

<p>1 Tuesday, 23 June 2015                  2 (10.30 am)                  3 MR JUSTICE DAVID RICHARDS: Mr Howard.                  4 Application by MR HOWARD                  5 MR HOWARD: My Lord, as you know, I appear for                  6 Goldman Sachs.                  7 MR JUSTICE DAVID RICHARDS: Yes.                  8 MR HOWARD: There is a cast of thousands here, most of whom                  9 I'm sure your Lordship is familiar with.                  10 MR JUSTICE DAVID RICHARDS: Yes.                  11 MR HOWARD: The issue in dispute is in fact a very narrow                  12 one. Goldman Sachs applies to join in these proceedings                  13 in order to deal with one specific point in which it's                  14 interested.                  15 The other parties largely agree, that's to say the                  16 administrators agree, that we should be there. The                  17 senior creditors agree. I think York are either                  18 agreeable or neutral and Wentworth disagree or I think                  19 they say they're not in a position to consent, as                  20 opposed to actively disagreeing, although their presence                  21 here rather suggests that they in fact see a tactical                  22 advantage in keeping us out.                  23 There's no question, of course, that Goldmans has                  24 a direct financial interest in these proceedings.                  25 That's not in dispute. The issue in dispute essentially</p> <p style="text-align: center;">Page 1</p>	<p>1 Now, I don't propose to repeat everything that we've                  2 set out in our written skeleton argument -- I'm sure                  3 your Lordship has those points --                  4 MR JUSTICE DAVID RICHARDS: Yes.                  5 MR HOWARD: -- but the legal test is actually a rather                  6 simple one. It's essentially: is it desirable to add                  7 the new party in order to resolve the issues? And at                  8 its simplest, we would say, before one even digs down                  9 too far into the issues, it is desirable to join                  10 Goldman Sachs because it has a direct financial interest                  11 and because it and other financial institutions are                  12 concerned that their interests may not properly be                  13 represented by the parties who are before the court.                  14 Now, that being so, one would have thought it's                  15 actually a very simple point that it must be desirable                  16 in that situation for my clients to be joined.                  17 It would be unfortunate for the court to reach                  18 a determination on the true construction of the ISDA                  19 master agreement if a significant segment of the market                  20 felt ultimately that the court hadn't properly received                  21 the arguments that they wished to run, so that in the                  22 future the issue may arise again and financial                  23 institutions would wish to re-litigate. It's obviously                  24 desirable that this litigation reaches what will be                  25 regarded as a definitive view on this important point.</p> <p style="text-align: center;">Page 3</p>
<p>1 is whether or not their presence will assist the court,                  2 whether it's desirable that they should be joined.                  3 The issue with which we're concerned is the proper                  4 interpretation of the term "default rate" in the ISDA                  5 master agreement. The position of Goldman Sachs is that                  6 that provision permits a relevant payee to certify                  7 a cost of funding that takes into account all its                  8 sources of funding, including, in particular, the cost                  9 of equity funding.                  10 Now, Goldman Sachs -- and they are supported by                  11 Deutsche Bank in this regard -- are particularly                  12 concerned to ensure that your Lordship has in mind the                  13 position of financial institutions when construing this                  14 provision and, in particular, as part of the factual                  15 matrix, the need for financial institutions to raise                  16 equity funding in particular circumstances.                  17 We say that is relevant. It's not because we're                  18 saying, of course, that the ISDA master agreement bears                  19 a different meaning according to whether a counterparty                  20 is a financial institution or some other corporate body,                  21 but because, as part of the background in deciding the                  22 breadth and interpretation of the term, it's relevant to                  23 consider the role financial institutions play in this                  24 market and their needs in terms of funding. So that, in                  25 a nutshell, is the way in which the issue arises.