

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

CLAIM NO. BL-2020-001343

B E T W E E N :

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)**
**(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN
AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL &
FINANCE PLC (IN ADMINISTRATION))**
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
**(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH
(JOINT ADMINISTRATORS OF LONDON OIL & GAS
LIMITED (IN ADMINISTRATION))**

Claimants

-and-

- MICHAEL ANDREW THOMSON
SIMON HUME-KENDALL
(3) ELTEN BARKER
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENT LIMITED
(10) HELEN HUME-KENDALL**

Defendants

**EXPERT REPORT OF DR CHUDOZIE OKONGWU
DATED 29 SEPTEMBER 2023**

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1. Introduction

1.1. Qualifications

1. I am a Managing Director in the Investigations, Disputes and Risk Practice of AlixPartners, a financial advisory and global consulting firm. At AlixPartners, I specialise in financial economics and valuation. My clients include financial institutions, corporations, individuals, and governments; I assist them in the areas of securities, banking, regulation, and risk management. I have consulted and acted as an expert in litigation, including matters involving the calculation of damages and the valuation of a wide range of financial products and assets (*e.g.*, commodity derivatives, fixed income and convertible securities, options, and complex financial structures).

2. Prior to joining AlixPartners in 2020, I was a Managing Director and Head of the European Finance, Litigation, and Dispute Resolution Group at NERA Economic Consulting. Before joining NERA in 1999, I was a member of Banque Paribas's (now BNP Paribas) Fixed Income emerging markets team in New York and London. In that capacity, I advised clients on their investment strategies in a broad range of emerging market products, including debt instruments denominated in various currencies, credit derivatives, and over-the-counter options on Brady bonds and Eurobonds. I also traded local currency debt instruments for the group on a proprietary basis. My résumé is attached as Appendix I and lists all publications that I have authored and all expert testimony that I have provided at trial or deposition.

1.2. Summary of Claim

3. In this section, I briefly summarise my understanding of the background to the current proceedings. My understanding is derived from my instructions from Mishcon de Reya LLP ("**Mishcon**"),¹ who act for Claimants in the current proceedings: the Joint Administrators of London Capital & Finance PLC ("**LCF**") and London Oil & Gas Limited ("**LOG**") and those two companies themselves, as well as the documents cited below.

¹ The Letter of Instructions is attached as Appendix II.

4. I understand that LCF was incorporated in England and Wales as a private limited company on 12 July 2012. LCF purported to carry on a legitimate business raising monies by issuing Bonds to members of the public, which monies it claimed to loan to small and medium sized businesses (“SMEs”) in the UK. From September 2013, LCF sold bonds to 11,625 public investors (“Bondholders”). I understand that it is the Claimants’ case that LCF represented that the “investment by Bondholders in Bonds was a secure investment which was capable of generating high returns ”.² LCF then on-lent the money to a small number of borrower companies, after purportedly having undertaken appropriate due diligence and subsequently engaged in ongoing monitoring. As at December 2018, there were 16,706 LCF Mini-Bond and LCF ISA products in issue,³ with the amount invested totalling just over £237.2 million.

5. It is the Claimants’ case that LCF’s business was carried on fraudulently, as the Bondholder monies were not loaned to businesses for legitimate commercial purposes but were in fact being misappropriated by some of the Defendants.

6. Surge and Paul Careless (who I understand was “a director of” and “owned/and or controlled” Surge)⁴ are both Defendants in the current proceedings (the “Surge Defendants”). With respect to Defendant Surge’s role, Surge claims that it was engaged by LCF to provide services to LCF, consisting of:

- **Marketing services:** for example, provided branding, website design, design of promotional materials (including the IMs and Brochures), advertising and lead generation via digital and print.
- **Technology:** designed, built, hosted and maintained LCF's website.
- **Account management:** provided an outsourced call/support centre, including a team of account managers who acted as representatives of LCF

² See Re-Re-Amended Particulars of Claim, dated 20 May 2022, para. 7(8).

³ I understand that, despite their description, LCF’s ISA products did not qualify as ISA investments because they did not meet the conditions at regulations 8A(2) and (4) of the Individual Savings Account Regulations 1998 that qualifying ISA investments must be transferable. See “Second Supervisory Notice”, dated 17 January 2019, para. 8 (Exhibit – 1) (**D1-0012662**).

⁴ See Re-Re-Amended Particulars of Claim, dated 20 May 2022, para. 28.

(but were employed by Surge) to interact with potential Bondholders and existing Bondholders.⁵

7. Surge claims that in return for providing LCF the above services, it was agreed that it would be paid a fee equating to 25% (or 22.5% in relation to certain of the bonds issued)⁶ of all Bondholder monies raised by LCF (the “**Surge Fee**”). I understand that while a draft service agreement was discussed between Surge and LCF, it was never finalised and remains unexecuted.⁷

8. I understand that LCF claimed in its disclosures to investors that it “generated income to cover its overheads and to pay interest on the Bonds by charging borrowers a one-off fee equal to 2% of the amount of the loan and interest in the region of 10% per annum on the amount of the loan until maturity”.⁸ For example, in an 11 June 2018 Information Memorandum, LCF stated that it generated income by charging borrowers “lending fees of 2% and making an interest ‘turn’ on the funds LCF lends”.⁹ LCF further stated, “As an example: for a £1 million loan, a set-up fee of £20,000 would be charged and a target 10% interest would be charged for the loan. The interest payable to Bondholders in respect to £1 million of Bonds would be 8%...”.¹⁰

9. I understand that LCF failed to disclose to Bondholders that it was paying the Surge Fee to Surge.¹¹ The Claimants allege that Surge received approximately £60.9 million in fees and consider that Surge was essentially charging an extravagant and unjustifiable sales commission to LCF for the sale of LCF’s bonds to members of the public. The Claimants also allege that Surge (and Mr Careless) participated in the misappropriation of bondholder monies¹² and that the funds

⁵ See Fifth and Sixth Defendants’ Amended Defence, dated 19 April 2022, para. 5(3).

⁶ Based on the Surge Fee Allocation Sheet (MDR00201706), the 22.5% Surge Fee appears to have been applied to the Series 11 Bonds and ISA Series 3 Bonds.

⁷ See Re-Re-Amended Particulars of Claim, dated 20 May 2022, para. 24(7)(viii).

⁸ See Re-Re-Amended Particulars of Claim, dated 20 May 2022, para. 7(3).

⁹ See ISA Series 4 – Information Memorandum, 3-year 8% Bonds, dated 11 June 2018, p. 10 (MDR_ST_00154860).

¹⁰ Ibid.

¹¹ I note that Surge is not mentioned in the Information Memorandum for the Series 4 ISA, 3-year 8% Bonds, for example. See ISA Series 4 – Information Memorandum (MDR_ST_00154860).

¹² See Re-Re-Amended Particulars of Claim, dated 20 May 2022, para. 29(6-7).

it received were “obviously extravagant, disproportionate, uneconomic and/or uncommercial and/or that no legitimate and honest moneylender would have been willing or able to pay such a fee”.¹³

1.3. Summary of Grainger Report

10. I understand that Paul Grainger was instructed by Kingsley Napley, who act for the Surge Defendants, to opine on the ordinary market rate (or, in the absence of a relevant market, the rate that would have been agreed between reasonable parties in an arm’s length transaction) for services of the type Surge claims to have been providing.¹⁴

11. In an expert report dated 28 July 2023 (the “**Grainger Report**”), Mr Grainger concludes, among other opinions, that “there was no generally accepted market rate for the services provided by Surge”¹⁵ and that “the fee agreed between LCF and Surge, when apportioned over the period of time for which service delivery was expected, is not significantly out of line with the fees for similar services offered by other service providers, if the greater scope of services provided by Surge is considered”.¹⁶

1.4. Assignment and Disclosures

12. I have been instructed by the Claimants’ legal representative in these proceedings, Mishcon, to consider (among other issues):

- a) Whether Surge's commission rates of 22.5% and 25% would have been agreed between reasonable parties in an arm’s length transaction and in the context of LCF's stated return of investment to investors (in other words, the economic feasibility of Surge's commission rate);
- b) Whether there was a market for the services provided by Surge; and

¹³ See Re-Re-Amended Particulars of Claim, dated 20 May 2022, para 42(5)(iii).

¹⁴ See Grainger Report, “Overview”, dated 28 July 2023, p. 2.

¹⁵ See Grainger Report, dated 28 July 2023, para. 12.1.

¹⁶ See Grainger Report, dated 28 July 2023, para. 12.4.

- c) If so, how Surge's commission rates of 22.5% and 25% compare with the rates ordinarily charged in that market.

13. I have also been asked to respond to the Grainger Report including in respect of the economic implications of the fee rate paid to Surge. In preparing this report, I have been assisted by a number of other professionals at AlixPartners, who worked under my direction and supervision. Neither I nor AlixPartners is aware of any issue that would constitute a conflict of interest with respect to my or AlixPartners' work on this matter.

14. The materials that I have considered in forming the opinions expressed in this report are identified in Appendix III to this report. I reserve the right to supplement this report should additional information become available that bears on my analyses and opinions.

1.5. Summary of Opinions

15. My opinions are summarised as follows:

- A legitimate commission rate of 25% (or 22.5%) is not credible, as it implies required rates of return on LCF's lending that far exceed the "target return" that LCF stated to investors, as well as high-yield corporate debt yields and the performance of the corporate loan market (see **Section 2**).
- I did not identify any companies that offer the identical set of services to those which are said to have been provided by Surge. However, there are firms who offer similar, or more extensive, services – including third-party marketers and placement agents, fund managers, and private credit funds – for substantially lower fee rates. I consider LCF's purported business activities, in combination with some of those that it outsourced to Surge, to be very similar to those of private credit funds. Surge's fee rate of 25% far exceeds the fees of private credit funds (see **Section 3**).
- The Grainger Report fails to provide any substantive evidence to support the reasonableness of the Surge Fee. In particular:
 - The Grainger Report fails to identify any service provider that offers services directly comparable to those purportedly provided by Surge and it fails to provide

any substantive evidence to support the claim that Surge’s services were “far more complex and far beyond” the services offered by other service providers.

- The Grainger Report’s comparison of Surge’s annualised fee rates with those of a (hypothetical) fund manager, while flawed and misleading, actually shows that Surge charged LCF a substantially higher fee rate.
- The Grainger Report fails to justify the substantial discrepancy in the annualised fee rates that Surge charged LCF and Blackmore, despite offering similar services to both customers.
- The Grainger Report’s claim that LCF and Surge effectively established a market rate for Surge’s services by acting as reasonable parties at arm’s length relies on circular reasoning (see **Section 4**).
- The Grainger Report’s analysis of Surge’s profit margins is flawed and unreliable. In particular, the Grainger Report fails to acknowledge the difference in the company’s profitability before and after LCF went into administration and that the economic benefits to Mr Careless were likely even greater than those indicated by his ownership share in Surge (see **Section 5**).

16. In **Section 6**, I provide an expert declaration acknowledging my responsibility to the Court for the opinions and conclusions I have expressed.

2. A commission rate of 25% (or 22.5%) is not credible given the stated return to investors

17. LCF claimed that it generated income by charging borrowers lending fees and by earning a differential between the interest payable by borrowers and the interest payable to Bondholders. For example, for the Series 4 ISA, 3-year 8% Bonds (the “**Series 4 ISA Bonds**”), LCF claimed, “As an example: for a £1 million loan, a set-up fee of £20,000 [*i.e.*, 2%] would be charged and a target 10% interest would be charged for the loan. The interest payable to

Bondholders in respect to £1 million of Bonds would be 8%...”.¹⁷ There was no evidence of which I am aware of the disclosure of the Surge Fee to Bondholders.

