,20,21 6:17 15:7,16 24:20,24 25:11,16,19 26:3 27:12,13,19,25 28:7,13 31:4,18 33:15,16,19,22 34:9,20,22 35:3,5 35:6,7,9,12,20 36:12 37:4,13,14 38:2,13,15,18,25 39:5,21,25 40:10 41:5,9 42:11,14 42:25 44:12,22 45:1,5,6,9,19 46:25 47:1,4,7,9 48:12 49:1,2,10 50:12,17,24 52:6 52:15,21,25 53:2 53:13,14,15,23 54:7,10,13,16,23 54:24,25 55:2 56:10 57:4 59:24 63:3 65:9,11 67:4 71:4 72:4 74:6,14,19 75:8 76:4 79:12 83:13 101:11,12,13 110:12,14 111:1 112:21 129:23 130:6,13,19 133:10,25 134:1 134:12 138:9 140:16,20,22,23 141:17,20 143:9 143:13 147:6,13 151:3,4,21 153:8 153:15,16 154:19 154:22 157:16 158:22	<b>regard</b> 14:19 36:25 64:7 95:10 109:10	<b>rely</b> 155:4	<b>remedy</b> 63:1 96:16	<b>research</b> 12:23
<b>redeem</b> 116:25	<b>regarded</b> 148:14 148:25	<b>reliance</b> 146:14	<b>remember</b> 24:21 32:6	<b>reserve</b> 155:6,8		
<b>redemption</b> 116:23 121:17	<b>regarding</b> 18:3 20:1	<b>relying</b> 64:13	<b>Remind</b> 7:23	<b>reset</b> 154:2,24		
<b>reduce</b> 148:19	<b>regards</b> 8:2 106:23		<b>reminds</b> 133:17	<b>resolved</b> 3:8 40:24 85:14		
<b>reduced</b> 84:9	<b>regime</b> 82:11 90:7 90:13		<b>remoteness</b> 67:22 69:11,15,20	<b>resource</b> 33:23		
<b>refer</b> 16:4 18:6,11 20:4 21:13 47:3 56:6 142:18	<b>regular</b> 6:4,22 7:5		<b>remunerates</b> 20:2	<b>resources</b> 18:12,21		
<b>reference</b> 8:15 14:5,19 28:12 29:3 33:18 34:2 35:11,14,23 38:13,20 39:19 50:20 51:5,19 56:17 58:12,17 64:4 67:17 68:14 69:8 85:6,24 92:19 102:12,14 112:25 113:12 114:16,24 124:12 127:12 136:14 145:13,24 146:3 146:11 148:9 154:20,21 156:3 156:10 157:13	<b>regulate</b> 17:25		<b>remuneration</b> 19:8	<b>respect</b> 12:20 26:6 43:10 46:15 49:10 50:9,23 56:21 59:2 62:12 63:14 67:18,23 71:1 72:13 86:9 97:21 115:10 145:19		
<b>referencing</b> 150:6	<b>regulator</b> 104:15		<b>repackage</b> 107:21	<b>respectful</b> 13:6 60:13		
<b>referred</b> 31:16 75:16 80:4 81:7 102:10 157:18	<b>regulators</b> 82:4 104:9 110:4		<b>repaid</b> 142:17	<b>respectfully</b> 14:21 73:23		
<b>referring</b> 18:7 44:15,21 55:25 56:1 90:2	<b>regulatory</b> 80:5 81:6,10 82:11,14 85:3,25 86:23		<b>repay</b> 122:8,14	<b>respects</b> 113:1		
<b>refers</b> 5:15 18:12 63:11 156:12	<b>regulator's</b> 106:22		<b>repayment</b> 122:16	<b>respond</b> 74:20		
<b>refined</b> 127:4	<b>reinforces</b> 91:8		<b>repeat</b> 77:2,5	<b>responding</b> 140:8		
<b>reflect</b> 64:16 84:12 99:5 121:18 131:10	<b>relate</b> 109:25,25 120:18		<b>repeated</b> 92:8	<b>response</b> 26:9 77:24 78:10,20 82:3 84:14 95:11 95:14,18 105:2 116:10 121:3 127:18		

<b>result</b> 7:12 8:3,12 8:16,18 10:3,10 65:23 120:12 131:16 136:7 151:6,8 152:5 153:17,19	60:25 61:6,7,8,14 61:25 62:3,7,9,16 62:17,18 72:18 73:12 <b>riskiness</b> 28:5,12 <b>risks</b> 148:19 <b>risky</b> 36:10 <b>Rix</b> 108:12 <b>Rixson</b> 143:15 <b>role</b> 13:10 91:11 <b>rolled</b> 116:22 <b>rolling</b> 119:25 123:19 <b>rolls</b> 71:25 <b>route</b> 139:2 <b>Rugman</b> 16:8 <b>rule</b> 66:8 67:12 68:1,3 <b>ruled</b> 134:5 <b>rules</b> 65:11 67:21 69:11,15,20 <b>ruling</b> 98:17	114:7 117:24 122:7 128:10 132:9 147:11 152:2 155:17 157:4 <b>scare</b> 72:14 <b>scenario</b> 102:6 <b>scenarios</b> 123:20 135:16 <b>SCG</b> 140:9 <b>schedule</b> 82:2 154:8 157:8 <b>scheme</b> 72:10 85:20 94:17 <b>scope</b> 84:11 128:10 131:6 134:10,16 135:1 136:23 <b>search</b> 89:12 <b>second</b> 15:5 16:12 20:21 32:14,23 33:1 34:9 39:15 40:18 44:21 48:6 48:21 57:17 61:4 69:24 78:22 81:22,23 82:3,6 82:10 120:4 139:23 141:12 142:15 144:16 145:13 147:23 152:24 153:13 <b>secondly</b> 1:19 4:10 63:19 141:18 <b>section</b> 20:14 24:18,24,24 25:9 42:6 45:12,13,22 45:23,24 46:6,9 46:24 49:5,13,20 49:25 50:7,10,23 51:10 52:3,10,13 53:4,11 54:15,20 55:10,15,23,23 56:1,3,12,17,21 57:11,13 58:6 60:17,18,23 61:2 61:3 62:23 74:11 75:2 85:11 119:3 144:18 145:2,7 145:12,17,23,25 146:9 150:17,23	151:11 153:10,12 154:16 <b>sections</b> 46:16 56:23 144:22 145:11 156:18 <b>secures</b> 81:6 <b>securities</b> 81:1 119:8 <b>security</b> 67:9,10 <b>see</b> 13:20 21:9 29:19 48:19 51:16 52:7 63:9 63:20 64:11 65:10 69:3 81:24 91:7 92:1 95:22 100:12 102:17 107:12 110:2 112:4 113:14 114:11 116:19 120:10,24 125:6 128:4 129:14 130:5 135:23 136:9 138:14,19 138:24 143:24 150:10,10 151:12 151:15,24,25 152:16,25 153:10 154:20 <b>seeing</b> 135:16 <b>seek</b> 23:17,18 70:8 78:23 79:12,18 91:9 99:23 129:3 141:21 <b>seeking</b> 9:10 29:24 30:2 54:22 97:6 98:20 99:18 133:12 <b>seeks</b> 64:12 <b>seen</b> 2:9 16:2 81:11 85:6 94:12 99:1 116:13 138:2 140:19 149:19 153:12,21 154:3 <b>sees</b> 16:9 74:4 78:3 81:15 91:17,22 97:3 102:12 131:18 <b>select</b> 82:1 <b>selecting</b> 92:24	<b>self-certification</b> 90:13,21 <b>seller</b> 25:6,13,17 <b>Sempra</b> 96:13 <b>senior</b> 38:5 44:24 57:5 60:10 63:11 66:2 77:2 111:25 <b>sense</b> 2:1 8:8 11:18 13:5 27:3 30:22 37:21 54:8,8,12 54:20 57:6 58:11 58:14 59:25 61:6 61:25 62:9 64:6 68:9 71:15 74:8 135:16 146:16 158:8 <b>sensible</b> 2:24 27:3 40:2 59:19 74:7 <b>sentence</b> 20:13 56:5 92:15 147:23 157:17 <b>sentences</b> 25:11 <b>separate</b> 1:14 26:11,18 30:7 88:14 89:8 138:2 <b>separately</b> 43:16 56:3 <b>September</b> 112:7 119:2 <b>series</b> 21:24 33:7 41:22 78:5 131:11 132:21 <b>serve</b> 126:19 <b>served</b> 80:25 88:10 <b>serving</b> 90:14 <b>set</b> 17:9 31:11 83:14 92:11 148:7,17 154:25 <b>sets</b> 16:21 47:12 148:16 157:15 <b>settlement</b> 25:4,6 <b>settling</b> 114:4 <b>seven</b> 146:6 <b>shadings</b> 138:24 <b>shape</b> 17:23 <b>share</b> 19:10 73:7 125:18,18 <b>shared</b> 72:8 73:11 <b>shareholder</b> 27:20 <b>shareholders</b>
	<b>S</b>			
<b>re-opened</b> 134:15 <b>re-reading</b> 58:10 <b>Richards</b> 76:24 159:5,9 <b>Richards's</b> 31:12 <b>rid</b> 13:17 94:22 95:25 <b>right</b> 2:5 23:19 24:8 25:7 29:4 32:9,24 38:5 46:19 51:5 60:4 60:4 64:23 83:8 89:13 96:9 97:23 98:12 108:18,20 113:18 115:24 116:5 121:1 122:11 124:20,22 125:1,3,8 149:11 <b>rightly</b> 119:11 <b>rights</b> 44:10 46:15 56:22 109:9 119:8 128:1 <b>rigid</b> 93:1 <b>rise</b> 96:12 <b>risk</b> 17:3 19:22 28:16 60:6,9,15	<b>Sachs</b> 76:11,22 80:11 109:8 115:20,21 117:6 119:1 124:16 129:18 133:4 140:10 <b>Sal</b> 102:11 111:6 <b>sale</b> 25:14 125:23 125:24 127:15 <b>salutary</b> 13:14 <b>satisfactory</b> 124:3 <b>satisfied</b> 110:1 135:18 <b>satisfies</b> 40:16 <b>satisfy</b> 69:20 114:14 <b>saw</b> 4:9 <b>saying</b> 10:11,13,21 11:14 23:18 68:8 68:13,19 91:25 108:22 109:5 137:19 <b>says</b> 5:8 6:12 39:25 55:13 60:1,4 67:6 69:13 94:7 108:21 113:21			

19:15	35:24 46:5 51:18	<b>size</b> 101:6	3:18 8:14 15:6	130:18 155:10
<b>shares</b> 22:6 115:11	68:24 89:8 91:24	<b>skeleton</b> 75:17	24:16 34:2 77:19	<b>started</b> 128:18
115:12 117:4,17	150:10 151:24	83:16 102:11	85:10 100:23,23	<b>starting</b> 35:5
118:9 120:11	153:12,21	113:13 129:14	101:5,10 102:5	65:19 139:15
124:12,16	<b>similarities</b> 47:23	135:5 140:14	102:14 103:3,3	<b>startling</b> 98:5
<b>sharing</b> 73:22	<b>similarity</b> 94:10	142:21	103:15,24,25	<b>starts</b> 65:18 67:3
<b>sheet</b> 28:1,8,13	94:11	<b>skeletons</b> 85:7	110:16 113:9,9	72:16
29:12 30:5,12	<b>similarly</b> 4:18	<b>slightly</b> 27:22	140:7	<b>stated</b> 132:15
36:21 37:12	15:13 49:19	36:16 55:8	<b>specifically</b> 60:9	136:15
<b>sheets</b> 121:22	92:16 100:3	145:12	60:22 103:7	<b>statement</b> 31:11
<b>shifted</b> 2:12	<b>simple</b> 28:10 37:8	<b>slips</b> 75:8	<b>specified</b> 25:5,15	31:25 32:8,23
<b>Shire</b> 67:8	40:22 42:19	<b>small</b> 43:9 102:19	42:3 65:14	46:9 97:5 124:19
<b>shooting</b> 134:13	98:21 129:1	104:12 139:2	145:21 154:7	150:20
<b>short</b> 25:24 30:25	<b>simplifying</b> 96:17	<b>societies</b> 86:12	157:8	<b>statements</b> 21:24
32:7 44:7 78:13	<b>simply</b> 2:13 4:16	<b>Socimer</b> 11:7	<b>specifying</b> 82:9	79:15 82:4
80:2 118:6	7:20 9:11 11:11	132:11 133:1	<b>speculate</b> 9:5	<b>States</b> 95:10
139:20 146:8	12:4,13 14:10	<b>solely</b> 33:15 44:16	<b>speculative</b> 72:14	<b>static</b> 81:11,11
<b>shorthand</b> 108:22	15:2 22:6 39:3	55:18 56:7 103:8	<b>spell</b> 7:16 9:1,2	<b>stating</b> 145:3
116:19 118:3	43:23 47:5 54:2	153:7	43:20	<b>statistical</b> 155:4
<b>shortly</b> 41:20 97:2	61:24 62:25 73:8	<b>solve</b> 106:22	<b>spelled</b> 43:16	<b>status</b> 109:11
<b>short-term</b> 14:13	74:20 84:11 91:2	<b>soon</b> 42:7	<b>spelt</b> 23:9	<b>statutory</b> 96:12,16
97:10	93:4 94:12 95:18	<b>sorry</b> 7:23 28:23	<b>spending</b> 111:14	<b>stemmed</b> 16:14
<b>show</b> 15:25 16:3	101:17 102:20	51:11 66:23 70:6	<b>spent</b> 111:8	<b>steps</b> 119:17
47:13 67:1 97:1	103:11 105:16	<b>sort</b> 3:7 10:13,23	<b>Spicer</b> 16:9	<b>stick</b> 43:22 133:1
111:5 118:8	108:17,18,25	13:9,21 14:8	<b>spoil</b> 73:11	<b>stipulates</b> 51:3,3
131:17 137:4	112:13 117:7	23:20 31:16	<b>spoils</b> 72:12 73:22	<b>stock</b> 64:25 116:25
141:25 142:11	129:2 132:25	51:20 62:16	<b>spread</b> 80:15	119:5 121:15
143:10 144:4	134:3 136:16	65:13 72:14 75:7	151:19,20,22	123:22
<b>showed</b> 15:20	137:13 145:15,24	75:9 89:3 93:15	153:20 154:1,6	<b>stops</b> 65:18
21:23 49:6 52:10	<b>Singh</b> 113:22	96:14 97:17 98:5	157:7,8	<b>stories</b> 72:14
56:2	<b>Singh's</b> 113:25	102:19,24 106:3	<b>spreads</b> 5:19	<b>storm</b> 104:8
<b>showing</b> 32:23	<b>single</b> 30:15 53:9	107:7 111:23	<b>Square</b> 120:25	<b>straightforward</b>
45:7 66:18	83:14 89:13	113:2 118:10	<b>squeeze</b> 29:20	22:16 39:2
131:24 138:9	114:9 120:20	119:10 126:15	<b>stage</b> 17:6 24:8	<b>strands</b> 1:7
<b>shown</b> 43:7 51:25	121:6	129:19 132:5	27:6 30:3 32:17	<b>strategy</b> 17:23
90:1 147:25	<b>sit</b> 128:7	137:20,21 138:18	46:17 50:24	<b>stray</b> 96:4
148:12	<b>situation</b> 4:13,15	<b>sorts</b> 73:14 125:17	64:12 66:19 71:5	<b>straying</b> 21:20
<b>shows</b> 89:9 158:6	11:3 25:20 26:23	<b>sought</b> 24:17 75:1	74:20 98:18	<b>strength</b> 60:1
<b>side</b> 25:1 30:20	30:24 40:4 42:9	103:17 113:22	115:4 120:11	82:19
68:6 97:16,17	46:3 48:21,22	<b>source</b> 19:13 86:11	<b>stages</b> 87:10 137:5	<b>stress</b> 10:18
103:22 139:3	52:12,14 54:15	104:18 112:9	<b>stand</b> 107:4	<b>strike</b> 117:14
148:10	54:19 61:18,18	114:16 128:15	<b>standard</b> 2:4 21:8	125:13
<b>side's</b> 93:17	61:25 62:13	<b>sources</b> 6:2,19	24:9 73:13 83:14	<b>strip</b> 121:6
<b>significance</b> 84:16	68:21 71:19 73:5	80:21	89:24 154:11	<b>strong</b> 75:14 87:3
123:24	73:8,13,22 101:2	<b>South</b> 120:25	155:14	90:15 149:2
<b>significant</b> 63:24	104:6 105:13,16	<b>Southern</b> 91:5	<b>stands</b> 90:6	<b>strongly</b> 83:3
81:3 83:25 101:5	<b>situations</b> 51:25	<b>spare</b> 72:11	<b>Stanley</b> 121:14	<b>structure</b> 21:18
105:10 146:14	60:19,20 62:25	<b>speak</b> 119:12	<b>start</b> 1:5 45:7	<b>structured</b> 51:14
<b>similar</b> 6:5,25 7:21	74:24 75:3	<b>special</b> 52:3	56:12 64:23	53:5
23:10 26:24	<b>Six</b> 150:25	<b>specific</b> 1:22 2:15	76:16,17 101:7	<b>struggling</b> 95:23



<b>study</b> 111:15	<b>subsidiary</b> 112:23	136:15 141:6,9	<b>swaps</b> 111:25	122:15
<b>stuff</b> 32:12	113:4	<b>summary</b> 32:21	154:12 156:3,7,8	<b>talks</b> 61:12
<b>subheading</b>	<b>substance</b> 33:20	73:25 85:22,23	156:9	<b>target</b> 134:14
139:21,23 140:4	122:11 127:6	86:7 91:18 92:8	<b>swept</b> 88:3,7	<b>task</b> 96:19
140:8	<b>substantial</b> 37:12	116:13	<b>syndicate</b> 71:21,22	<b>team</b> 139:9
<b>subheadings</b>	37:15 147:25	<b>sums</b> 52:1 55:18	71:24 72:1	<b>technical</b> 125:13
139:21	<b>substantially</b>	137:10	<b>syndicated</b> 70:10	<b>techniques</b> 7:10
<b>subject</b> 7:6 8:18	37:16	<b>sun</b> 16:20	<b>system</b> 108:4	<b>tell</b> 77:14
35:1 37:25 45:13	<b>substantive</b> 156:14	<b>superadded</b>	155:6	<b>tells</b> 87:16
49:13,25 67:21	157:20	104:23 109:8		<b>Temple</b> 128:15
69:10 70:22	<b>subsumed</b> 29:15	<b>superclass</b> 13:22	<b>T</b>	<b>ten</b> 79:5
145:17 159:11	<b>succession</b> 96:11	<b>superhuman</b> 75:7	<b>tab</b> 5:5 16:7 24:22	<b>tend</b> 96:4
<b>submission</b> 5:1	<b>suddenly</b> 24:6	<b>supplemental</b>	27:10 45:10 46:6	<b>tension</b> 136:22
10:20 12:15 13:6	<b>suffered</b> 4:6 93:25	135:5	47:17 48:18	<b>term</b> 40:3,8 102:4
14:4 15:6 29:7	<b>suffering</b> 144:8	<b>supplied</b> 5:17	51:17 55:11	104:19 154:1
30:7 33:21 43:21	<b>sufficiency</b> 112:2	<b>support</b> 41:24,25	66:22 70:7 81:18	<b>terminated</b> 4:24
47:10 53:15	<b>sufficient</b> 28:15	42:10 64:13 84:4	85:9 87:19 91:14	6:25 7:1
60:13,14 61:4	34:18 54:2	87:3 90:16	111:7 118:16,25	<b>termination</b> 7:22
68:7 73:16,25	109:11 114:4	113:16 132:16	129:15 135:6,9	12:3 39:12 41:8
80:7 107:12	130:20	<b>supported</b> 13:6	143:16,19 146:20	42:7 45:25 46:11
114:22 149:12	<b>sufficiently</b> 36:15	<b>suppose</b> 12:7	150:1 153:1,1	47:15,18 48:5,23
<b>submissions</b> 1:4	<b>suggest</b> 96:7,18	89:15 97:15 99:4	154:13 155:11,11	48:25 49:4,10
3:23 32:20 45:8	110:17 123:5	101:8 109:12	157:13	50:5,10,16,18
49:7 57:3 64:22	126:11 128:22	114:8 125:20	<b>take</b> 3:19 5:8 9:14	52:2 54:18 56:14
76:7,21 77:1,4,9	133:8 134:8	137:24	12:7,11 13:15	82:1 88:2 92:25
78:14 87:14,21	148:13	<b>supposedly</b> 138:16	14:24 18:2 26:19	144:24 145:4,15
129:8 139:1,3	<b>suggested</b> 43:17	<b>supposing</b> 106:21	28:6,17,24 29:23	146:2 151:2,3,8
140:17 159:17,18	70:23 78:2 83:17	136:3	30:21 32:13 38:3	152:1,4,13,14
159:25 160:3,5	95:7 122:4 125:1	<b>sure</b> 1:8 24:13	40:3 42:9 44:3	153:16,19 156:23
<b>submit</b> 2:16 7:14	135:4,10	70:2 71:18 111:8	51:1 55:10 63:6	<b>terms</b> 15:19 20:22
13:25 15:18 75:1	<b>suggesting</b> 10:2	118:20 134:18	81:9,16 86:25	21:2 22:12 25:9
78:7 87:22 92:5	43:20 82:5	138:10 152:22	97:18 99:3,10	25:23 32:7 40:9
93:13 94:3	<b>suggestion</b> 41:21	<b>surplus</b> 73:3,7	106:20 119:17	40:22 43:13,23
103:14 106:9	42:1,25 62:1,7,13	98:19	125:22,24 128:2	46:5 52:8 64:6
117:13 124:2	64:8 72:6 83:3	<b>surprising</b> 64:8	129:13 130:1	66:13 71:25
138:6 157:24	112:14 123:15	66:15 71:24 78:8	143:9	76:25 83:14
158:18	125:9,11 126:10	86:16 89:25	<b>taken</b> 1:17 3:18	91:23 99:7 108:7
<b>submitted</b> 15:22	<b>suggests</b> 47:7	<b>surprisingly</b> 7:20	30:6,24 32:25	110:19 114:13
149:9	<b>suit</b> 104:18	<b>survive</b> 144:24	37:7 42:19,21,23	119:16,21 126:3
<b>subordinated</b>	<b>suited</b> 155:22	146:1	54:5,7 68:19	128:17
117:15 122:9	<b>sum</b> 5:23 12:3,4	<b>suspect</b> 88:24	71:2,7 82:12	<b>terrible</b> 97:20
123:1,4	26:13 37:15 49:3	139:16	87:17 93:14	<b>territory</b> 86:20
<b>subparagraph</b>	51:19 52:3,4	<b>suspects</b> 115:15	102:13,15 112:1	<b>test</b> 1:19,22 2:12
150:20,20 154:20	53:9 54:18 55:5	120:21 123:1	112:4,20 113:24	3:18 4:1 8:6,25
154:23 156:24	55:23,25 56:1,6	<b>suspension</b> 144:6	129:17,24 133:6	9:21 10:9 11:13
157:3	58:21 61:18,20	144:11	<b>takes</b> 45:10 47:16	11:23 23:14
<b>subparagraphs</b>	62:10 63:2 69:18	<b>sustained</b> 67:25	71:3 79:23 117:7	136:24 140:3
33:9	72:22 88:7,9	<b>swap</b> 99:20 146:2	<b>talking</b> 4:17 23:10	<b>tested</b> 126:8
<b>subsection</b> 150:7	89:3 100:22	153:2 155:19	23:12 55:24	<b>testing</b> 64:6
<b>subset</b> 139:25	105:11 116:15	156:1 157:21	63:16 71:8,10	<b>tests</b> 11:6 78:1

<b>text</b> 92:13 155:12	100:22 158:7	80:10 99:17	87:25 133:3	<b>ultimately</b> 1:20
<b>Thank</b> 33:3 75:18	<b>thinks</b> 35:19 73:8	113:11	<b>true</b> 99:6 122:8	5:23 8:7 22:7
76:9 116:7	<b>third</b> 5:17 6:17,24	<b>topics</b> 77:7	133:11 144:18	66:6 99:11
118:24 138:25	48:22 60:6,9	<b>totality</b> 143:24	<b>truly</b> 16:21	<b>umbrella</b> 10:16
<b>Thanks</b> 16:23	62:1 66:11 73:4	<b>touchstone</b> 114:23	<b>trump</b> 131:12	<b>unable</b> 61:9,23
<b>theoretical</b> 17:9	113:11 119:3	124:3	<b>trumped</b> 108:25	<b>unbridled</b> 81:4
<b>theories</b> 32:1	139:25 142:18	<b>touchstones</b>	<b>trust</b> 80:25	<b>uncertainty</b> 93:16
<b>theory</b> 31:17	<b>thirdly</b> 1:21	106:14	<b>try</b> 1:7 121:5	109:17
130:23	<b>thought</b> 11:21	<b>track</b> 143:3	<b>trying</b> 15:15 22:3	<b>unchallenged</b> 86:4
<b>thereon</b> 50:15	13:11,17 24:6	<b>tracker</b> 100:4,11	93:22 94:24 95:6	<b>uncommercial</b>
151:2 153:15	67:22 71:8,20	<b>traditional</b> 14:6	113:14 121:8	78:5 117:15
<b>thereto</b> 67:21	136:11 138:24	<b>transacting</b> 141:19	<b>Tuesday</b> 1:1	125:14 126:15
69:10	147:24	<b>transaction</b> 6:25	<b>turn</b> 71:13 79:24	<b>uncompensated</b>
<b>thing</b> 2:16 28:22	<b>threads</b> 24:16	13:21,23 15:7	87:9 92:9 155:2	67:24
39:11 47:10 69:5	<b>three</b> 1:24 5:14	25:8 26:11 49:10	157:13	<b>uncontroversial</b>
107:1 115:24	30:18 32:22 33:1	62:14 77:19	<b>turned</b> 137:11	80:19
121:2 136:10	38:8 47:12 51:24	89:22 99:21	<b>turning</b> 57:5 85:8	<b>underlying</b> 46:23
149:21	69:8 142:7	103:7,15,24	139:20 140:19	64:15 88:20
<b>things</b> 3:6 11:22	144:15	107:22 113:9	156:20,21	<b>undermine</b> 76:2
26:1 39:10 40:2	<b>tier</b> 81:2	117:12 119:23	<b>turns</b> 27:9	<b>undermines</b> 60:11
103:11 148:21	<b>tightly</b> 109:23	120:20 121:9	<b>twice</b> 58:4	<b>understand</b> 3:14
<b>think</b> 4:5 10:23	<b>time</b> 3:7 4:11 6:20	127:2,9 144:25	<b>two</b> 4:7 6:10 12:6	12:6,14 26:9
12:2 16:6 19:4	18:24 21:6 25:3	146:2	12:12 14:23 19:1	29:2,17 30:25
23:1 28:20 30:25	42:12,12 44:3,23	<b>transactional</b>	20:10 25:11	41:13 43:19 51:2
32:17,19,24	44:23 45:5 47:4	14:17	31:12 32:1 37:18	51:4 71:21 76:13
33:17,20 38:4	47:5 66:14 72:23	<b>transactions</b> 6:5	40:14 41:2 43:5	108:21 114:25
43:8,19 46:17	76:10,18,18,19	6:23 7:1 62:16	44:14 45:23 47:8	135:19 148:9
49:7 58:3 65:12	79:4,5 81:12	128:23 153:6	48:5 52:19 53:1	149:12
71:3,6,18 74:23	88:8 91:3 96:6	155:22	53:17,21,22,24	<b>understandable</b>
75:5,6,10 76:12	96:10 106:18	<b>transaction-spec...</b>	54:17 63:7,15	145:3
76:19 83:8 84:13	109:13 110:15	15:10 111:24	64:2 66:18 73:1	<b>understanding</b>
85:22 86:6 87:9	111:8,13 115:15	113:2	80:23 83:7 87:23	17:13 29:1 74:13
89:11,16 91:6	116:22 117:25	<b>transcript</b> 58:10	88:19 89:7 94:16	137:14
92:9 94:5 95:7	120:6 122:15	<b>transfer</b> 45:7,11	102:22 104:21	<b>understands</b> 31:8
98:18,22 100:24	123:21 124:1	45:16,20 46:6,10	119:9 122:20	<b>understate</b> 36:3
100:25 102:4	142:23 144:9	46:19,22 52:11	131:23 135:4	<b>undertaken</b> 90:18
104:25 109:22	152:19,25	54:21 55:13	141:15 153:3	133:22
111:19 112:6,18	<b>times</b> 140:20	56:13 57:11,13	155:17,19 156:14	<b>undertook</b> 98:1
113:13,20 114:22	<b>tiny</b> 136:2	57:24 58:6 69:17	158:2	<b>underwriting</b>
118:10,20,22	<b>tipped</b> 97:20	<b>transferred</b> 45:15	<b>two-year</b> 99:20	106:24
121:12 124:14,21	<b>title</b> 145:10	<b>translate</b> 15:1	<b>type</b> 6:3 13:22	<b>undoubtedly</b> 34:1
124:25 127:22	<b>today</b> 111:8	23:14	20:3 78:18	61:7 75:14
128:2 129:6,11	<b>told</b> 12:22 79:4	<b>treat</b> 31:18	126:18	<b>unencumbered</b>
129:18,24 130:3	108:12 118:17,23	<b>treated</b> 86:22	<b>types</b> 5:12 6:1	33:16,19,24 34:5
130:21 133:3	<b>tomorrow</b> 158:25	116:2 128:24	90:20,24 123:1	34:10,21
135:14,21 138:13	<b>tool</b> 17:21 109:11	<b>treatment</b> 77:13	127:5 154:18	<b>unfair</b> 96:2
141:1 147:23	<b>top</b> 81:20 91:15,16	115:11,14	155:21	<b>unilateral</b> 76:12
149:8 159:6,7	135:9 150:14	<b>trouble</b> 73:14		<b>unimpeachable</b>
<b>thinking</b> 14:10,10	157:17	<b>Trower</b> 33:17 38:4	<b>U</b>	124:20
14:11 30:8 89:19	<b>topic</b> 25:24 77:21	43:8 49:6 87:21	<b>ultimate</b> 89:13	<b>United</b> 95:10

<b>universe</b> 84:6	147:15 148:7,9	<b>view</b> 8:15 90:9,16	63:22 67:9,10,25	<b>weren't</b> 116:20
<b>unknown</b> 120:25	148:13,17,21,24	98:12,20 133:7	74:4,21 77:20	<b>We're</b> 31:7
<b>unnecessary</b> 53:14	149:3,22 155:9	134:2	78:24 79:5,11	<b>wholly</b> 62:4 78:6
<b>unobjectionable</b>	155:10,13 157:25	<b>virtually</b> 128:24	84:22,23 85:19	117:14
89:18	158:15	156:10	94:19 100:19	<b>whopping</b> 13:22
<b>unpaid</b> 31:19	<b>uses</b> 7:5 48:20	<b>viz</b> 126:25	105:1,17 106:5,7	<b>wide</b> 129:1
37:16 87:25	65:23 127:11	<b>volatilities</b> 5:19	106:17 109:18	<b>wider</b> 104:2
88:12 89:2 117:2	<b>usual</b> 14:11	6:7	115:21 118:9	<b>willingness</b> 29:13
151:24 152:1,3	<b>usually</b> 105:12	<b>volume</b> 115:7,24	120:1,4 122:19	<b>winning</b> 32:2
156:23		118:14 135:6	127:22 129:18	<b>wish</b> 14:13 77:21
<b>unpredictability</b>	<b>V</b>		132:20 133:23	121:1
93:16	<b>v</b> 66:21 69:25	<b>W</b>	134:15 141:4	<b>wishes</b> 37:19
<b>unreal</b> 26:12,17	102:11	<b>WACC</b> 21:8 28:24	148:3 149:13	<b>witness</b> 31:10,25
62:15	<b>vague</b> 7:23	29:3,16,18 30:6	<b>ways</b> 12:7 13:15	32:8 97:5
<b>unreasonableness</b>	<b>validity</b> 146:24	33:2 36:20	14:24 18:25	<b>wonder</b> 9:15,19
8:9 11:9 131:10	<b>valuation</b> 6:4,20	<b>wake</b> 131:21	35:10 38:8 44:14	44:3 129:13
<b>unrelated</b> 6:24	7:4 17:23 132:17	132:22	73:15 77:22	<b>word</b> 47:11,14
<b>unrestricted</b>	<b>valuations</b> 22:22	<b>walks</b> 39:10	107:22 125:8	48:2,13 52:23,25
122:11	<b>value</b> 4:11 28:3	<b>walk-away</b> 85:16	128:25 131:4	53:13 74:11
<b>unsatisfactory</b>	72:23 76:18,19	86:1	<b>Wednesbury</b> 8:9	75:25 76:1 90:12
40:1 96:20	82:22 96:6 99:25	<b>want</b> 23:22 37:22	11:8,18 108:10	102:22 107:10
<b>unstated</b> 126:19	117:1 121:18	76:16 77:17	108:11 131:9	114:8 135:22
<b>unsupported</b>	142:23 146:25	93:12 98:17	<b>Wednesday</b>	139:22 142:16
113:20	147:25 148:15,24	102:21 107:6	159:22	159:5
<b>unusual</b> 13:5 34:3	<b>valuing</b> 6:23 22:23	118:8 144:3	<b>week</b> 79:4 149:25	<b>wording</b> 51:14
<b>unworkable</b> 78:6	142:23	<b>wanted</b> 1:5 43:3	<b>weekly</b> 155:4	65:18,20 105:23
<b>urge</b> 93:15	<b>variable</b> 22:11	54:10 80:11	<b>weight</b> 82:15	129:2 134:19
<b>urged</b> 126:7	98:6 123:13	81:16,19 87:6,9	<b>weighted</b> 20:24	135:3,11 141:2
<b>use</b> 2:18 6:8 7:4	<b>variants</b> 63:23	99:16 113:11	34:24 35:23	143:6,7 151:15
9:7 10:12,14,22	<b>varied</b> 79:1	116:25 120:11	36:13 97:9	153:22 154:3,12
10:24 11:4 17:24	<b>varies</b> 66:14	129:6	<b>well-known</b> 67:17	<b>words</b> 2:18,19
20:7 25:22 26:12	<b>various</b> 30:19	<b>wanting</b> 100:3	<b>went</b> 79:3	10:19 11:16 15:8
35:21 36:2,16	39:10 74:22	<b>wants</b> 71:4	<b>Wentworth</b> 29:2	23:2 24:12 36:5
44:12 47:24 49:2	87:10 97:6,8	<b>ward</b> 14:18	41:4,10 44:17	43:11 44:12,14
52:5,23 54:7,13	105:9 107:3	<b>warn</b> 14:21	46:20 55:8,9	45:4,25 46:18,25
74:11,14 75:24	112:1 116:8	<b>warning</b> 13:14	57:7,19 60:1	47:1 49:2,3
76:1 82:6 89:17	<b>vary</b> 95:19	<b>warrant</b> 9:24 10:1	64:18 66:8 72:3	50:24 53:7 54:16
89:23 90:3 97:12	<b>vast</b> 101:14 121:19	<b>warrants</b> 117:4	78:3 83:9,11,16	55:16 56:10,19
97:14 127:4	<b>venture</b> 126:10	<b>wasn't</b> 1:25 21:13	92:5 120:14	59:12 72:24
128:16 153:5	<b>versa</b> 93:19	67:11 68:10 71:7	121:24 122:6	74:14 75:8 78:23
<b>useful</b> 9:23	<b>version</b> 12:12	105:17 114:13	128:22	83:18,21 84:11
<b>user</b> 81:16,18	66:23 74:18	<b>waterfall</b> 123:12	<b>Wentworths</b>	103:2,6 126:17
92:19 142:12	97:18	<b>Waterhouse</b> 16:16	124:10	129:4 134:12
143:2,10,12	<b>versions</b> 12:12	<b>way</b> 2:8 4:15 7:14	<b>Wentworth's</b> 3:13	136:21 141:21
<b>users</b> 80:10,15,18	143:12 158:15	7:21 9:25 11:21	26:9 41:7,13	142:1
83:12,22,25 84:1	<b>versus</b> 20:20 41:19	12:24,25 15:11	53:12,15 54:12	<b>work</b> 16:19 32:1
84:16 86:13,14	82:21	24:5,9 30:16	57:7 58:22 64:12	32:24 53:3 59:9
86:21 93:7,9	<b>vice</b> 93:19	34:15 39:21,23	73:18 84:14	88:12 94:24 95:6
117:14 121:20	<b>victim</b> 97:18,24,24	40:1 51:13 53:6	114:22 121:3	97:6,14
125:13 128:5	99:3,10,13	53:9,12,20 60:11	127:18	<b>working</b> 96:22

97:2		112:11 114:19	158:2,23	<b>2008/2009</b> 104:7
<b>works</b> 7:14 75:12	<b>Z</b>	129:9,11 139:17	<b>1992</b> 3:25 9:3 10:3	<b>2015</b> 1:1 159:22
<b>workshop</b> 17:1	<b>Zacaroli</b> 94:5	<b>12(1)</b> 33:13	10:9,17 23:2,6,11	<b>21</b> 148:7
<b>world</b> 16:20,24	139:1,2 143:19	<b>12(2)</b> 34:19	24:4,7 45:12	<b>23</b> 76:25 119:2
<b>worlds</b> 3:1	146:8 147:18,20	<b>12(3)</b> 36:17 37:2	46:19,21 47:16	<b>24</b> 66:22 92:10
<b>worried</b> 36:19	147:23 149:12,17	<b>12(4)</b> 38:4,8	48:7 49:5 50:7	<b>25</b> 86:17 92:20
112:15	152:23 157:2	129:17 130:21	51:15 55:10,20	93:10 110:21
<b>worries</b> 14:18	159:19 160:5	<b>120</b> 157:17	55:22 77:13 79:4	<b>26</b> 86:17
<b>worry</b> 22:7,13	<b>Zacaroli's</b> 118:11	<b>121</b> 129:16	81:12,14,18	<b>27</b> 67:3 70:7 93:5
95:17	<b>Zambia</b> 69:25	<b>122</b> 129:16	87:18 89:16 90:4	93:11
<b>worse</b> 64:20		<b>128</b> 91:14	146:12,18 147:2	<b>28</b> 159:8
<b>worst</b> 3:1	<b>\$</b>	<b>13</b> 33:5 38:11	147:14,15 148:2	
<b>worth</b> 17:4 36:1	<b>\$450</b> 112:18	40:23 43:4 139:6	149:22 152:17	<b>3</b>
66:18 83:15 85:8		139:17	157:12,15 158:3	<b>3</b> 27:22 111:7,16
87:18 89:19	<b>1</b>	<b>13.1</b> 117:5	<b>1996</b> 110:23	111:18 129:15
102:10 122:3	<b>1</b> 13:22 17:3 27:10	<b>13.7.9</b> 86:11		135:6 156:18,20
<b>wouldn't</b> 3:1 9:25	27:12 33:9 38:13	<b>135</b> 81:19	<b>2</b>	159:13
15:10,10 30:14	66:22 70:6 76:15	<b>139</b> 160:5	<b>2</b> 17:7 27:17 38:14	<b>3.03</b> 119:7
73:21 137:15	79:23 95:19	<b>139A</b> 16:7	85:9 111:16,17	<b>3.12</b> 118:5
<b>wrap</b> 139:16	112:11 114:19	<b>14</b> 33:6 43:5,24	111:19 135:8	<b>3.18</b> 118:7
<b>writers</b> 118:3	129:15 135:7,9	78:14 129:9	143:16 145:20	<b>30</b> 109:16
<b>writer's</b> 116:20	145:18 150:1	131:1 151:11	147:16 148:11	<b>31</b> 67:4,5
<b>writing</b> 16:13	151:9,19 155:13	<b>143</b> 118:17,25	150:6 155:23	<b>33</b> 129:16
<b>wrong</b> 10:20 26:22	156:24 157:3,10	<b>149</b> 49:6	156:6,22 157:2	<b>36</b> 135:6
55:20,22 98:13	159:12,13,25	<b>15</b> 114:1	159:13	<b>377</b> 24:24
131:17 136:10,16	<b>1A</b> 153:1	<b>155</b> 50:7 56:4	<b>2(a)(iii)</b> 85:11	<b>378</b> 25:11
137:11,13 138:15	<b>1(a)</b> 116:17	<b>157</b> 45:12 55:11	143:23 144:6,22	<b>38</b> 135:9
138:20,20,23	<b>1.00</b> 80:1	<b>161</b> 87:20	145:11,12,24	
147:21	<b>10</b> 1:1 44:1,9 73:25	<b>162</b> 48:8	146:3,10,12	<b>4</b>
	79:3 98:8,21	<b>163</b> 47:17	<b>2(a)(i)</b> 144:7	<b>4</b> 17:16 28:20 33:9
<b>X</b>	116:15 117:7,15	<b>163C</b> 71:5	145:17	91:13 155:11
<b>X</b> 159:23	121:16 124:15	<b>164F</b> 71:5	<b>2(e)</b> 49:5 150:7,11	159:13
	139:19	<b>17</b> 85:23 112:7	<b>2.00</b> 80:3	<b>4A</b> 16:7 118:17,19
<b>Y</b>	<b>10.30</b> 1:2 159:2,22	<b>18</b> 98:22 135:6	<b>2.96</b> 112:20	118:22 154:13
<b>year</b> 116:15,21	<b>101AA</b> 154:19	<b>185</b> 46:7 56:12	<b>20</b> 86:8 93:7	<b>4B</b> 118:15
117:23 124:21	<b>101Y</b> 154:15	<b>187</b> 49:21 115:8	109:16	<b>4.30</b> 159:20
<b>years</b> 58:18 79:3,5	<b>11</b> 25:25 27:7,8,10	116:6	<b>20E</b> 153:10	<b>46</b> 85:9
<b>yesterday</b> 1:6 3:22	27:10 33:4 46:16	<b>188</b> 51:17 115:19	<b>20G</b> 153:23	<b>48</b> 111:22 113:19
4:5 12:2 15:21	56:23 77:10	116:17	<b>2002</b> 2:11 3:25 5:4	144:3
15:25 24:16,17	112:8,10 114:16	<b>189</b> 120:4 121:12	9:4,20 10:4,7	<b>49</b> 144:15
24:25 118:18	114:19 129:7	<b>19</b> 86:4	23:3,8 24:3 46:5	
<b>yield</b> 5:19 6:7	139:5,15,20	<b>193</b> 5:6,6	46:13,21 48:16	<b>5</b>
20:18	140:19 151:11	<b>195</b> 48:18	49:19 51:16	<b>5</b> 18:17 24:22
<b>yields</b> 5:19 6:7	159:22	<b>1986</b> 154:12 156:4	55:21 56:11,18	27:10 76:15
<b>York</b> 63:8,10,23	<b>11(4)</b> 31:2 32:4	<b>1987</b> 142:11 143:5	79:4 90:1 146:18	81:17,18 150:1
91:5 119:12	<b>11.47</b> 44:6	145:10,13,23	147:4,12 148:1	157:13
124:22 126:24	<b>11.53</b> 44:8	146:4,8,18	148:12	<b>50</b> 113:21 145:1
139:7 149:24	<b>110</b> 75:17,20 117:1	149:21 150:2	<b>2003</b> 24:23	<b>51</b> 91:17 92:10,21
159:16	<b>111</b> 75:17,20	152:23 155:10	<b>2006</b> 104:10	93:5 112:1
	<b>119</b> 157:14	157:21,21,23	<b>2008</b> 119:2	113:24 145:8

147:7	<b>8</b> 5:5 20:24 46:6,16		
<b>519</b> 154:25 155:3	48:18 51:2,10,17		
<b>52</b> 143:16,19 146:5	56:23 74:11,17		
147:9,11	75:2		
<b>53</b> 112:1,8 146:6	<b>8K</b> 119:1		
147:17,19	<b>84</b> 155:12		
<b>54</b> 147:19			
<b>55</b> 148:3	<hr/> <b>9</b> <hr/>		
<b>57</b> 58:3 148:16	<b>9</b> 24:22 49:20		
149:6	<b>9(c)</b> 144:18,21		
<b>58</b> 148:17	145:11,23 146:9		
<hr/> <b>6</b> <hr/>	<b>9(h)</b> 46:16 56:23		
<b>6</b> 91:17 153:12	<b>9(h)(ii)</b> 51:16		
<b>6(b)(ii)</b> 45:13	<b>9(h)(i)(1)</b> 49:20		
<b>6(c)</b> 49:13	<b>9.75</b> 120:10		
<b>6(c)(ii)</b> 144:23	<b>9.9</b> 24:18,24 25:1,9		
145:2,25	<b>97</b> 156:21 157:2		
<b>6(d)</b> 50:7 150:17			
150:18 151:17			
153:11			
<b>6(d)(ii)</b> 56:3			
<b>6(e)</b> 42:6 45:22,24			
46:24 49:25			
50:10,23 52:3,13			
53:4,11 55:15,24			
56:1,17,21 145:7			
150:23			
<b>60</b> 111:7 148:22			
<hr/> <b>7</b> <hr/>			
<b>7</b> 45:10,12 46:6			
47:17 52:10			
54:15,20 55:10			
55:11 57:13 58:6			
60:17,18 61:2,3			
62:23 87:19			
115:7,24 120:3			
135:6 150:18			
154:15			
<b>7(a)</b> 60:18,21			
<b>7(b)</b> 45:23 46:9			
55:11,23,24			
56:12 57:11			
60:17,20,23 61:2			
<b>7.1</b> 154:16			
<b>7.2(a)</b> 155:7			
<b>76</b> 160:3			
<hr/> <b>8</b> <hr/>			