</p> <p style="text-align: center;">Page 2</p>	<p>1 So leaving aside the arguments about whether or not                  2 Goldman Sachs has anything independent to say, it would                  3 be desirable. But, my Lord, Goldman Sachs does have                  4 something independent to say and their interests are not                  5 wholly aligned or not necessarily wholly aligned with                  6 the interests of the Senior Creditor Group.                  7 The debate between Goldman Sachs and Wentworth                  8 really comes down to that. Wentworth I think seek to                  9 say that our interests must be wholly aligned with that                  10 of the Senior Creditor Group.                  11 Now, it is true that the Senior Creditor Group also                  12 wishes to argue that the default rate includes cost of                  13 funding which can include equity funding, but the                  14 Senior Creditor Group here is essentially, as                  15 I understand it, hedge funds, not financial                  16 institutions, and so they will not be presenting the                  17 matter from the perspective of financial institutions.                  18 We've already put before the court the evidence about                  19 how financial institutions may need to raise equity --                  20 that's in Mr Kelly's first witness statement -- and we                  21 wish to put that material before the court and to argue                  22 the matter from that perspective.                  23 So we submit that, in addition to the more general                  24 point I've already made, it is desirable for                  25 Goldman Sachs to be added because it will firstly be</p> <p style="text-align: center;">Page 4</p>

<p>1 able to assist your Lordship by advancing arguments 2 regarding the funding requirements applicable to 3 financial institutions and it will be able to provide 4 the court with relevant commercial background as to how 5 the ISDA master agreement was operated in practice by 6 financial institutions, and it will therefore be putting 7 before the court this distinct position.</p> <p>8 Now, it is also, of course, not possible to predict 9 with certainty how, in the course of the hearing, any 10 arguments will be developed, whether by Wentworth or by 11 the Senior Creditor Group. So an added reason why it's 12 important that Goldman Sachs as a financial institution 13 should be before the court is to be able to respond to 14 such arguments as they develop or issues that 15 your Lordship may raise insofar as they are seen to 16 impact on the position of financial institutions, so we 17 would wish to be able to do that.</p> <p>18 So, my Lord, as a matter of desirability and justice 19 we say the position all points one way. One could 20 understand resistance if what was going to happen was 21 that our presence was somehow going to delay or 22 undermine the proceedings. Now, our proposal will not 23 in any way delay the hearing date that your Lordship has 24 set. We will catch up with everything. Secondly, it is 25 very unlikely that our presence would materially add to</p> <p style="text-align: center;">Page 5</p>	<p>1 desirability and justice point to allowing Goldman Sachs 2 to intervene and be added as a party.</p> <p>3 MR JUSTICE DAVID RICHARDS: The joint administrators have 4 put forward some conditions that they would seek to add. 5 Do you have any comment on those?</p> <p>6 MR HOWARD: I don't think there's any problem with those. 7 I mean, as I've said in relation to the first one -- 8 I think the correct way of putting it is that we would 9 not duplicate the submissions of the SCG. We accept 10 that the SCG will continue to take the lead, that they 11 would go first and that we will simply supplement their 12 submissions from our own perspective. Then the third 13 point about the further position papers, yes, that's all 14 agreed. I think the other points are just recording the 15 position. So, my Lord, I don't think there's any 16 problem with any of that.</p> <p>17 MR JUSTICE DAVID RICHARDS: Yes. Thank you very much, 18 Mr Howard.</p> <p>19 Mr Trower?</p> <p>20 Submissions by MR TROWER</p> <p>21 MR TROWER: My Lord, I don't think I have anything to add in 22 any substantive terms to what's already been said in our 23 skeleton argument. We do consider that joinder is 24 prima facie desirable because of the different way of 25 arguing the case which is identified in clause 14 of</p> <p style="text-align: center;">Page 7</p>
<p>1 the length of those proceedings.</p> <p>2 We do not intend -- and a number of parties have 3 said we should not -- but we do not intend to duplicate 4 any other party's arguments. So insofar as, for 5 instance, Mr Knowles on behalf of the 6 Senior Creditor Group makes submissions which cover the 7 ground --</p> <p>8 MR JUSTICE DAVID RICHARDS: He's now called "Dicker".</p> <p>9 MR HOWARD: I'm sorry, Mr Dicker. Sorry. I was assuming he 10 was already on the bench, but he's decided to stay this 11 side of the Bar. My Lord, he will make the submissions 12 just as well as Mr Knowles would have done.</p> <p>13 My Lord, assuming Mr Dicker runs the arguments that 14 we currently anticipate, we would not intend to 15 duplicate, but we would add to them, and so it is 16 unlikely that our presence will add in any significant 17 or material way to the amount of time that's required. 