18. The economics of the above example clearly are not credible if a 25% (here, £250,000) fee (or a 22.5% (here, £225,000) fee) is paid to Surge for each £1 million investment by Bondholders, as the required return on LCF’s lending would need to be substantially higher than 10% to make payments due.¹⁸

19. Table 1 below shows, for each Bond Series, the annualised return required on LCF’s lending (to borrowers) to fund payment of the Surge Fee, meet the obligations towards the Bondholders, and pay the “Lender Interest” to LCF.¹⁹

¹⁷ See ISA Series 4 – Information Memorandum, 3-year 8% Bonds, dated 11 June 2018, p. 10 (MDR_ST_00154860). The same “target 10% interest” language can be found in many of the other Information Memoranda including, for example, the Information Memorandum for the Series 3, 1-year 3.9% Bonds. The Information Memorandum states that “[a]s an example: for a £1 million loan, a set-up fee of £20,000 would be charged and a target 10% interest would be charged for the loan. On a 1-year bond the interest payable to Bond Holders would be 3.9% [...] and the interest charged to the Borrowing Company for this loan would be £100,000”. (See Series 3 – Information Memorandum, 1-year 3.9% Bonds, p. 14 (MDR_ST_00053302)).

¹⁸ I understand that, in practice, in the example above the loan borrower would only receive £750,000 in funds at the beginning of the loan term for a loan with a principal value of £1,000,000 – in effect, paying an upfront arrangement fee equal to 33% of the net amount of the loan – to fund payment of the 25% Surge Fee. I further understand that this “arrangement fee” was not disclosed to Bondholders. Thus, while LCF discussed “target 10% interest”, in reality, the yield-to-maturity for a loan taking account of the 33% arrangement fee was substantially higher and would imply a much different risk profile for that lending.

¹⁹ The loan interest rate charged to borrowers under most of the facilities is the sum of the Bondholder’s interest rate (the “Funder’s Interest”) and the premium to that rate charged by LCF (the “Lender Interest”). For example, in the facility agreement between Costa Support Limited (Borrower) and London Capital & Finance PLC (Lender), the loan interest rate is defined as “1.75% (the Lender Interest) plus the interest rate agreed between the Lender and its funders who shall have provided the monies to be lent pursuant to this Facility (the Funder’s Interest)”. See Facility Agreement between Costa Support Limited and LCF, dated 29 April 2017, p. 5 (MDR00005244).

Table 1
Bond Series Summary

Bond Series	Sold Period	Principal Amount	Term	Coupon (per Annum)	Payment Frequency	Required Rate of Return
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Series 1 Bonds	2013	£ N/A	N/A	N/A %	N/A	N/A %
Series 2 Bonds	Sep 2013 - Jan 2016	N/A	1, 2 and 3 years	8.50	Quarterly	21.8
Series 3 Bonds	Dec 2015 - Oct 2018	25,000,000	1 year	3.90	Payable on redemption	41.8
Series 4 Bonds	Nov 2015 - Dec 2018	25,000,000	2 years	6.50	Semi annually	25.3
Series 5 Bonds	Dec 2015 - Feb 2017	25,000,000	3 years	8.00	Quarterly	21.5
Series 6 Bonds	Feb 2016 - Dec 2018	25,000,000	2 years	6.50	Payable on redemption	25.4
Series 7 Bonds	Jan 2016 - Dec 2018	25,000,000	3 years	8.00	Payable on redemption	21.0
Series 8 Bonds	Feb 2017 - Sep 2017	25,000,000	3 years	8.00	Quarterly	21.5
Series 9 Bonds	Feb 2014 - Sep 2015	700,000	5 years	11.00	Annually	21.4
Series 10 Bonds	Aug 2017 - Dec 2018	50,000,000	3 years	8.00	Quarterly	21.5
Series 11 Bonds	Jun 2018 - Dec 2018	50,000,000	5 years	8.95	Annually	18.1
Series 1 ISA Bonds	Dec 2017 - Jul 2018	50,000,000	3 years	8.00	Quarterly	21.5
Series 2 ISA Bonds	Dec 2017 - Dec 2018	50,000,000	2 years	6.50	Semi annually	25.3
Series 3 ISA Bonds	Jun 2018 - Dec 2018	50,000,000	5 years	8.95	Annually	18.1
Series 4 ISA Bonds	Jun 2018 - Dec 2018	50,000,000	3 years	8.00	Quarterly	21.5

Notes and Sources:

See Table IV.1 in Appendix IV for full notes and sources.

20. The required returns per year on LCF’s lending range from a low of 18.1% (for the Series 11 Bonds and Series 3 ISA Bonds) to a high of 41.8% (for the Series 3 Bonds). These required returns are substantially higher than the “target 10% interest” discussed above and also far exceed contemporaneous yields on high-yield corporate debt. For example, the yield-to-maturity on the ICE BofA Sterling High Yield index ranged from approximately 5.6% to 7.6% in the years from 2015 to 2019. See Table 2 below.

Table 2
ICE BofA Sterling High Yield Index
Yield to Maturity

<u>Year</u>	<u>Minimum Yield</u>	<u>Maximum Yield</u>	<u>Average Yield</u>
(1)	(2)	(3)	(4)
2015	5.85 %	6.83 %	6.22 %
2016	6.12	7.46	6.66
2017	5.56	6.26	5.87
2018	5.79	7.53	6.33
2019	5.77	7.62	6.41
Total	5.56 %	7.62 %	6.30 %

Notes and Sources:

Data obtained from FactSet Research Systems Inc.

21. Another relevant benchmark is the performance of corporate loans. The Cliffwater Direct Lending Index (“**CDLI**”) tracks the performance of private middle market loans, the “largest segment of the private credit market”.²⁰ Table 3 below shows the annual returns of the Cliffwater Direct Lending Index, which averaged approximately 8.5% over the period from 2015 to 2019.

²⁰ The CDLI seeks to measure the unlevered, gross of fee performance of U.S. middle market corporate loans, as represented by the asset-weighted performance of the underlying assets of Business Development Companies (BDCs), including both exchange-traded and unlisted BDCs, subject to certain eligibility requirements. See “CDLI Snapshot”, dated 30 June 2023, p. 1 (Exhibit – 2) (**MDR00226950**). I understand that the loans include both secured and unsecured loans.

Table 3
Cliffwater Direct Lending Index
Total Return

<u>Year</u>	<u>Cliffwater Direct Lending Index¹</u>
(1)	(2)
2015	5.54 %
2016	11.24
2017	8.63
2018	8.07
2019	9.00
Average	8.50 %
Median	8.63 %

Notes and Sources:

Cliffwater Direct Lending Index Website,
available at: <https://www.cliffwaterdirectlendingindex.com/>
(Exhibit - 26).

¹ Year over year return as of end of December each year.

22. Given the data presented above, and knowledge of the Surge Fee, it would simply not be credible to believe that LCF could have consistently achieved a return on its lending business that met (or exceeded) the return required to make the payments due to Bondholders. Large, professional, private credit funds are not able to achieve these levels of returns. For example, Ares Capital Corporation (ARCC), a market-leading Business Development Company (BDC) and one of the largest direct lenders in the U.S.,²¹ achieved annualised returns of 12.9% in the five-year period up to 31 December 2021, while the company stated that its “BDC Peers” achieved returns of 8.1%.²² Thus, knowledge of the Surge Fee should have raised serious questions as to the feasibility of LCF’s business model.

23. In fact, I note that an email conversation between Mr Careless and his accountant, Mr Partridge, shows that Mr Careless himself refers to the 25% commission that Surge was

²¹ Ares Capital Corporation was the “largest publicly traded BDC by market capitalization as of June 30, 2023”. See Ares Capital Corporation Website, available at: <https://www.arescapitalcorp.com/> (Exhibit – 3) (MDR00227042).

²² See Ares Capital Corporation, “Investor Presentation, Quarter Ended March 31, 2022”, p. 31 (Exhibit – 4) (MDR00227058).

receiving from LCF as “huge”.²³ Mr Partridge described the commission as “insane”, stating that LCF “would have to grow by 55% in two years” to fund the payment of the Surge Fee and meet the obligations to the Bondholders.²⁴ Ultimately, he concluded that he could not “see how these figures are sustainable”.²⁵ That particular conclusion is consistent with my opinion. I note that three of Surge’s “customers”, LCF,²⁶ Blackmore,²⁷ and First Northbridge,²⁸ went into administration.

3. Based upon publicly available data, Surge’s fee rates far exceed those of service providers offering similar services

24. In this section, I compare Surge’s service offerings and fee rates to those of firms who offer similar or more extensive services to those purportedly provided by Surge. In particular, I focus on three categories of service providers: (1) third-party marketers and placement agents; (2) fund managers; and (3) private credit funds. Based on publicly available data, the fees charged by such service providers are all substantially lower than the Surge Fee.

3.1. Third-Party Marketers and Placement Agents

25. Third-party marketers and placement agents are “independent representative[s]” who “match the expertise of an asset manager to interested investors”, with the aim of raising “capital from target institutions plus brand building to help foster long term relationships”.²⁹ Their services include “devising the sales strategy, strengthening the story and the way managers tell it,

²³ See Email between Mark Partridge and Paul Careless, with chain, dated 24 July 2015. (SUR00129198).

²⁴ See Email between Mark Partridge and Paul Careless, with chain, dated 24 July 2015. (SUR00129198).

²⁵ Ibid.

²⁶ See “LCF – Appointment of an administrator”, dated 18 February 2019, available at: <https://find-and-update.company-information.service.gov.uk/company/08140312/filing-history> (Exhibit – 5) (MDR00227067).

²⁷ See “Blackmore – Appointment of an administrator”, dated 7 May 2020, available at: <https://find-and-update.company-information.service.gov.uk/company/10273135/filing-history> (Exhibit – 6) (MDR00227066).

²⁸ See “First Northbridge -Appointment of an administrator”, dated 8 June 2020, available at: <https://find-and-update.company-information.service.gov.uk/company/11446347/filing-history> (Exhibit – 7) (MDR00227069).

²⁹ See Insight Discovery, “Lifting the lid on the mysterious world of third party marketing”, p. 2 (Exhibit – 8) (MDR00226942).

calling on investors, facilitating investor meetings and communications, populating the databases, and creating marketing materials”.³⁰ These services largely overlap with some of the services Surge purportedly offered.³¹ Such service providers typically charge either a percentage of the asset manager’s management fees³² or “3-5% of the raised capital”,³³ both of which are much lower than Surge’s fees.³⁴

3.2. Fund Managers

26. Similar to Surge, many fund managers provide account management services,³⁵ conduct marketing of their funds,³⁶ have websites where investors can find information about

³⁰ See Sondhelm Partners, “Third-Party Marketers and Placement Agents: A Boutique Asset Managers’ Path to Raising Capital”, dated 18 October 2022, p. 2 (Exhibit – 9) (**MDR00227055**).

³¹ The Amended Defence states that “Surge provided LCF with third party, outsourced investor facing services”, including marketing services such as “branding, website design, design of promotional materials, advertising and lead generation via digital and print”. See Fifth and Sixth Defendants’ Amended Defence, dated 19 April 2022, para. 5(3)(a).

³² I understand that the percentage is “typically 20-40% of management fees”. See Sondhelm Partners, “Third-Party Marketers and Placement Agents: A Boutique Asset Managers’ Path to Raising Capital”, dated 18 October 2022, p. 3 (Exhibit – 9) (**MDR00227055**). For example, if management fees equal 1%, the fee charged by third-party marketers is in the range of 0.2% - 0.4%.

³³ See Sondhelm Partners, “Third-Party Marketers and Placement Agents: A Boutique Asset Managers’ Path to Raising Capital”, dated 18 October 2022, p. 3 (Exhibit – 9) (**MDR00227055**).

³⁴ In addition, based on a survey by Insight Discovery, 59% of third party marketing firms charge a fee of 21%-30% of the annual management charge (*e.g.*, if management fees equal 1%, the fee charged by third-party marketers is in the range of 0.21% - 0.3%), while 24% of firms charge a fee of 11%-20% of the annual management charge. Only 10% of firms charge a fee of more than 30% of the annual management fee. See Insight Discovery, “Lifting the lid on the mysterious world of third party marketing”, p. 9 (Exhibit – 8) (**MDR00226942**).

³⁵ “Under the terms of the ACD [Vanguard Investments UK, Limited, the authorised corporate director of the Company] Agreement, the ACD is to provide investment management services, administrative, accounting, consultancy, distribution, advisory, secretarial services and registrar services to the Company [Vanguard Investments Funds ICVC]”. See “Vanguard Investments Funds ICVC Prospectus”, dated 31 July 2023, p. 7 (Exhibit – 10) (**MDR00227060**).

³⁶ “The Company [Vanguard Investment Series plc.] will also pay certain other costs, charges, fees and expenses incurred in its operation including [...] the costs and expenses of preparing, printing, publishing and distributing prospectuses, annual and semi-annual reports, and other documents to current and prospective Shareholders”. See “Vanguard Investment Series Plc Prospectus”, dated 1 August 2023, p. 96 (Exhibit – 11) (**MDR00226949**).

funds and check their account balances,³⁷ and offer dedicated phone lines for both existing and potential clients.³⁸ These phone lines are available for general inquiries including account set up as well as to address queries related to existing fund investments.³⁹ However, while a fund manager is also responsible for managing the fund's investments,⁴⁰ the Surge Defendants state that they "did not participate in the lending, treasury or finance parts of LCF's business" and "were not involved in selecting borrowers or the terms on which monies were loaned".⁴¹ Surge is said to have been "specifically barred from holding any sales conversations with clients under FCA regulations".⁴² Moreover, the Surge Defendants state that they were "reliant on LCF for the substantive content of the information they provided" to Bondholders and prospective Bondholders, using "call scripts as provided by LCF".⁴³ Thus, fund managers offer similar, and in fact more extensive, services to those provided by Surge. The costs for these services, whether they are provided internally or through external vendors, are passed on to the investors in the funds. As an example, the average total costs of Vanguard's Fixed Income active funds are 0.42% of

³⁷ See "All Funds _ Vanguard UK Investor", available at: <https://www.vanguardinvestor.co.uk/what-we-offer/all-products> (Exhibit – 12) (MDR00227043).

³⁸ The Grainger Report states that the services offered by Surge are "similar in several ways" to those of fund managers. See Grainger Report, dated 28 July 2023, p. 11, paras. 10.14, 10.15.

³⁹ See "Vanguard – How can we help", available at: <https://www.vanguardinvestor.co.uk/need-help> (Exhibit – 13) (MDR00227043), and "Vanguard – Our team", available at: <https://www.vanguard.co.uk/professional/contact-us/advisers> (Exhibit – 14) (MDR00227045).

⁴⁰ "The Investment Adviser to the Funds is a private limited company incorporated in Pennsylvania, U.S. and is part of the Vanguard Group of Companies. [...] The Investment Adviser currently provides investment management and advisory services to collective investment schemes domiciled in the U.K. and Ireland as well as non-U.S. separate account clients. [...] The assets of the Company's "active management" Funds are mainly managed by a number of independent, specialist advisory firms, subject to ongoing monitoring and supervision by the Investment Adviser". See "Vanguard Investments Funds ICVC Prospectus", dated 31 July 2023, pp. 8, 9 (Exhibit – 10) (MDR00227060).

⁴¹ See Fifth and Sixth Defendants' Amended Defence, dated 19 April 2022, para. 5(4)(a).

⁴² See Bonds Process Summary Document, p. 4 (MDR00211057).

⁴³ See Fifth and Sixth Defendants' Amended Defence, dated 19 April 2022, para. 5(3)(c).

assets under management.⁴⁴ Based on the FCA’s “Asset Management Market Study”,⁴⁵ the total (annual) charge for fixed income funds in 2015 was 0.8% of assets under management, much lower than the fee charged by Surge.

3.3. Private Credit Funds

27. Private credit is defined as “any non-publicly traded debt financing of a company and typically references companies in the small- and middle-market segment”.⁴⁶ Private credit employs various investment strategies including, but not limited to, direct lending which is defined as “the origination of loans by nonbank lenders to primarily non-investment-grade small- and middle-market companies”.⁴⁷ Given that LCF claimed that it loaned the monies raised from the issuance of Bonds to SMEs in the UK, I consider its purported business activities, in combination with some of those that it outsourced to Surge, to be very similar to those of private credit funds. For example, private credit funds offer account management services,⁴⁸ conduct marketing for their funds,⁴⁹ have websites where investors can find information about the funds,⁵⁰ and provide phone numbers that existing and potential investors can use to request information about the funds

⁴⁴ See “Vanguard – Active Fixed Income Funds”, available at: <https://www.vanguard.co.uk/professional/product> (Exhibit – 15) (MDR00227056).

⁴⁵ Financial Conduct Authority (FCA), “Asset Management Market Study, Interim Report”, dated November 2016, p. 128 (Exhibit – 16) (MDR00227061).

⁴⁶ See AON, “Direct Lending: An Investment Opportunity Within Private Debt”, dated March 2018, p. 2 (Exhibit – 17) (MDR00226938).

⁴⁷ Ibid.

⁴⁸ See *e.g.*, “Carlyle Tactical Private Credit Fund, Prospectus”, dated 28 April 2023, p. 72 (Exhibit – 18) (MDR00226947): “Pursuant to the Administration Agreement with State Street, State Street furnishes the Fund with clerical, bookkeeping and record keeping services. State Street also performs, or oversees the performance of, certain of the Fund’s required administrative services, which include, among other things, providing assistance in accounting, legal, compliance, operations, being responsible for the financial records that the Fund is required to maintain and preparing reports to the Fund’s Shareholders and reports filed with the SEC”.

⁴⁹ See *e.g.*, “Carlyle Tactical Private Credit Fund, Prospectus”, dated 28 April 2023, p. 74 (Exhibit – 18) (MDR00226947): “Expenses borne directly by the Fund include [...] fees and expenses associated with marketing efforts”.

⁵⁰ See *e.g.*, Carlyle Tactical Private Credit Fund Website, available at: <https://www.carlyle.com/fund> (Exhibit – 19) (MDR00227049).

and make enquiries.⁵¹ Private credit fund managers are also responsible for managing the investments of their funds.⁵²

28. According to a study by Callan,⁵³ the median (annual) management fee charged by private credit firms over the period 2016 – Q3 2022 was 1.15%. In addition, Cliffwater, in its 2023 study, found that “management fees and administrative expenses for direct lending private funds average 3.94% of net assets”; this is comprised of “1.96% in management fees, 1.50% in carried interest, and 0.48% in administrative expenses”.⁵⁴ As such, Surge’s fee rate of 25% (or 22.5%) far exceeds those of private credit funds.

4. The Grainger Report fails to provide any substantive evidence to support the reasonableness of the Surge Fee

29. As described in more detail below, the Grainger Report fails to identify any service provider that offers services directly comparable to those purportedly provided by Surge and it also fails to provide any substantive evidence to support the claim that Surge’s services were “far more complex and far beyond” the services offered by other service providers.

⁵¹ See *e.g.*, “Carlyle Tactical Private Credit Fund, Prospectus”, dated 28 April 2023, pp. iii, iv (Exhibit – 18) (**MDR00226947**): “The Statement of Additional Information and the Fund’s annual and semi-annual reports and other information filed with the SEC, can be obtained upon request and without charge by writing to the Fund at Carlyle Tactical Private Credit Fund, One Vanderbilt Avenue, Suite 3400, New York, NY 10017 or by calling toll-free 833-677-3646. Investors may request the Fund’s Statement of Additional Information, annual and semi-annual reports and other information about the Fund or make Shareholder inquiries by calling 833-677-3646 or by visiting www.CarlyleTacticalCredit.com. In addition, the contact information provided above may be used to request additional information about the Fund and to make Shareholder inquiries”.

⁵² See *e.g.*, Carlyle Tactical Private Credit Fund Website: “As of June 30, 2023, Carlyle’s Global Credit platform manages \$152 billion of credit assets. The group’s investment strategies span the credit spectrum: liquid credit, private credit and real assets credit”. The website is available at: <https://www.carlyle.com/fund> (Exhibit – 19) (**MDR00227049**).

⁵³ Callan, “Our First Private Credit Fees and Terms Study: What We Found in 2023”, dated 6 July 2023, p. 1 (Exhibit – 20) (**MDR00227062**). The study “includes 330 private credit partnerships, representing fund offerings reviewed by Callan that were in the market in 2016-YTD 2022 (as of 3Q).[...] The dataset is weighted toward direct lending, which represents 62% of the partnerships reviewed”.

⁵⁴ Cliffwater, “Cliffwater 2023 Study on Private Fund Fees & Expenses for Direct Lending”, dated 18 April 2023, p. 1 (Exhibit – 21) (**MDR00227063**). The study focuses on “investment management services for middle market corporate lending covering 58 of the largest direct lending firms managing \$924 billion in direct lending assets”.

30. Also, the comparison made in the Grainger Report between Surge's annualised fee rates and those of a (hypothetical) fund manager is flawed and misleading, but nevertheless shows that the fee rate Surge charged to LCF was substantially higher.

31. In addition, the Grainger Report fails to explain the reasons behind the substantial discrepancy in the annualised fee rates that Surge charged LCF and Blackmore, despite offering very similar services to both customers.

32. Finally, the Grainger Report's claim that LCF and Surge effectively established a market rate for Surge's services by acting as reasonable parties at arm's length relies on circular reasoning.

4.1. The Grainger Report does not identify any service provider offering services directly comparable to those purportedly provided by Surge

33. The Grainger Report claims that “very few, if any, firms provided the comprehensive range of end to end [*sic*] support that Surge offered for intermediation of mini-bond issues”⁵⁵ and fails to identify any firm providing directly comparable services.

34. The Grainger Report claims, however, that “it is possible to compare the service offerings of firms who offer similar services even though they may be less comprehensive or only offer part of the services offered by other service providers”.⁵⁶ The Grainger Report then proceeds to identify various types of service providers that it asserts can provide partial points of comparison, including stockbrokers, corporate finance advisors, and fund managers, ultimately concluding that none are directly comparable to Surge,⁵⁷ as Surge's services are “far more complex and far beyond the service provided by other service providers”.⁵⁸

⁵⁵ See Grainger Report, dated 28 July 2023, para. 10.1.

⁵⁶ See Grainger Report, dated 28 July 2023, para. 10.4.

⁵⁷ See Grainger Report, dated 28 July 2023, paras. 10.9, 10.22, 10.36.

⁵⁸ See Grainger Report, dated 28 July 2023, para. 10.35. See also, *e.g.*, paras. 10.9, 10.22, and 10.25.

35. It is simply not credible that Surge was providing services that were “far more complex and far beyond” the service provided by other service providers, and the Grainger Report provides no substantive evidence to support that claim. On the contrary, according to a document titled “Bond Process Summary”, Surge “only prepare online marketing and facilitate the application process”⁵⁹ and was “specifically barred from holding any sales conversations with clients under FCA regulations”.⁶⁰ As discussed above, the Surge Defendants claim that they were “reliant on LCF for the substantive content of the information they provided” to Bondholders and prospective Bondholders, using “call scripts as provided by LCF”.⁶¹ An internal Surge document that lists Surge’s standard activities shows that Surge employees spent 80% of their time answering questions from existing and potential customers.⁶² The Surge Defendants further claim that they “did not participate in the lending, treasury or finance parts of LCF’s business” and “were not involved in selecting borrowers or the terms on which monies were loaned”.⁶³ The Grainger Report focuses on the services that Surge purportedly was offering to LCF, while failing to acknowledge all of the aforementioned services that Surge was *not* providing, but that other service providers such as fund managers typically provide (in addition to Surge’s services) for substantially lower fees.

4.2. The Grainger Report’s comparison of annualised fee rates for Surge and a (hypothetical) fund manager is flawed and misleading, but nonetheless shows that the fee rate Surge charged to LCF was substantially higher

36. The Grainger Report claims that the services offered by Surge are “similar in several ways” to those of fund managers,⁶⁴ and then compares Surge’s annualised fee rate with that of a hypothetical fund manager. The Grainger Report finds that the hypothetical fees that fund

⁵⁹ See Bonds Process Summary Document, p. 4. (MDR00211057).

⁶⁰ Ibid.

⁶¹ See Fifth and Sixth Defendants' Amended Defence, dated 19 April 2022, para. 5(3)(c).

⁶² See Surge activities by percentage of total (Attachment to MDR00224136) (SUR00051622).

⁶³ See Fifth and Sixth Defendants' Amended Defence, dated 19 April 2022, para. 5(4)(a).

⁶⁴ See Grainger Report, dated 28 July 2023, para. 10.14.

managers charge “equate to 7.25% over the 3 year term” while Surge’s fee “equates to 8.33% for each of the 3 years of service provision”.⁶⁵ As I discuss in more detail below, while this comparison is flawed and misleading, it actually shows that Surge’s fee rate was higher, and in fact substantially higher once an “apples to apples” comparison is made.

4.2.1. The Grainger Report’s assumed 5% “initial management fee” for the hypothetical fund is at the higher end of the spectrum based upon a market study

37. The hypothetical fund discussed in the Grainger Report is assumed to charge an “initial management fee” of 5% of the invested sum plus an annual management fee of 0.75% of the fund value each year.⁶⁶ While some funds impose initial fund charges, the Grainger Report’s assumption of a 5% initial fund charge is at the higher end of the spectrum based upon the FCA’s “Asset Management Market Study”. The FCA study states that “some funds available on some platforms impose initial fund charges” and found “examples of popular funds which impose initial charges of *up to 5% AUM*”.⁶⁷ Thus, the FCA describes a 5% initial charge as being the *maximum* observed among the subset of funds that have an initial charge. As such, the Grainger Report uses an aggressive assumption for the initial fund charge. This serves to increase the fee rate of the hypothetical fund manager.

4.2.2. The Grainger Report’s calculation of an annualised fee rate for Surge ignores the time value of money as well as credit risk

38. The Grainger Report seeks to calculate an annualised fee rate for Surge by dividing the total fee rate (as a percentage of funds raised) by the number of years of anticipated service delivery. For example, for the Series 4 ISA Bonds, the Grainger Report states that “the fee of 25%

⁶⁵ See Grainger Report, dated 28 July 2023, para. 10.21.

⁶⁶ See Grainger Report, dated 28 July 2023, para. 10.17.

⁶⁷ See Financial Conduct Authority (FCA), “Asset Management Market Study, Interim Report”, dated November 2016, para. 5.8 and footnote 156 (emphasis added) (Exhibit - 16) (**MDR00227061**).

of funds raised would equate to approximately 8.33% per year”.⁶⁸ This simple calculation ignores both the time value of money and credit risk.

39. From Surge’s perspective, receiving 25% of the funds raised up front is worth more in present value terms than receiving 8.33% per year due to the time value of money. It is a basic principle of finance that, when interest rates are positive, “a dollar today is worth more than a dollar tomorrow, because the dollar today can be invested to start earning interest immediately”.⁶⁹ As such, the Grainger Report ignores the time value of money in its simple calculation of an annualised fee rate.

40. In addition to ignoring the time value of money, the Grainger Report also ignores credit risk in its flawed calculation of an annualised fee rate. Assume, for example, that Surge was paid a fee rate of 8.33% per year for the Series 4 ISA Bonds, rather than 25% up front. If LCF defaulted on the Series 4 ISA Bonds after one year, then Surge would only have been paid a fee for one year (8.33%), having only conducted that one year of service. Instead, the fee was paid to Surge in advance in its entirety, leaving less funds for investors in the event of a default by LCF. The Grainger Report ignores this in its calculation of an annualised fee rate, effectively assuming that LCF is a credit risk-free counterparty to Surge.

41. Finally, I note that the Grainger Report focuses on the Series 4 ISA Bonds in its comparison of the annualised Surge fee rate with that of a hypothetical fund manager. While the Series 4 ISA Bonds had a 3-year term, at least three of the LCF mini-bond series had 2-year terms.⁷⁰ Surge’s annualised fee rate would be substantially higher for these series, even using the flawed calculation presented in the Grainger Report. Moreover, at least one series had a 1-year term, and therefore no annualisation is required.

⁶⁸ See Grainger Report, dated 28 July 2023, para. 10.13.

⁶⁹ See Brealey, Myers and Allen, "Principles of Corporate Finance", 9th edition, p. 14 (Exhibit - 22) (MDR00227068).

⁷⁰ Series 2 Bonds have one-, two- or three-year term bonds, see “Report of the Independent Investigation into the Financial Conduct Authority’s Regulation of London Capital & Finance plc”, dated 23 November 2020, p. 380 (Exhibit – 23) (MDR00226940). Series 1 Bonds are not included in the Surge Fee Allocation Sheet (MDR00201706) and I have not been provided with an Information Memorandum for that bond series.

4.2.3. The Grainger Report compares the total fee rate for the hypothetical fund to the annualised fee rate for Surge in an attempt to “muddy the waters”

42. The Grainger Report finds that the hypothetical fund fees “equate to 7.25% over the 3 year term” while Surge’s fee “equates to 8.33% for each of the 3 years of service provision”.⁷¹ Comparing the two figures is a flawed comparison; the hypothetical 7.25% fee rate is *a cumulative fee rate over a 3-year term*, while the 8.33% fee rate is the annualised fee *paid each year*. I note that, even using this inappropriate comparison, Surge’s fee rate is higher. Moreover, if the hypothetical fund fee rate is annualised to 2.42% per year using the Grainger Report’s flawed approach (*i.e.*, 7.25% divided by the 3-year term), then Surge’s annualised fee rate of 8.33% is *substantially higher*.

4.2.4. The Grainger Report fails to provide any substantive evidence to support the claim that Surge’s services are “much greater” than that of a fund manager

43. The Grainger Report acknowledges that Surge’s fee is “a greater amount” than that charged for fund management services but claims that the services provided by Surge are “much greater than those being provided by a fund manager”.⁷² It is not clear in what respect Surge’s services are “much greater” than that of a fund manager or the basis on which the Grainger Report makes this claim. As discussed above, fund managers offer similar, and in some cases more extensive, services to those provided by Surge. Thus, the Grainger Report’s claim that Surge’s services are “much greater” than that of a fund manager is suspect and unsupported. In particular, the Grainger Report fails to account for the fact that in some areas the services provided by Surge were less extensive than those provided by fund managers.

⁷¹ See Grainger Report, dated 28 July 2023, para. 10.21.

⁷² See Grainger Report, dated 28 July 2023, para. 10.24.

4.3. The Grainger Report’s comparisons of annualised fee rates for Surge’s customers show that the fee rate charged to LCF was substantially higher than that charged to Blackmore for similar services

44. The Grainger Report compares the annualised fee rate charged by Surge to LCF with the annualised fee rate charged to one of Surge’s other customers, Blackmore Bond PLC (“**Blackmore**”), another mini-bond issuer. Even using the Grainger Report’s (flawed) logic, these comparisons show that the fee rate charged to LCF was *substantially higher* than that charged to Blackmore for similar services.

45. The fee rate charged by Surge to Blackmore was 20% of the funds raised from the bond investors, - *i.e.*, as a starting point, 5 percentage points lower than the fee rate charged to LCF. Moreover, the service to Blackmore was for a 5-year term, and therefore, according to the Grainger Report, was “broadly equivalent to 4% per year over 5 years”.⁷³ In comparison, the Grainger Report states that for the Series 4 ISA Bonds the “fee of 25% of funds raised would equate to approximately 8.33% per year”.⁷⁴ This is *more than double* the annualised fee rate charged to Blackmore.⁷⁵

46. The Grainger Report provides no credible explanation for this difference in fee rates. While the Grainger Report first states that the services provided to Blackmore were “very similar to those provided to LCF”,⁷⁶ it elsewhere claims that the difference in fees may be “due to a difference in the breadth and/or depth of services provided to the two firms”.⁷⁷ Based on the contract between Blackmore and Surge, the services provided to Blackmore appear very similar

⁷³ See Grainger Report, dated 28 July 2023, para. 10.12.

⁷⁴ See Grainger Report, dated 28 July 2023, para. 10.13.

⁷⁵ If a 2-year term is instead assumed for the LCF service, the per year fee rate charged to LCF would be *more than three times* that charged to Blackmore. See Grainger Report, dated 28 July 2023, para. 10.13.

⁷⁶ See Grainger Report, dated 28 July 2023, para. 5.10.

⁷⁷ See Grainger Report, dated 28 July 2023, para. 5.11.

to those provided to LCF, as they included marketing services,⁷⁸ managing Blackmore’s website,⁷⁹ and account management.⁸⁰ Mr Careless himself in his witness statement admits that “Surge’s role in Blackmore was exactly the same as what we did for LCF”⁸¹ and that there was an agreement “to provide the whole range of services to LCF (*i.e.*, the same services we were providing for Blackmore)”.⁸² Thus, the Grainger Report provides no credible evidence of a “difference in the breadth and/or depth of services provided” to LCF and Blackmore that accounts for the substantial difference in fee rates.

4.4. Other examples mentioned in the Grainger Report appear chosen selectively and do not change my view that a legitimate commission rate of 25% (or 22.5%) is not credible in the context of the LCF mini-bonds

47. The Grainger Report mentions four examples of companies purportedly willing to pay double-digit fees/commissions for fundraising assistance, referring to documents that were “provided” to Mr Grainger.⁸³ First, the Grainger Report mentions Hydrogard Legal Services (“**Hydrogard**”) and Thistle Group, two parties from whom Surge had allegedly received enquiries for fundraising assistance and “who were aware of the services provided by Surge and of the 25% fee”.⁸⁴ The Grainger Report then mentions two additional firms, Dolphin Capital and Argo

⁷⁸ For example, the contract between Surge and Blackmore states that Surge “shall use all reasonable endeavours to seek to ensure that persons who are using the internet and who might wish to invest in bonds such as those issued by [Blackmore] are made aware of [Blackmore’s website]”, see “Surge – Blackmore Contract”, dated 14 April 2018, Schedule 2, para. 3.

⁷⁹ For example, the contract between Surge and Blackmore states that Surge “shall ensure that Potential Investors shall be able to download from [Blackmore’s website] approved promotions relating to the bonds such as an information memorandum and other related documents...”, see “Surge – Blackmore Contract”, dated 14 April 2018, Schedule 2, para. 5.1.

⁸⁰ For example, the contract between Surge and Blackmore states that Surge “shall be responsible for on-going Investor service interaction on behalf of [Blackmore], which may include, by way of example only: [1] resetting of Investor passwords relating to the Plug-ins; and [2] responding to queries from Investors concerning: (i) interest, such as when it is received and what the withholding tax amount will be; and (ii) placing a future investment in a second bond”, see “Surge – Blackmore Contract”, dated 14 April 2018, Schedule 2, para. 7.1.

⁸¹ See Witness Statement of Paul James Careless, para. 24.

⁸² See Witness Statement of Paul James Careless, para. 59.

⁸³ See Grainger Report, dated 28 July 2023, para. 11.6.

⁸⁴ *Ibid.*

Consulting, who were allegedly willing to pay introductory fees/commissions of 20-21% in connection with bond sales. As a preliminary matter, it is not clear exactly who provided the documents referenced in this section of the Grainger Report to Mr Grainger. The documents do not appear to be publicly available. I am therefore unable to assess the reliability of the information contained in these documents.

48. With respect to the Hydrogard and Thistle Group enquiries, I first note that these were simply enquiries and not signed contracts. I am not aware of any evidence that either Hydrogard or Thistle Group decided to engage Surge. I further note that Dolphin Capital went into administration and is the subject of an ongoing investigation by the pensions watchdog.⁸⁵ I have not been able to identify much information regarding Argo Consulting. Nonetheless, none of these other examples mentioned in the Grainger Report change my view that a legitimate commission rate of 25% (or 22.5%) is not credible in the context of the LCF mini-bonds.

4.5. The Grainger Report’s conclusions are premised on an (unsupported) assumption that both LCF and Surge were acting as reasonable parties in an arm’s length transaction

49. The Grainger Report’s conclusions are premised on an assumption that the “services and fee were agreed between LCF and Surge, who were each acting as reasonable parties in an arm’s length transaction”.⁸⁶ The Grainger Report provides no support for this assumption. The fact that the contract between Surge and LCF remained unexecuted raises serious questions as to the nature of the negotiations between Surge and LCF. If either party was not acting as a “reasonable party” or the transaction was not conducted at arm’s-length, then the assumption underlying the Grainger Report’s conclusions would be incorrect and it is unclear what that would mean for those conclusions. The Grainger Report therefore relies upon circular reasoning in its

⁸⁵ See, e.g., The Irish Times, “Lavish salaries, large directors loans’ at liquidated Dolphin International Group”, dated 14 March 2021 (Exhibit – 24) (MDR00227057). See also, Business Post, “Defendants in Dolphin Trust-linked cases set for mediation”, dated 6 September 2023 (Exhibit – 25) (MDR00226952).

⁸⁶ See Grainger Report, dated 28 July 2023, para. 12.7.

conclusion that LCF and Surge “acting as reasonable parties and at arm’s length, effectively established a market rate”.⁸⁷

5. The Grainger Report’s analysis of Surge’s financial metrics is flawed and misleading

50. The Grainger Report relies on the “Third Party Costs Analysis prepared by Surge” (“**Financial Cost Summary**”), which covers the period from 19 January 2015 to 30 September 2019, in an attempt to portray Surge as a company with high cost metrics that are in line with market standards. However, the Grainger Report fails to acknowledge the difference in the company’s profitability before and after LCF went into administration. The Grainger Report also fails to acknowledge that the economic benefits to Mr Careless were likely even greater than those indicated by his ownership share in Surge. I comment further on this below.

5.1. The Grainger Report fails to acknowledge the difference in the company’s profitability before and after LCF went into administration

51. The Grainger Report misleadingly claims that “[t]he gross profit in most years amounted to circa 53%”.⁸⁸ The total gross profit over the period analysed (19 January 2015 to 30 September 2019) is indeed 53% according to the Financial Cost Summary; however, it did not amount to 53% in most years. It varied substantially from year to year, ranging from 42% to 98%, and it was more than 53% for all years apart from 1 February 2016 to 31 January 2017. See Table 4 below.

52. In addition, the Grainger Report states that the “total overheads were 72.4% of revenues⁸⁹ and the net profit (pre-tax profit) margin of Surge was 27.6%” from 19 January 2015 to 30 September 2019.⁹⁰ However, the Grainger Report fails to acknowledge that from 19 January

⁸⁷ See Grainger Report, dated 28 July 2023, para. 12.6.

⁸⁸ See Grainger Report, dated 28 July 2023, para. 10.37.

⁸⁹ Total overheads in the Grainger Report are the sum of the total operating expenses and the total cost of sales. However, “Other Income” and “Other Interest” are deducted from this total. After fixing this error, the total costs were 72.8% of revenues.

⁹⁰ See Grainger Report, dated 28 July 2023, para. 10.38.

2015 to 30 September 2018 (the periods before LCF went into administration), the net profit margin was substantially higher than 27.6%, ranging from 28.2% to 48.0%. LCF went into administration in January 2019 and, in contrast, from 1 October 2018 to 30 September 2019 Surge's total costs increased to 134.3% of revenues and its net profit margin dropped to -32.9%.⁹¹ The substantial decrease of the net profit margin during the last period had a serious impact on the overall net profit margin for the entire 19 January 2015 to 30 September 2019 period. See Table 4 below. When focusing on the period from 19 January 2015 to 30 September 2018 (the periods before LCF went into administration), the total costs were 64.8% of revenues and the net profit margin was 35.4%, which is approximately 8 percentage points higher than the 27.6% net profit margin of the entire period.

Table 4
Surge: Cost Metrics and Profitability Analysis

Grainger Report	January 2016	January 2017	September 2017	September 2018	September 2019	Total	
	19-Jan-2015 to 31-Jan-2016	1-Feb-2016 to 31-Jan-2017	1-Feb-2017 to 30-Sep-2017	1-Oct-2017 to 30-Sep-2018	1-Oct-2018 to 30-Sep-2019		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Grainger Report Financial Metrics							
Direct Marketing Cost (% of Revenues)	37	0.0	39.2	35.6	39.1	31.5	37.0
Total Overheads (% of Revenues)	¹ 72.4	52.0	71.8	65.0	62.4	132.9	72.4
Total Overheads (% of Revenues) (AP Analysis)	¹ n.a.	52.0	71.9	65.0	62.8	134.3	72.8
Gross Profit Margin (%)	53	97.9	42.0	53.2	53.2	59.6	52.8
Net Profit (pre-tax) Margin (%)	² 27.6	48.0	28.2	35.0	37.6	-32.9	27.6

Notes and Sources:

Data are from the "Third Party Costs Analysis prepared by Surge".

¹ Total overheads in Grainger Report analysis is the sum of the total operating expenses and the total cost of sales. "Other Income" and "Other Interest" are deducted from this total.

Total overheads in AP analysis are the total costs.

² The net profit (pre-tax profit) margin factors in "Other Income" and "Other Interest".

53. With respect to Surge's costs, the Grainger Report states that Surge's "most significant overhead in the cost of sales is the direct marketing cost which averaged 37% of

⁹¹ LCF went into administration in January 2019 (See "LCF – Appointment of An Administrator", dated 18 February 2019, available at: <https://find-and-update.company-information.service.gov.uk/company/08140312/filing-history> (Exhibit - 5) (MDR00227067)) and Surge's revenues for that period substantially decreased (they were only 23% of what they were for the period from 1 October 2017 to 30 September 2018). While the gross profit margin for that period was 60% (exceeding the overall gross profit margin for the entire 19 January 2015 to 30 September 2019 period), the operating expenses substantially increased in comparison to the previous period, resulting in a substantial drop in the net profit margin. In particular, the "Bad debt" increased by £1.76 million and the "Management charges" by £1.17 million.

revenues”.⁹² In the next section, I discuss Surge’s inflated marketing costs, among other costs, in further detail.

5.2. The Grainger Report ignores additional profit generated by the Connected Companies

54. I have reviewed a spreadsheet provided to me which lists all payments into and out of Surge from 16 March 2015 to 7 August 2019 (“Bank Account Statement”).⁹³ The Bank Account Statement shows that a large portion of Surge’s total costs were paid to companies in which Mr Careless held a “person with significant control” (PSC) status at some point between 16 March 2015 and 7 August 2019 and also owned a significant portion of the companies’ shares (“**Connected Companies**”). In other words, a substantial portion of Surge’s costs, including with respect to marketing spend, were paid to the Connected Companies.⁹⁴ Some of these companies were also connected to other Defendants. In addition, the Bank Account Statement shows that Mr Careless received at least £8.6 million from Surge, either directly or in the form of benefits, including at least £2.5 million in dividend payments.

55. It is reasonable to assume that the Connected Companies earned profit margins on those payments which flowed back to Mr Careless and others, at least in part. Any such additional profits should arguably also be considered to gain a more comprehensive perspective of the overall profitability of Surge’s business and of the economic benefits to Mr Careless in particular. Between 16 March 2015 and 7 August 2019, there were net outflows of £33.3 million from Surge Financial Limited to the Connected Companies. See Table 5 below. Since Mr Careless and/or Surge owned a substantial portion of the Connected Companies, and assuming that these Companies had some profit, then at least part of their profit should be considered when assessing Surge’s overall profitability and Mr Careless’s economic benefits. By not taking into account this additional profit,

⁹² See Grainger Report, dated 28 July 2023, para. 10.37.

⁹³ See Surge’s Bank Account Statement.

⁹⁴ For example, as discussed in further detail below, RP Digital received from Surge Financial Limited £96,600 in marketing expenses from 5 December 2015 to 4 January 2016. This company received a total of approximately £19 million from Surge Financial Limited between 14 October 2015 and 12 June 2019 (see Table 5 below).

the Grainger Report underestimates Surge's overall profitability and obscures the economic benefits to Mr Careless.

Table 5
Connected Companies

Connected Companies	Net Payments from Surge Financial Limited (1)	Period of Payments (2)	Connection to Mr Careless (3)
Surge Group Limited	£ 10,270,000	10-Nov-2017 to 27-Jun-2019	Mr Careless is listed as PSC.
Crucial Group	735,300	14-Nov-2017 to 02-Jul-2019	Mr Careless was listed as PSC between 10 May 2018 and 23 April 2019 (owning >25% but <50% of the shares). Surge Group Limited was listed as PSC between 17 October 2017 and 23 April 2019 (owning >25% but <50% of the shares).
Service Box Group Limited	933,000	25-Jul-2017 to 29-Jul-2019	Mr Careless was a director between 25 October 2017 and 29 April 2019. Mr Careless has been listed as PSC (owning >25% but <50% of the shares) since 28 September 2017. Surge Group Plc was listed as PSC between 28 September 2017 and 28 February 2023 (owning >25% but <50% of the shares).
View Property Group Limited	560,050	16-Nov-2017 to 17-Jul-2019	Mr Careless is listed as PSC. Mr Careless was director between 3 July 2017 and 9 April 2019.
RP Digital	19,002,100	14-Oct-2015 to 12-Jun-2019	Mr Careless was listed as PSC of (owning >75% of the shares) between 6 July 2018 and 24 April 2019. Mr Jones is the current sole director of RP Digital (appointed on 15 September 2015) and has been listed as a PSC of the RP Digital Services Limited (owning >75% of the shares) since 24 April 2019.
Info Connections	1,821,800	09-Apr-2015 to 01-Apr-2019	Mr Careless has been listed as PSC (owning >75% of the shares) since 22 July 2016.
Total	£ 33,322,250		

Notes and Sources:

Data are from "Surge's Bank Account Statement" and from the "Information Sheet with Excerpts from Surge's Bank Account Statement".

56. The Bank Account Statement shows that from 16 March 2015 to 7 August 2019, Surge Financial Limited received £61 million from LCF and £8 million from Blackmore. In addition to the net outflows of £33.3 million from Surge Financial Limited to the Connected Companies, a further £13.3 million was paid to Mr Careless and other Defendants, either directly or in the form of benefits. In total, there were net outflows of £46.6 million from Surge Financial

Limited to the Connected Companies, Mr Careless, and other Defendants (*e.g.*, approximately 67.5% of the funds received from LCF and Blackmore).⁹⁵ See Table 6 below.

Table 6
Surge Net Payments

	16-Mar-2015 to 31-Jan-2016	1-Feb-2016 to 31-Jan-2017	1-Feb-2017 to 30-Sep-2017	1-Oct-2017 to 30-Sep-2018	1-Oct-2018 to 7-Aug-2019	Total
	(1)	(2)	(3)	(4)	(5)	(6)
Net Payments Received from LCF	£ 823,182	£ 9,483,814	£ 13,386,084	£ 31,648,863	£ 5,687,510	£ 61,029,452
Net Payments Received from Blackmore	0	1,062,720	3,052,460	2,413,911	1,499,536	8,028,627
Total	£ 823,182	£ 10,546,534	£ 16,438,543	£ 34,062,774	£ 7,187,046	£ 69,058,079
Net Payments Directed to Connected Companies						
Surge Group Limited	£ 0	£ 0	£ 0	£ 8,920,000	£ 1,350,000	£ 10,270,000
Crucial Group	0	0	0	750,300	-15,000	735,300
Service Box Group Limited	0	0	170,000	913,000	-150,000	933,000
View Property Group Limited	0	0	0	1,290,000	-729,950	560,050
RP Digital	269,500	4,243,000	5,124,000	7,148,000	2,217,600	19,002,100
Info Connections	251,800	663,000	668,000	220,000	19,000	1,821,800
Total [A]	£ 521,300	£ 4,906,000	£ 5,962,000	£ 19,241,300	£ 2,691,650	£ 33,322,250
Net Payments Directed to Mr Careless and other Defendants						
Mr Careless (excluding dividends)	£ 82,250	£ 292,088	£ 1,556,561	£ 2,120,000	£ 2,000,415	£ 6,051,315
Mr Careless (dividends)	0	70,000	395,000	2,070,050	0	2,535,050
Mr Russell-Murphy	31,270	25,000	168,000	0	0	224,270
Mr Russell-Murphy (via Grosvenor Pk II)	55,000	765,000	500,339	800,443	204,000	2,324,782
Mr Thomson (via Media GPS Limited)	0	136,000	267,381	0	0	403,381
Mr Golding	0	10,000	400	1,477,324	281,012	1,768,736
Total [B]	£ 168,520	£ 1,298,089	£ 2,887,681	£ 6,467,816	£ 2,485,427	£ 13,307,533
Total Net Payments [A] + [B]	£ 689,820	£ 6,204,089	£ 8,849,681	£ 25,709,116	£ 5,177,077	£ 46,629,783

Notes and Sources:

Data are from "Surge's Bank Account Statement" and from the "Information Sheet with Excerpts from Surge's Bank Account Statement".

57. I was also provided with one business bank statement of RP Digital covering the period 5 December 2015 to 4 January 2016. A review of RP Digital's bank statement shows evidence of substantial mark-ups to marketing costs, as well as of indirect transfers of funds from Surge to Mr Careless. In particular, during this period, RP Digital charged Surge £96,600 in marketing costs and paid £49,467 for Google and Bing Advertising. Of the remainder, I note that RP Digital paid £46,600 to Mr Careless for providing "Consultancy" services (*e.g.*, approximately 48.2% of the funds received from Surge and 94.2% of the amount paid to advertise through Bing

⁹⁵ An additional £1 million was paid from Surge Financial Limited to Mrs Venn (nee Graham). If Surge's payments to Mrs Venn (nee Graham) are included in the net outflows, then the net outflows amount to 69% of the funds received from LCF and Blackmore.

and Google together).⁹⁶ These transactions appear consistent with indirect transfers of funds from Surge to Mr Careless through RP Digital. The effect of this is to inflate Surge's reported costs and to obscure the economic benefits to Mr Careless. While I have not received bank statements covering the entire relevant period, I note that RP Digital received approximately a total of £19 million for the services it offered to Surge between 14 October 2015 and 12 June 2019 (see Table 6 above) and it is therefore possible that there are other indirect transfers to Mr Careless included in that amount.

6. Expert's Declaration

58. I understand my duty to the Court and have complied and will continue to comply with it. I am also aware of and have complied with the requirements of CPR Part 35, Practice Direction 35, and The Civil Justice Council's Guidance for the Instruction of Experts in Civil Claims 2014.

59. My work is subject to revision based on new information (including new reports or testimony by the Defendant's expert(s), as well as any additional documents produced by either party), which subsequently may be provided to, or obtained by me.

⁹⁶ See RP Digital Bank Statement for period of 5 December 2015 – 4 January 2016 (SUR00009475).

STATEMENT OF TRUTH

60. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Date: 29 September 2023



Dr Chudozie Okongwu

APPENDIX I

Chudozie Okongwu, PhD
Managing Director

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London, EC4A 3BF
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Dr. Okongwu has been retained in over 200 matters, directing projects in the areas of economics, finance, and valuation.

He has provided expert evidence in venues including the High Court of Justice Chancery Division (UK), High Court of Justice Queen's Bench Division Technology and Construction Court (UK), Southwark Crown Court (UK), High Court of Ireland, Grand Court of the Cayman Islands, and US federal, state, and bankruptcy courts. Dr Okongwu has also testified in international arbitrations in various forums, including in the International Chamber of Commerce (ICC) International Court of Arbitration and the International Centre for Settlement of Investment Disputes (ICSID), as well as in arbitration proceedings brought under the United Nations Commission on International Trade Law (UNCITRAL), Stockholm Chamber of Commerce (SCC), and ad hoc arbitrations. He has given evidence in US domestic arbitration forums including Financial Industry Regulatory Authority (FINRA) and its predecessor, the National Association of Securities Dealers (NASD), Federal Arbitration, Inc., New York Stock Exchange Inc. Department of Arbitration, and the American Arbitration Association (AAA). Dr. Okongwu is listed in Who's Who Legal: Arbitration Expert Witness and Who's Who Legal: Consulting Experts and is a member of the P.R.I.M.E Finance panel of experts. Dr. Okongwu is viewed by sources as a "focused, eloquent and credible" expert and has been described as "one of the best experts around" under cross-examination.

Dr. Okongwu has assisted clients with internal investigations and with responses to formal investigations by regulatory agencies. He has testified and consulted on matters concerning the valuation, trading, and risk characteristics of a range of derivatives, fixed income and equity products, and exotic financial structures. In particular, his expert testimony and consulting has covered credit linked notes, credit default swaps and total return swaps. Dr. Okongwu has also testified numerous times on the alleged mis-selling of financial products. He has assessed the risks and profitability of hedge fund trading strategies and the effects on investors of mismarking of fund portfolios. He has consulted on the forced liquidation of securities positions and the termination of over the counter (OTC) derivative positions. Dr. Okongwu has been retained in many other matters involving hedge funds and mutual funds, including civil and regulatory matters concerning allegations of market abuse, including insider trading and market manipulation. He has also worked extensively on matters involving subprime and structured finance securities.

Dr. Okongwu is the lead author of "Credit Derivatives and Mortgage-Backed Securities" in The Handbook of Mortgage-Backed Securities (Frank J. Fabozzi, ed., 2016), and has authored articles in The Journal of Structured Finance, the International Journal of Finance & Economics, and Wall Street Lawyer. He is a co-author of an econometric study on the impact of securitization for the American Securitization Forum.

Prior to becoming a Consultant, Dr. Okongwu was a member of Banque Paribas's Fixed Income Emerging Markets team in London and New York. Dr. Okongwu holds a PhD and MA in economics from the University of California, Berkeley. His doctoral dissertation focused on the determinants and consequences of volatile portfolio capital flows to emerging market countries. Dr. Okongwu received his SB in economics from the Massachusetts Institute of Technology.

EDUCATION

PhD	Economics, University of California, Berkeley
MA	Economics, University of California, Berkeley
SB	Economics, Massachusetts Institute of Technology

PROFESSIONAL EXPERIENCE

2020 – **AlixPartners** *Managing Director*

Directs projects that apply financial economics to consulting and capital markets litigation and investigations. Has analysed issues of materiality, causation, and damages. Has testified and consulted in cases involving the valuation of equity and fixed income securities as well as exotic derivative structures. Has analysed the suitability of a variety of investment strategies and products for individual as well as institutional investors. Has analysed the components of the costs of trade execution. Has provided expert assistance on internal and regulatory investigations of trading practices. Trading strategies analysed include many that use financial derivatives. Asset classes covered include equities, rates, credit, FX and some commodities. Some of the issues examined include valuation, market abuse, insider trading, and mis-selling.

2008 – 2020 **NERA Economic Consulting** *Managing Director*

Directed projects that apply financial economics to consulting and to securities related litigation and investigations. Has analysed issues of materiality, causation, and damages. Has testified and consulted in cases involving the valuation of equity and fixed income securities as well as exotic derivative structures. Has analysed the suitability of a variety of investment strategies and products for individual as well as institutional investors. Has analysed the components of the costs of trade execution. Has also analysed a variety of trading strategies including many that use financial derivatives. Asset classes covered include equities, rates, credit, FX and some commodities. Some of the issues examined include valuation, market abuse, insider trading, and mis-selling.

2010 – 2020 **NERA Economic Consulting** *Head of Finance, Litigation, and Dispute Resolution Group – Europe*

2004 – 2008 **NERA Economic Consulting** *Vice President*

- 2001 – 2004 NERA Economic Consulting
Senior Consultant
- 1999 – 2001 NERA Economic Consulting
Consultant
- 1997 – 1998 Paribas Capital Markets**
Sales/Trader, Fixed Income Emerging Markets Department
- Advised clients on a broad range of emerging market products including: Brady bonds, Eurobonds, local currency debt instruments, credit derivatives, and OTC options on Brady bonds and Eurobonds. Clients included: UK asset managers, UK hedge funds, UK, and continental European private banks, as well as UK and US bank proprietary accounts. Also traded local currency instruments for the bank on a proprietary basis.
- 1996 – 1997 Paribas Capital Markets
Economist/Strategist, Fixed Income Emerging Markets Department
- Provided analysis of Emerging Market economies and sovereign debt, primarily for countries in Eastern Europe, Africa, and the Maghreb. Evaluated the size and nature of sovereign obligations and determined the likely effects of various political and macroeconomic scenarios on the probability and extent of debt service. Responsible for advising traders, global sales force, and clients on inter- country and intra-country asset allocation and trading strategies. Provided country-specific, as well as global, analysis for quarterly publications. Authored, as well as contributed to, several one-off research *pieces*.
- 1993 – 1994 The Energy Institute**
Research Assistant
- Analysed differences in the efficiency of public and private electric utilities among a cross-section of developing and transition economies. Investigated the impact of legal rules, property rights, and regulatory regimes on firm performance.
- 1989 – 1991 WT Chen & Company**
- Responsible for the planning, implementation, and delivery of large-scale government information systems projects. Extensively consulted with client management teams to plan rapid systems development projects suitable to their organizations. Also responsible for maintaining communications with clients and addressing their concerns. Devised a program to effectively tailor and transfer rapid application development methodologies to client organizations.
- 1989 – 1989 Morgan Stanley & Co.**
Analyst, Equities Division
- Provided quantitative support to convertible bond trading desk. Designed application programs upon request for traders and salespeople. Used rigorous quantitative techniques to value various equity-derivative securities. Also acted as liaison between the firm and institutional clients that leased its securities valuation software.

TESTIMONY EXPERIENCE

- Expert Report, In the High Court of Justice Business and Property Courts of England and Wales Commercial Court (KBD), in *HRH Princess Deema Bint Sultan Bin Abdulaziz Al Saud v. Ronald William Gibbs and Sunnydale Services Limited*, on valuation of portfolios of alternative assets in a dispute between an investor and an investment advisor. 2023.
- Expert Report in the *United States District Court for the Eastern District of New York in United States of America v. UBS Securities LLC, UBS AG, Mortgage Asset Securitization Transactions, Inc., and UBS Real Estate Securities, Inc.*, on factors that can explain defaults and losses on loans underlying residential mortgage-backed securities. 2023.
- Testimony, Rebuttal Expert Report and Expert Report, In Relation to Arbitration Proceedings brought Under the Rules of the International Centre for Settlement of Investment Disputes, in *1. Addiko Bank AG, 2. Addiko Bank D.D. v The Republic of Croatia*, on alleged damages due to the retroactive conversion of foreign currency-linked loans, 2019 - 2021.
- Expert Report, Rebuttal Expert Report, Declaration, Deposition Testimony and Testimony in the United States District Court for the Southern District of New York in *Optima Media Group Limited; Optima Sports Management International (UK) Limited v. Bloomberg L.P.*, regarding macroeconomic conditions in Nigeria, the financial condition of a Nigerian media company, and costs incurred in connection with a licensing agreement, 2020.
- Expert Report, In Relation to Arbitration Proceedings brought Under the Rules of the International Centre for Settlement of Investment Disputes (ICSID), in *1. Erste Group Bank AG, 2. Erste & Steiermärkische Bank D.D. v The Republic of Croatia*, on an analysis of alleged damages stemming from the retroactive conversion of foreign currency-linked loans, 2020.
- Expert Report, In the Court of Session in Scotland, in *Asia Research & Capital Management v. Premier Oil, PLC*, on an analysis of key economic and financial risks arising from a proposed acquisition in the oil and gas sector, 2020.
- Testimony, in the US District Court for the Eastern District of New York in *U.S. v. Boustani et. al.* on macroeconomic conditions in Mozambique and the performance and risks of Mozambican debt, 2019.
- Expert Report, Supplemental Expert Report, and Testimony, In Relation to Arbitration Proceedings brought Under the Rules of the International Centre for Settlement of Investment Disputes, in *1. UniCredit Bank Austria AG, 2. Zagrebačka Banka D.D. v. The Republic of Croatia*, on alleged damages due to the retroactive conversion of foreign currency-linked loans, 2019.
- Expert Report (with Fabrizio Hernandez and Jorge Baez), Before the Juzgado de Primera Instancia de Madrid, in *Inversión Corporativa I.C., S.A. v. Banco Santander, S.A. y HSBC Bank plc*, on the contributing factors to a corporate bankruptcy, 2019.
- Testimony, Before the Financial Industry Regulatory Authority (FINRA), in *Faigenblat, et al. v. UBS Financial Services of Puerto Rico*, on investment portfolio analyses, the performance of municipal bond and municipal closed end fund markets, as well as alleged damages, 2018.
- Deposition Testimony and Expert Report, In the United States District Court for the Southern District of New York, in *Fernandez et al v. UBS AG, et al.* on alleged damages to a proposed class of investors in Puerto Rico municipal closed-end funds, 2018.
- Testimony, Second Expert Report and Expert Report in a Stockholm Chamber of Commerce (SCC), in *UkrGasVydobuvannya PJSC v. Karpatygas LLC and Misen Entreprises AB*, Arbitration on valuation of a joint venture to extract natural gas, oil, and other hydrocarbons in Eastern Europe, 2017.

- Expert Report, In the Royal Court of Guernsey, Ordinary Division, *In the Matter of the “Rabiu No.1”, “Rabiu No. 2”, “R1”, “R2”, and “Woronzow” Trusts* on valuation of estate assets, 2017.
- Testimony, Supplemental Expert Report, Joint Experts’ Memorandum and Expert Report, In the High Court of Justice Queen’s Bench Division Commercial Court Financial List in *Golden Belt 1 Sukuk Company B.S.C. (c) v. BNP Paribas and FCOF II UB Securities LLC, FTS SIP LP & 13 Other Sukuk Trust Certificate Holders v. BNP Paribas* on valuation involving an alleged breach of duty of care of a defaulted Sukuk towards certificate holders, 2017.
- Declaration, In the United States District Court for the Southern District of New York, *In re Credit Default Swaps Antitrust Litigation* on a review of over 70,000 CDS portfolios to determine if valuations were consistent with market pricing, 2016.
- Deposition Testimony and Expert Report, In the United States District Court for the District of Hawai’i in *Bradley Willcox, et al. v. Lloyds TSB Bank, PLC* on multi-currency mortgages, 2015.
- Deposition Testimony and Expert Report, In the Superior Court of California for the County of Riverside in *Lloyds TSB Bank, PLC v. Michael J. Kilroy, et al. / Michael J. Kilroy v. Lloyds TSB Bank, PLC, et al.* on multi-currency mortgages, 2015.
- Report on valuation and timing of writedowns of Fortis’s Subprime-Related Residential Mortgage Backed Security and Collateralized Debt Obligations during the credit crisis, prepared on behalf of BNP Paribas Fortis, 2015.
- Testimony and Expert Evidence, In Southwark Crown Court (United Kingdom), *R v Ulf Magnus Michael Peterson* on strategies allegedly employed by a hedge fund trading in interest rate derivatives; also valued multiple swap positions, 2014.
- Deposition Testimony and Rebuttal Expert Report, In the United States District Court for the Southern District of New York in *Ge Dandong, et al. v. Pinnacle Performance Limited, Morgan Stanley Asia (Singapore) PTE, et al.* on disclosures, characteristics, and risks of investments in certain credit linked notes, 2014.
- Deposition Testimony and Report (with Faten Sabry) in the United States Bankruptcy Court for the Middle District of Florida –Orlando Division, *In re: Sherwood Investments Overseas Limited, Inc. (Debtor) / Sherwood Investments Overseas Limited, Inc. v. The Royal Bank of Scotland N.V., f/k/a ABN AMRO Bank, N.V.* on alleged loss causation and damages with regards to investments in certain equity derivative products, 2014.
- Testimony, Deposition Testimony, Rebuttal Expert Report and Expert Report, In the United States District Court for the Southern District of New York in *Clarex Limited and Betax Limited v. Natixis Securities America LLC, et al.* on the valuation of oil-linked warrants, 2013-2014.
- Testimony and Report, Arbitration Proceedings Brought Under the United Nations Commission on International Trade Law (UNCITRAL) Rules and the Agreement on Promotion, Protection, and the Guarantee of Investments Among Member States of the Organisation of the Islamic Conference, *Hesham Al-Warraq v. The Republic of Indonesia* on alleged damages as a result of a bank nationalization and failure to abide by the terms of a mandatory convertible bond, 2012 and 2014.
- Supplemental Expert Report and Expert Report, In the United States District Court for the Northern District of California – San Francisco Division in *John Dugan, et al. v. Lloyds TSB Bank, PLC* on alleged damages in a dispute concerning multi-currency mortgages, 2013.

- Joint Experts' Expert Report and Memorandum, In the Grand Court of the Cayman Islands – Financial Services Division, *Valiance Special Opportunities Fund of Funds Limited, et al. v. Cheyne New Europe Fund Inc.* on a fund valuation dispute involving Eastern European assets, 2013.
- Testimony and Expert Report, United Nations Commission on International Trade Law (UNCITRAL) Ad Hoc Arbitration, *Valle Esina S.p.A. v. The Russian Federation* on alleged damages estimated using a discounted cash flow analysis, 2012-2013.
- Testimony, Before the Financial Industry Regulatory Authority, *In the Matter of the Arbitration between US Airways, Inc. v. Oppenheimer & Co., Inc. and Vincent Woo* on Claimant's investment history and the structure and economic risks of auction rate securities collateralized by credit linked notes, 2012.
- Testimony, Supplemental Expert Report and Expert Report, Before Federal Arbitration, Inc., *Arbitration between Jefferies & Company, Inc. and The NASDAQ OMX Group, Inc., International Derivatives Clearing Group, LLC, and International Derivatives Clearinghouse, LLC* on damages due to the alleged misrepresentation of the risk characteristics and value of an interest rate derivative product, 2012.
- Deposition Testimony and Expert Report, In the Superior Court of New Jersey Law Division for Hudson County in *B2X Corporation, Inc. v. The PNC Financial Services Group, Inc., PNC Bank, N.A., et al.* on the structures and economic risks of certain student-loan auction rate securities and alleged damages due to losses sustained as a result of investments in those securities, 2012.
- Expert Report, In the High Court of Ireland, *In the Matter Between: Weaving Macro Fixed Income Fund Limited (In Liquidation) and PNC Global Investment Servicing (Europe) Limited* on the alleged failure of a hedge fund's administrator to fulfil its obligations, specifically as regards the valuation of interest rate derivatives and counterparty risk, 2012.
- Expert Report, Before the Financial Industry Regulatory Authority in *MetroPCS Wireless, Inc. v. Merrill Lynch & Co., Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated* on the structure of the auction rate securities (ARS) market, the credit risk of certain collateralized debt obligation (CDO) ARS, and Claimant's exposure to subprime collateral, 2012.
- Testimony, Before the Financial Industry Regulatory Authority Dispute Resolution, *In the Matter of the Arbitration between Essex Equity Holdings USA, LLC, et al. v. Lehman Brothers, Inc., et al.* on the structures and economic risks of certain types of auction rate securities and the perceived liquidity in the markets for those securities prior to the onset of the credit crisis, 2012.
- Expert Report, In The High Court of Justice Queen's Bench Division Technology and Construction Court in *Phaestos Ltd., Mindimaxnox LLP and IKOS CIF Limited v. Peter Ho and Tobin Maxwell "Sam" Gover* on damages related to lost management fees due to underperformance of a hedge fund's investment strategies, 2012.
- Deposition Testimony and Expert Report, In the United States District Court for the Southern District of New York in *Aurelius Capital Master Ltd., et al. v. MBIA Inc., et al.* on certification of a class of structured product investors, 2012.
- Expert Report, In The High Court of Ireland – Commercial in *Glenhaven Holdings Limited, et al. v. BDO* on macroeconomic performance and lending conditions in Poland as well as property prices in Poland and Ireland in 2008-2010, 2012.
- Testimony and Expert Report, In the High Court of Justice Chancery Division, *In Weaving Capital (UK) Limited, Geoffrey Bouchier and Paul Clark v. Ulf Magnus Michael Peterson, Amanda Dawn Peterson, Cayman National Bank and Trust Company (Isle of Man) Limited, et al.*, on trading and

hedging strategies in interest rate derivatives, valuation of positions, counterparty risk, alleged breaches of investment restrictions and risk management protocols, and alleged misrepresentations to investors, 2011.

- Testimony, Before the Financial Industry Regulatory Authority Dispute Resolution, *In the Matter of the Arbitration between Baker Hughes Incorporated and Baker Hughes Treasury Services GmbH v. BNY Mellon Capital Markets, LLC and Pershing LLC* on causation and damages related to investments in auction rate securities, collateralized by structured finance securities, 2011.
- Expert Report, In the Grand Court of the Cayman Islands – Financial Services Division, *Weaving Macro Fixed Income Fund Limited (In Liquidation) v. Stefan Peterson and Hans Ekstrom* on the valuation of derivative products held by a hedge fund, 2011.
- Testimony, Supplemental Expert Report and Expert Report, In Relation to the Proceedings Brought Before the ICC International Court of Arbitration in the Matter Filed Under Reference 16911/JHN in *Powszechny Zakład Ubezpieczeń S.A. (Poland), et al. v. The Goodyear Tire & Rubber Company (USA) and Goodyear S.A. (Luxembourg)* on alleged damages to minority shareholders as a result of practices by a majority shareholder, 2010-2011.
- Testimony, Before the Financial Industry Regulatory Authority Dispute Resolution, *In the Matter of the Arbitration between TGS-NOPEC Geophysical Company v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* on liquidity in the markets for certain auction rate preferred stocks, 2011.
- Deposition Testimony and Expert Report, In the United States District Court for the Southern District of Florida in *U.S. Holdings, Inc. v. SunTrust Bank and SunTrust Robinson Humphrey, Inc.* on causation and losses as the result of investments in auction rate securities, 2010.
- Deposition Testimony, In the Supreme Court of the State of New York for the County of New York in *Matthew Serino, et al. v. Kenneth Lipper, PricewaterhouseCoopers LLP, et al.* on damages due to the failure of an investment management business, 2010.
- Affidavit, In the United States District Court for the Southern District of New York in *CILP Associates, L.P. and Cohen Pooled Assets, L.P. v. Lipper Convertibles, L.P., PricewaterhouseCoopers LLP, et al. / Andrew E. Lewin, et al. v. Lipper Convertibles, L.P., PricewaterhouseCoopers LLP, et al.* on investor losses due to the mis-marking of a convertible bond portfolio, 2010.
- Testimony, Consolidated Rebuttal Report and Rebuttal Report, *Arbitration Between: The Rompetrol Group NV and The Republic of Romania*, (In Relation to the Arbitration Proceedings Brought Under the Rules of the International Centre for Settlement of Investment Disputes in Accordance with Article 8 of the Agreement on Encouragement and Reciprocal Protection of Investments Between The Government of The Kingdom of the Netherlands and The Republic of Romania) on causation and damages as a result of a disputed government privatization, 2009-2010.
- Testimony, Rebuttal Expert Report, Deposition Testimony and Expert Report, In the United States District Court for the Southern District of New York, *Securities and Exchange Commission v. Jon-Paul Rorech and Renato Negrin* on CDS valuation and relationship between bond and CDS markets, 2010.
- Testimony, Before FINRA Dispute Resolution, Inc., *In the Matter of the Arbitration between The Westervelt Company v. Banc of America Securities LLC*, on causation and damages due to losses allegedly sustained as a result of investments in auction rate securities, 2010.
- Testimony, Before the Financial Industry Regulatory Authority Dispute Resolution in *BioMimetic Therapeutics, Inc. (Claimant) v. Deutsche Bank Securities, Inc. (Respondent)* on causation and damages due to losses allegedly sustained as a result of investments in auction rate securities, 2009.

- Expert Reports, In the Supreme Court of the State of New York for the County of New York in *Matthew Serino, et al. v. Kenneth Lipper, PricewaterhouseCoopers LLP, et al.* on damages from the alleged mis-marking of a portfolio of convertible bonds, 2009.
- Deposition Testimony, Supplemental Expert Report and Expert Report, In the United States District Court for the District of Maryland, *In re Mutual Funds Investment Litigation [Janus Subtrack]* on damages due to market timing in a mutual fund complex, 2008.
- Affidavit, Deposition Testimony and Expert Report, In the Supreme Court of the State of New York for the County of New York in *Jeremy M. Jones, et al. v. PricewaterhouseCoopers LLP* on calculating damages from the alleged mis-marking of a portfolio of convertible bonds, 2006- 2007.
- Deposition Testimony and Expert Reports, In the Supreme Court of the State of New York for the County of New York in *Richard A. Williamson as Successor Liquidating Trustee on Behalf of Lipper Convertibles, L.P. and Lipper Fixed Income Fund, L.P. v. PricewaterhouseCoopers LLP* on calculating damages due to the alleged mismarking of a portfolio of convertible bonds, 2006-2007.
- Deposition Testimony and Expert Report, In the Circuit Court of Cook County, Illinois – County Department, Law Division in *Freeman, Freeman & Salzman, P.C. Employees’ Profit Sharing Plan, et al. v. PricewaterhouseCoopers LLP* on calculating damages due to the alleged mis- marking of a portfolio of convertible bonds, 2006.
- Expert Report, In the Supreme Court of the State of New York for the County of New York in *Matthew Serino, et al. v. Kenneth Lipper, PricewaterhouseCoopers LLP, et al.* on calculating damages due to the alleged mis-marking of a portfolio of convertible bonds, 2006.
- Expert Report, In the United States District Court for the Southern District of New York in *Fredda Levitt, et al. v. PricewaterhouseCoopers LLP* on calculating damages due to the alleged mis-marking of a portfolio of convertible bonds, 2006.
- Testimony before NASD Dispute Resolution, *In the Matter of the Arbitration between Corporacion Financiera del Valle S.A. and Merrill Lynch, Pierce, Fenner & Smith, Inc.* on valuation of promissory note and calculating alleged damages due to the improper presentment of the note, 2006.
- Testimony, Deposition and Expert Report, In the Supreme Court of the State of New York for the County of New York in *HFTP Investment L.L.C., GAIA Offshore Master Fund, Ltd. and Caerus Fund Ltd. v. Grupo TMM, S.A.* on damages due to the failure to implement a reset clause on warrants issued by the defendant, 2005.
- Expert Report, In the United States District Court for the District of Oregon in *James R. Mann, MD, et al. v. William C. St. Laurent, et al.* on the valuation of a defaulted asset backed by local currency emerging market receivables, 2004.
- Testimony before the National Association of Securities Dealers, Inc. in *Carla Lopez, John Boggan, and Donald Kreft Jr. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.* on alleged damages resulting from holding a concentrated stock position acquired by the leveraged exercise of employee stock options, 2004.
- Testimony before the New York Stock Exchange, Inc. Department of Arbitration in *Joseph T. Apprendi and Scott J. Paternoster v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.* on potential damages as a result of an allegedly unsuitable strategy involving equity based compensation, 2003.
- Expert Report before the United States District Court for the District of Connecticut in *John D. Lane v. Jefferson Pilot Financial Insurance Company* on changes in the market for equity offerings between 1999 and 2002, 2003.

- Declaration before the United States District Court for the Eastern District of New York, *In Re: Jennifer Convertibles Securities Litigation* in opposition to Plaintiffs' Daubert Motion, 2003.
- Expert Report before the American Arbitration Association, In the Matter of the Arbitration between *Thomas R. Pilholski and Inamed Corporation and McGhan Medical Corporation* on the value of disputed employee stock options, 2001.

BUSINESS AND ASSET VALUATION CONSULTING EXPERIENCE

- Valued a complex exchange-cleared interest rate swap transaction using a variety of interest rate models. Analysed the effect of various exchange clearance mechanisms on the swap valuation. Analysed the effects of interest rate volatility and correlation on changes in the swap value. Discussed swap valuation and modelling issues with traders.
- Analysed allegations of alleged mismarking of a portfolio of CLNs and a bespoke CDO. Analyses included valuing the bespoke CDO and the underlying credit portfolios.
- Reviewed the purchase of a single tranche synthetic CDO whose reference portfolio consisted of a number of corporate entities and sovereigns; valued the transaction as of the transaction date, identified risk factors and the pattern of losses as credit events occurred, and compared reference portfolio to commonly used market indices to assess industry exposure and correlation.
- Analysed the valuation process and credit rating process for a SIV containing CDOs, HELs, and other assets.
- Analysed the valuation and credit rating process for a series of CPDOs as well as the performance of those products during the credit crisis.
- Directed the analysis and preparation of the termination amount payable to a large commercial and investment bank under the ISDA Master Agreement in connection with a portfolio of more than 30,000 OTC derivatives. The portfolio included credit, interest rate, commodity, equity, and foreign exchange derivatives.
- Advised a hedge fund on a variety of issues concerning the valuation, margin calculations, and termination of a total return swap (TRS) referencing leveraged loan portfolio.
- Valued several principal protected derivative instruments with differing embedded options being sold by a hedge fund.
- Consulted on the valuation of a number of credit linked note issued auction rate securities in broker-customer disputes.
- Analysed the value of a U.S. dollar denominated security backed by securitized emerging market local-currency receivables.
- Analysed the size, performance, and valuation of a portfolio of real estate investments (direct investments, limited partnerships, mortgage loans, and guarantees) held by a large financial services firm in order to determine whether the effect of these investments on firm performance was properly recorded and foreseeable.
- Analysed merger and spin-off transactions involving a large conglomerate in order to determine whether the transactions constituted a fraudulent conveyance.
- Valued convertible securities issued by a technology firm under various assumptions concerning an alleged failure to provide adequate disclosure of the businesses future prospects at the time of issue.

- Evaluated the performance of fixed income securities secured by real estate assets in order to determine causation and damages resulting from a lease dispute.
- Valued a technology start up firm that alleges it failed as a result of antitrust violations. Analysed the value of a contract in a regulatory dispute involving a financial services firm.

SECURITIES FRAUD CONSULTING EXPERIENCE

- Expert for an investment manager seeking to recover a large investment in a private fund run by an asset management company. Analysed illiquid fixed income and reverse repo positions that lost value in early 2020. Reviewed fund documentation and stated strategies to determine if they were consistent with representations to investors. Identified irregular transactions (e.g., breaches of applicable regulatory limits and anomalies in pricing of related party transactions). Proposed a damages model and assisted outside counsel with drafting a Letter Before Action. Client achieved a favourable settlement.
- Consulted in a confidential engagement concerning the economic risks and rating assignment of a structured investment vehicle backed by structured finance investments.
- Consulted in a number of securities fraud class action cases (Section 10b-5, Sections 11 and 12) across various industries involving allegations of securities fraud. Performed analyses of class certification, liability, materiality, affected trading volume, and damage estimates.
- Valued various classes of securities issued by a drug distribution company in order to evaluate the appropriateness of a share repurchase plan initiated by management.
- Analysed alleged damages to a group of investors as a result of the failure of a company to register a large unregistered stock position in a timely manner.

MARKET MANIPULATION AND FX CONSULTING EXPERIENCE

- Provided expert advice to a large bank on an internal investigation of a derivatives trading desk. Analysed alleged violations of internal risk limits, misallocation of profits and potential front-running of client transactions. Examined the pricing and profitability of OTC interest rate derivative trades as well as their rationale. Conducted staff interviews and reviewed internal correspondence. Presented findings to internal and external counsel.
- Provided expert assistance to a large commercial and investment bank on an internal investigation regarding allegations of manipulation of certain benchmark prices used for interest rate derivative contracts. Investigated trading by the bank in cash and derivative instruments. Prepared materials to assist the client in their interactions with the regulators.
- Investigated trading by the bank in cash and derivative instruments. Prepared materials to assist the client in their interactions with the regulators.
- Directed a project in response to multiple regulatory investigations of a financial institution's foreign exchange trading. Analysed commissions/spreads and allegations of front-running.
- Expert for a large commercial bank on an internal investigation concerning allegedly manipulative trading in credit default swap indices and index tranches. Analysed valuation and risk of positions; also analysed allegedly manipulative trading strategies.

HEDGE FUNDS CONSULTING EXPERIENCE

- