Fourth Respondent
Johannes Weber
Exhibit: JW1
Date: 18 June 2015
No 7942 of 2008

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

(1) ANTHONY VICTOR LOMAS

(2) STEVEN ANTHONY PEARSON

(3) PAUL DAVID COPLEY

(4) RUSSELL DOWNS

(5) JULIAN GUY PARR

(as the joint administrators of the above named company)

Applicants

- AND -

(1) BURLINGTON LOAN MANAGEMENT LIMITED

(2) CVI GVF (LUX) MASTER S.À R.L

(3) HUTCHINSON INVESTORS LLC

(4) WENTWORTH SONS SUB-DEBT S.À R.L

(5) YORK GLOBAL FINANCE BDH, LLC

Respondents

FIRST WITNESS STATEMENT OF JOHANNES WEBER

I, Johannes Weber of Elliott Management Corporation ("**Elliott**"), of 40 West 57th Street, New York, NY 10019, United States, state as follows:

Introduction

1. I am an Associate Portfolio Manager at Elliott and have been employed at Elliott since 2009.

2. Elliott is one of the parties to the Wentworth joint venture and I am authorised by Wentworth Sons Sub-Debt S.à r.l (the Fourth Respondent to these proceedings) to make this witness statement.

3. Save where I have indicated otherwise, the contents of this witness statement are matters within my personal knowledge and are true. Where matters are not within my own personal knowledge I identify the source and I confirm they are true to the best of my knowledge and belief.

4. There is now produced and shown to me a paginated bundle of documents marked **"JW1"** to which I refer in this statement. Except where otherwise indicated, references to page numbers below are references to this exhibit.

5. Unless the context requires otherwise, terms capitalised but not otherwise defined herein have the meaning given to them in the Waterfall II Application (the "**Application**").

Purpose and Structure

6. The purpose of this witness statement is to set out certain evidence relevant to the application on behalf of Goldman Sachs International ("**GSI**"), for an order that they be added as an additional respondent to the Application.

7. I understand, based solely on the ASX Form 603 pursuant to the Corporations Act 2001 (Australia) (see **pages 1 to 9, in particular 4 and 5**), that GSI and Goldman Sachs Lending Partners LLC ("**GSLP**") is owned directly or indirectly by Goldman Sachs Group, Inc ("**GSGI**"). GSGI and its subsidiaries are referred to below as the "**Goldman Sachs Group**".

8. There is publically available information set out below which indicates that, for the period following the insolvency of LBIE to date, the cost of funding of the Goldman Sachs Group is and was likely to result in a Default Rate, as defined under the ISDA Master Agreement, at a rate substantially lower than 8% per annum. This would suggest that GSI does not share the perspective of a bank or financial institution with an interest in arguing for a basis which would permit some higher measure of cost of funding to be taken into account in calculating the Default Rate.

9. On 16 June 2015 the solicitors to the Fourth Respondent, Kirkland & Ellis International LLP, wrote to Cleary Gottlieb, the solicitors to GSI, explaining the above matters. I exhibit a copy of that letter and the holding response on behalf of GSI at **pages 10 to 12** and **pages 13 to 14**, respectively. As at the date of filing this statement, no substantive response has been received by Kirkland & Ellis from GSI.

10. The remainder of this witness statement is structured as follows:

    A. The cost of funding of GSI derived from its claims against LBHI and LBSF (each defined below) in their respective bankruptcy proceedings in New York.

    B. Published cost of funds of GSGI.

    C. Public statements in relation to a lower cost of funding as a result of GSGI's conversion into a bank holding company.

A. GSI's cost of funding as derived from its claims in the US bankruptcies.

11. I have reviewed certain publicly available information as set forth in my Exhibit and, based solely on such information, summarize below certain calculations regarding the cost of funding rate implied by the amount of interest claimed by GSI from Lehman Brothers Holdings Inc. (**"LBHI"**) as guarantor of LBIE, and from Lehman Brothers Special Financing Inc, ("**LBSF**"), in each case under transactions governed by the relevant ISDA Master Agreement between the parties thereto.

12. I have reviewed the proof of claims ("**POCs**") filed by GSI in the bankruptcies of LBHI and LBSF. They are:

(a) The LBIE ISDA Master Agreement guaranty claim filed against LBHI in connection with LBHI's Chapter 11 bankruptcy proceeding filed in the United States Bankruptcy Court of the Southern District of New York (Case No. 08-1355(JMP)) (the "**LBIE ISDA Guaranty Claim**") (See **pages 15 to 25**).

(b) The ISDA Master Agreement claims filed against LBSF in connection with LBSF's Chapter 11 bankruptcy proceeding filed in the United States Bankruptcy Court of Southern District of New York (Case No. 08-1388 (JMP)) (the "**LBSF ISDA Claim**") (See **pages 26 to 35**).

<u>LBIE ISDA Guaranty Claim</u>

13. The LBIE ISDA Guaranty Claim is in the amount of $86,366,585.80, which includes interest of $62,936.84 and costs/fees and expenses of $80,703.65.

14. Using September 15, 2008, which is the designated Early Termination Date of the claim as the start date for purposes of calculating interest, and using September 22, 2009 as the end date identified in the POC, it is possible to calculate a simple rate of interest.

15. The implied simple interest rate is 0.07162%, which is calculated as follows:

(Interest / Claim Amount less Interest and Costs) * 365 days / (End date – Start Date) = Simple Interest Rate

Or in this case:

($62,937/$86,222,945)*365 days /(9/22/2009-9/15/2008 (or 372 days) = 0.07162%.

<u>LBSF ISDA Claim</u>

16. The LBSF ISDA Claim is in the claim amount of $999,304,164.16, which includes $1,859,167.00 of interest and $279,586.89 of costs/fees and expenses associated with the claim.

17. Using the Early Termination Date of September 15, 2008 as the start date for purposes of calculating interest and using the LBSF petition date of October 3, 2008

as the end date identified in the POC it is again possible to calculate a simple rate of interest.

18. The implied simple interest rate is 3.78069%, calculated as follows:

> **(Interest / Claim Amount less Interest and Costs) * 365 days / (End date – Start Date) = Simple Interest Rate**
>
> **Or in this case:**
>
> **($1,859,167/$997,165,410)*365 days / (10/3/2008-9/15/2008 (or 18 days) = 3.78069%.**

B. Published cost of funds rates of GSGI

19. I refer to the quarterly chart (see **pages 36 to 38**) (the "**Quarterly Chart**") and the annual chart (see **page 39**) (the "**Annual Chart**", together with the Quarterly Chart the "**Charts**") published online to subscribers by the financial information provider S&P Capital IQ, McGraw Hill Financial.

20. The Charts show, in the "*Cost of Funds*" section, the "*Cost of Total Borrowings %*", of the Goldman Sachs Group. The online information button to the Charts defines "*Cost of Total Borrowings %*" as follows:

> "*Cost of Total Borrowings % represents the average rate of interest that the Bank pays on its sources of funds. It is expressed as a percentage of interest paid on the all interest bearing liabilities. Normally, it is lower than the rate of interest earned by the Bank on its Total Interest Earning Assets.*"

(the "**Published Cost of Funds Rate**")

21. S&P Capital IQ, McGraw Hill Financial state that they collect the Published Cost of Funds Rate from the relevant public filings. According to S&P Capital IQ, McGraw Hill, the rates are sourced from both quarterly and annual SEC and non-SEC filings. The respective Charts show the Published Cost of Funds Rate on a quarterly and annual basis from 2008 to the most recently available date.

22. In the Quarterly Chart (Q3 2008 - Q1 2015 inclusive), the highest Published Cost of Funds Rate during the period is **3.1%** (Q3 2008, ending 29 Aug). It should be noted that, as I understand it, based solely on the information provided by the Quarterly Chart, the rate for each of the Q4 quarterly periods is unavailable, as after the end of Q4 the annual rate is disclosed rather than the Q4 quarterly rate.

23. In the Annual Chart (2008 - 2014 inclusive), the highest Published Cost of Funds Rate during the period is **3.2%** (2008), and for most of this period the rate is **1%** or lower.

C. Public statements in relation to a lower cost of funding as a result of GSGI's conversion into a bank holding company.

24. On 21 September 2008 GSGI announced it would convert into a bank holding company. The respective public statements of GSGI and the Board of Governors of the Federal Reserve System (U.S.) (the "**Federal Reserve**") (see **pages 44 to 46**) indicate that a purpose or benefit of conversion into a bank holding company was to gain access to a greater diversity of permanent funding sources, including in particular the use of Federal Reserve credit and liquidity programs (including borrowing from the Federal Reserve Bank of New York by the U.S. and London broker-dealer subsidiaries of GSGI).

25. At the time there were a number of Federal Reserve credit and liquidity programs, including, among others, the following (the rate information below is taken from the Federal Reserve website unless otherwise stated):

    (a) Credit from the Federal Reserve Bank of New York in exchange for collateral under the primary credit facility for depositary institutions (as referred to in the Federal Reserve press release regarding GSGI dated 21 September 2008 see **page 46**) (this program remains open):

        (A) The Federal Reserve states that the interest rates were set as "*Recommended by the Boards of Directors of the Reserve Banks and approved by the Board of Governors*" (see **page 49**).

        (B) Between 15 Sep 2008 and 18 Feb 2010 the published primary credit rate ranged between **2.25% and 0.5%**. From 19 Feb

2010 to date the published primary credit rate has been **0.75%** (see **page 54**, sourced from the Federal Reserve Discount Window website).

(b) Credit from the Federal Reserve Bank of New York in exchange for collateral under the Primary Dealer Credit Facility (**PDCF**) (as referred to in the Federal Reserve press release regarding GSGI dated 21 September 2008: see **page 46**) (this program closed February 2010).

(A) The Federal Reserve states that the interest rates were set as "*Equal to the primary credit rate in effect at the Federal Reserve Bank of New York*" (see **page 50**).

(B) As stated above, between 15 Sep 2008 and 18 Feb 2010 the published primary credit rate ranged between **2.25% and 0.5%** (see **page 54**, sourced from the Federal Reserve Discount Window website).

(c) Credit from the Federal Reserve Bank of New York by way of the Single-Tranche Term Repurchase Agreements in exchange for delivery of securities by primary dealers (this program closed December 2008) (see **page 53**).

(A) The published information shows that between 15 Sep 2008 and 30 Dec 2008 "*Goldman, Sachs & Co*" carried out a number of transactions at rates that ranged between **1.10% and 0.01%** (see **page 55**).

Statement of Truth

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

Johannes Weber

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FIRST WITNESS STATEMENT OF JOHANNES WEBER

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