18 I'm absolutely confident (a) that your Lordship would 19 prevent us duplicating arguments and I think 20 your Lordship could trust me that I won't simply 21 duplicate arguments.</p> <p>22 So, for all of those reasons, we submit that it's 23 really a relatively straightforward matter and it's 24 a matter of regret, really, that we have to trouble 25 your Lordship with this hearing. We would suggest that</p> <p style="text-align: center;">Page 6</p>	<p>1 Mr Howard's skeleton.</p> <p>2 It's, I think, appropriate to say that in a case 3 such as this, the joint administrators are keen to 4 ensure that any doubts about the extent to which 5 Goldmans may be able to assist are resolved in favour of 6 joinder to avoid a risk that there is late disruption 7 from creditors who consider that all available arguments 8 have not been made and that the appropriate way of 9 exercising control in a case such as the present is by 10 circumscribing the arguments which GSI is entitled to 11 advance so as to avoid duplication, and that's why we've 12 taken the approach that we've taken.</p> <p>13 We do not consider that it would be desirable, that 14 your Lordship should not hold it would be desirable, in 15 the absence of those provisions restricting the role of 16 GSI, this not being standard adversarial commercial 17 litigation, but being proceedings as to how to 18 distribute assets being administered by the court or by 19 the court's officers.</p> <p>20 So, my Lord, that is in essence our position. The 21 only thing I wanted to add was, as far as the order is 22 concerned, in broad terms -- having looked at the 23 provisions which are contained behind tab 2, how it is 24 that the impact of GSI's joinder would affect the 25 continuation of the proceedings -- the only issue which</p> <p style="text-align: center;">Page 8</p>

<p>1 does concern us is on the timetable, what GSI's position                  2 would be in respect of any evidence were it to seek to                  3 apply to put in any further evidence.                  4 Now, having listened to Mr Howard this morning, the                  5 indications that he gave were that they wish to rely on                  6 the evidence which has already been put in. I didn't                  7 understand him to be saying that GSI thought they would                  8 be putting in any further evidence, although I think                  9 their position is formally reserved until such time as                  10 the documents that are referred to in paragraph 2 of the                  11 draft order have been provided to them so that they have                  12 the entirety of the picture on the basis of which they                  13 can make a final decision.                  14 We would be concerned if any application to admit                  15 further evidence was in any way to disrupt the timetable                  16 that we've got down here and indeed your Lordship should                  17 ensure that that doesn't happen. One way of doing it                  18 would be to make a direction now that any admissible                  19 evidence on factual matrix which GSI wish to adduce                  20 should go in at the same time as their position paper,                  21 just to ensure that we've got it tied into the                  22 timetable, but I only float that at this stage.                  23 Your Lordship needs to consider the possibility of                  24 that in the context of both the substantive application                  25 for joinder, and, if your Lordship does join GSI, the</p> <p style="text-align: center;">Page 9</p>	<p>1 least one other financial institution.                  2 MR JUSTICE DAVID RICHARDS: Deutsche Bank?                  3 MR TROWER: Deutsche Bank.                  4 MR JUSTICE DAVID RICHARDS: Yes.                  5 MR TROWER: Again, I don't have those figures immediately to                  6 hand, but I think we can get them pretty immediately and                  7 I'll --                  8 MR JUSTICE DAVID RICHARDS: If anyone has a rough -- it's                  9 only a rough idea.                  10 MR TROWER: I may know straightaway. If not, I'll give them                  11 to your Lordship in a moment.                  12 MR JUSTICE DAVID RICHARDS: All right, Mr Trower.                  13 MR TROWER: I have a figure of 80 million for the                  14 Goldman Sachs claim.                  15 MR JUSTICE DAVID RICHARDS: Is that pounds or dollars?                  16 MR TROWER: That's sterling, according to this note.                  17 MR JUSTICE DAVID RICHARDS: Sterling, yes, would be an                  18 admitted claim. It would be, wouldn't it? Thank you,                  19 Mr Trower.                  20 MR TROWER: If I get the Deutsche Bank or indeed any others,                  21 I'll let your Lordship know in a moment.                  22 MR JUSTICE DAVID RICHARDS: Mr Howard, can I just clarify                  23 a little bit about what Goldman Sachs' intentions as to                  24 evidence would be if they were joined?                  25 MR HOWARD: Yes, my Lord. The position as it stands at the</p> <p style="text-align: center;">Page 11</p>
<p>1 knock-on consequences so far as directions are                  2 concerned.                  3 MR JUSTICE DAVID RICHARDS: Yes, I perhaps might have                  4 addressed this to Mr Howard. I'm not sure in the                  5 evidence I've seen what the size of Goldman Sachs' --                  6 I say Goldman Sachs, I mean the entities within the                  7 Goldman Sachs group -- what the size of their admitted                  8 claim is. Do we have that?                  9 MR TROWER: I think I have that figure somewhere, but                  10 whether it's in the evidence or not, I can't remember.                  11 Mr Howard may know.                  12 MR HOWARD: I don't think it's in the evidence.                  13 MR JUSTICE DAVID RICHARDS: Are you able to tell me what                  14 that is?                  15 MR TROWER: I will in a moment. I'll sit down and --                  16 MR JUSTICE DAVID RICHARDS: I've got a related question,                  17 which is -- I mean, clearly there has been a lot of                  18 trading in the Lehman's debt and a lot of the debt has                  19 been acquired by funds and so on who are either members                  20 of Mr Dicker's group or, in a sense, in a very similar                  21 position, but do we have any information as to roughly                  22 how much debt is still held by banks and financial                  23 institutions in a position which is similar to that of                  24 Goldman Sachs?                  25 MR TROWER: What I can say straightaway is that there is at</p> <p style="text-align: center;">Page 10</p>	<p>1 moment is that we would be seeking to rely on the                  2 material that we've put in in Mr Kelly's witness                  3 statement. We would only see the need to serve any                  4 further evidence if either that's disputed, which seems                  5 unlikely -- it seems uncontroversial, one would think --                  6 and if, once we've seen the materials that are referred                  7 to in paragraph 2 of the order, that raised the need for                  8 anything else. But it's very unlikely and would be                  9 limited and I would certainly accept that we could serve                  10 that evidence, if any, at the same time as serving our                  11 position paper in paragraph 3 of the order. That would                  12 seem a sensible proposal. So that would ensure that                  13 there was no disruption to the timetable.                  14 MR JUSTICE DAVID RICHARDS: Yes. Thank you very much.                  15 Mr Dicker?                  16 MR TROWER: Before Mr Dicker stands, the Deutsche Bank claim                  17 is approximately 100 million. There are other financial                  18 institution claims that were originally with financial                  19 institutions that have found their way into the hands                  20 of, amongst other people, members of the SCG.                  21 MR JUSTICE DAVID RICHARDS: Yes. That's helpful. Thank you                  22 very much indeed.                  23 Mr Dicker?                  24 Submissions by MR DICKER                  25 MR DICKER: My Lord, as your Lordship knows, we support the</p> <p style="text-align: center;">Page 12</p>

<p>1 application. There's nothing substantive I think I need                  2 to add to our skeleton. Our short point is none of the                  3 members of the SCG are financial institutions and our                  4 view is that arguments reflecting the position of the                  5 financial institutions are best made by such an                  6 institution, rather than by any of the members of the                  7 SCG. Unless I can help your Lordship further.                  8 MR JUSTICE DAVID RICHARDS: Thank you very much.                  9 Mr Zacaroli?                  10 Submissions by MR ZACAROLI                  11 MR ZACAROLI: My Lord, broadly speaking, our position is we                  12 don't accept that Goldman Sachs have made out a case for                  13 joinder.                  14 Can I make seven short points in respect of that                  15 submission?                  16 The first is that no different construction has been                  17 contended for in relation to the phrase "cost if it were                  18 to fund or of funding" by Goldman Sachs. That is shown                  19 by two quick references: Mr Kelly's first witness                  20 statement, paragraph 8, where he says:                  21 "The specific issue that Goldman Sachs wishes to                  22 address is whether the default rate encompasses all                  23 sources of funding, including equity."                  24 The second reference is to the revised position                  25 paper of the Senior Creditor Group, paragraph 11.2,</p> <p style="text-align: center;">Page 13</p>	<p>1 support of the construction for which it and, of course,                  2 the Senior Creditor Group contends. The position on                  3 evidence was reserved in correspondence, but basically,                  4 I think, as my Lord has heard today, because of                  5 unsureness about what other parties might have said to                  6 date. But there's nothing in what other parties have                  7 said to date which would prompt any expert evidence or                  8 factual evidence to be required by any party.                  9 The fifth point is that the Senior Creditor Group                  10 can be expected to advance any and all arguments of                  11 construction as to the meaning of the phrase                  12 "generally", given that there's no specific meaning                  13 contended for in relation to financial institutions.                  14 The Senior Creditor Group can be expected to make all                  15 arguments for the construction for which they contend.                  16 As my Lord has heard, the Senior Creditor Group                  17 doesn't consist of banks, but it does, within its                  18 armoury of claims, have claims that once belonged to                  19 banks that Mr Trower has just indicated. So, to the                  20 extent that there are arguments that it might want to                  21 suggest would be run slightly differently because a bank                  22 is the creditor, well, it's in a position to run those                  23 arguments, having those claims.                  24 Goldman Sachs says, in essence, that it wishes to                  25 build an argument on the fact that financial</p> <p style="text-align: center;">Page 15</p>
<p>1 where they say in terms the same thing, that cost of                  2 funding is not limited to any particular source of                  3 funding and includes cost of equity.                  4 The second point is that there's no basis or source                  5 of funding being contended for by Goldman Sachs that is                  6 different or additional to that on which the                  7 Senior Creditor Group rely. My Lord may remember that                  8 in formulating the revised issues 11 and 12, following                  9 a CMC I think in March, the revised issues were                  10 formulated on the bases and the sources of funding upon                  11 which the Senior Creditor Group wished to rely.                  12 Goldman Sachs don't propose to add to that list.                  13 Indeed, as I say, the only one they wish to contend for                  14 is that it includes costs of raising funds by issuing                  15 equity.                  16 The third point is that it's not suggested that the                  17 phrase under consideration has any particular meaning                  18 among financial institutions that's different from its                  19 general meaning as a matter of construction for all                  20 counterparties; in other words, there's no suggestion                  21 that there is a particular market usage amongst                  22 financial institutions which leads to a construction                  23 different from that which we might contend for.                  24 The fourth point, Goldman Sachs does not positively                  25 seek to rely upon any factual or expert evidence in</p> <p style="text-align: center;">Page 14</p>	<p>1 institutions are subject to capital requirements. Now,                  2 the argument that connects that fact with a construction                  3 of the ISDA master agreement that includes cost of                  4 equity in the concept of cost of funding is yet to be                  5 articulated, but if there is such an argument, it's one                  6 that can be as easily run by the Senior Creditor Group.                  7 There's no magic in who it is that advances that                  8 argument.                  9 Sixthly, although we don't doubt the court has                  10 a discretion in a case like this to allow Goldman Sachs                  11 to join to present arguments from, as it puts it, the                  12 perspective of financial institutions, even though it's                  13 not contending for any different construction or                  14 position, in exercising that discretion we do say it's                  15 relevant to consider whether Goldman Sachs has                  16 established at least a prima facie credible basis for                  17 contending why the existence of capital requirements                  18 entitle a financial institution -- or entitle it more                  19 properly -- to more than 8 per cent interest in                  20 circumstances where it in fact had access to funding                  21 over the entire period at very substantially lower                  22 rates, in the region of 1 per cent or less as the                  23 evidence of Mr Webber shows. I take it my Lord has had                  24 a chance to look at Mr Webber's witness statement?                  25 MR JUSTICE DAVID RICHARDS: I have read it, yes.</p> <p style="text-align: center;">Page 16</p>

<p>1 MR ZACAROLI: So I won't repeat the details, but in very                  2 broad, brief terms, my Lord will have seen that                  3 Goldman Sachs' stated costs of borrowing were in the                  4 region of 1 per cent throughout the period, the highest                  5 was 3 per cent, and they in fact had access to                  6 Federal Reserve funding at between 0.01 per cent and                  7 1.1 per cent in the three months after Lehman's                  8 collapse. So we say, although that's not in itself                  9 a relevant consideration to construction, it is relevant                  10 as a matter of discretion as to whether Goldman Sachs is                  11 an appropriate party to be joined to argue for rates                  12 higher than 8 per cent.</p> <p>13 The seventh point is, to the extent as suggested in                  14 Mr Kelly's second witness statement, paragraph 7, that                  15 Goldman Sachs has a broader interest because it's                  16 a counterparty in the market to many ISDA agreements,                  17 which of course is accepted -- to that extent it doesn't                  18 give it any basis for being joined to these proceedings.                  19 The question is whether its joinder to these proceedings                  20 enables the issues in this case to be determined more                  21 desirably or it's desirable for them to be involved so                  22 that the issues can be determined in this case. An                  23 interest in the market generally is not enough to                  24 warrant its joinder into these proceedings.</p> <p>25 So, my Lord, for those seven brief reasons we submit</p> <p style="text-align: center;">Page 17</p>	<p>1 certify a cost of funding above 8 per cent.</p> <p>2 My Lord, going back to the other points Mr Zacaroli                  3 made, the essential point he makes is that we are not                  4 proposing to run a different point of construction or                  5 meaning to that which is put forward by the                  6 Senior Creditor Group.</p> <p>7 The simple answer to that is the                  8 Senior Creditor Group does not consist of financial                  9 institutions. It, through my friend Mr Dicker, is                  10 essentially saying that it does not feel in a position                  11 to put forward the points that a financial institution                  12 would put forward. Goldman Sachs is able to assist the                  13 court by explaining the position from the perspective of                  14 financial institutions and it would be wrong to deny                  15 that opportunity, particularly where, if one actually                  16 analyses what is going on -- why is Wentworth actually                  17 opposing this -- it's fairly obvious that Wentworth sees                  18 a financial advantage because it's in Wentworth's                  19 interests to seek to ensure that the certified cost of                  20 funding is reduced as much as possible. That way they                  21 make a bigger return on their investment.</p> <p>22 So although this is not normal adversarial                  23 litigation, the reality is -- of course, the                  24 administrators are there to assist the court, but the                  25 reality is that you've got, on the one side, Wentworth</p> <p style="text-align: center;">Page 19</p>
<p>1 that Goldman Sachs has not reached, as it were, the                  2 threshold of a joinder application.</p> <p>3 MR JUSTICE DAVID RICHARDS: Thank you very much indeed                  4 Mr Howard?</p> <p>5 Submissions in reply by MR HOWARD</p> <p>6 MR HOWARD: My Lord, the first point I would make is, in                  7 fact, there's no answer to the point that Goldman Sachs                  8 has a direct financial interest in these proceedings and                  9 that's the overriding point that one should not lose                  10 sight of.</p> <p>11 However, just picking up the sixth point, where it's                  12 said based on the evidence that was put in on Friday                  13 that Goldman Sachs will not be able to certify a rate                  14 above 8 per cent, my Lord, that is not correct.                  15 Your Lordship has evidence in Mr Kelly's second                  16 statement that Goldman Sachs believes that it will, in                  17 fact, be able to certify a cost of funding above                  18 8 per cent, so the point is simply misconceived.</p> <p>19 Insofar as there's a dispute about that, that will                  20 be an issue to be resolved at a later stage, once                  21 your Lordship has resolved the point of construction and                  22 once certification has taken place. But, for present                  23 purposes, your Lordship should proceed on the basis that                  24 Goldman Sachs has a real interest in that it is                  25 proposing, if its view of construction is right, to</p> <p style="text-align: center;">Page 18</p>	<p>1 seeking to reduce the certified cost and, on the other                  2 hand, the SCG and Goldman Sachs looking at arguments to                  3 seek to increase the amounts.</p> <p>4 So it's artificial to suggest that we don't have                  5 a real interest and, therefore, in our submission, none                  6 of the points 1 to 5 that Mr Zacaroli raised, which were                  7 all really variants on a theme, actually take the matter                  8 anywhere.</p> <p>9 One point I should just deal with is the suggestion                  10 that we are not seeking to rely on factual evidence. Of                  11 course, we are. We are seeking to rely on the factual                  12 evidence of matrix which we have put in, which is not                  13 evidence to say that this term means something                  14 different, but that, when construing the ISDA master                  15 agreement and what is meant by "the cost of funding", it                  16 is relevant to take account of the fact that very                  17 frequently the counterparties are financial                  18 institutions, and if there is a default, financial                  19 institutions' cost of funding will include or may                  20 include the need to raise additional equity because,                  21 amongst other things, of the regulatory requirements.</p> <p>22 So if one takes, obviously, the Lehman's situation,                  23 with the default of Lehmans, financial institutions'                  24 balance sheets were substantially impacted and therefore                  25 they had the need and in fact the obligation to raise</p> <p style="text-align: center;">Page 20</p>

<p>1 additional equity capital and that had particular costs                  2 associated with it. It's as simple as that, my Lord.                  3 So we would ask your Lordship to allow us to                  4 intervene on the basis which we've previously discussed.                  5 MR JUSTICE DAVID RICHARDS: Thank you very much.                  6 (Judgment given)                  7 MR TROWER: My Lord, there is an a minute of order behind                  8 tab 2 in the bundle.                  9 The two matters that were debated were, one, that                  10 the term -- and, of course, we accept that Mr Howard,                  11 having heard the argument and indeed having supported                  12 what I said, that he is not going to duplicate of his                  13 own volition -- but it may be helpful if we put at the                  14 end of paragraph 1 a reflection of limitation on the                  15 participation, so it's "... such participation being                  16 limited to the submission of evidence and the making of                  17 arguments which do not duplicate those made by the SCG".                  18 I have tried to pick up the words from the skeleton that                  19 we discussed.                  20 So that's the first point. The second point in                  21 paragraph -- perhaps if I just run through the order.                  22 Paragraph 1 is the substantive order.                  23 Paragraph 2 is a direction that we provide within                  24 seven days listed documentation which is all agreed.                  25 Paragraph 3 deals with the service of GSI's position</p> <p style="text-align: center;">Page 21</p>	<p style="text-align: center;">INDEX</p> <p style="text-align: right;">PAGE</p> <p>3 Application by MR HOWARD .....1                  4 Submissions by MR TROWER .....7                  5 Submissions by MR DICKER .....12                  6 Submissions by MR ZACAROLI .....13                  7 Submissions in reply by MR HOWARD .....18                  8 (Judgment given) .....21</p> <p style="text-align: center;">Page 23</p>
<p>1 paper, and I think we just need to add in there "... and                  2 any admissible evidence on factual matrix".                  3 So that's that. The remainder of the directions                  4 I don't have anything to add to. As I understand it,                  5 they are agreed between all the parties on the                  6 assumption your Lordship made the order that you've just                  7 made.                  8 MR JUSTICE DAVID RICHARDS: Yes.                  9 MR TROWER: We are all satisfied that the timetable isn't                  10 thereby prejudiced and it fits in perfectly                  11 satisfactorily with what your Lordship has already                  12 directed.                  13 MR JUSTICE DAVID RICHARDS: Yes. Very well. Are those                  14 terms agreed? Thank you very much indeed.                  15 Well, if an amended order could be prepared and                  16 emailed to my clerk. Remember, as we do now, to                  17 identify the counsel who are appearing for the various                  18 parties and on the first page, underneath                  19 "Companies Court", it should have my name and the date.                  20 That's the standard form of orders now. But if you do                  21 that, then she will seal the order in the normal way.                  22 MR TROWER: I'm grateful.                  23 MR JUSTICE DAVID RICHARDS: Good. Thank you all very much.                  24 (11.20 am)                  25 (The court adjourned)</p> <p style="text-align: center;">Page 22</p>	

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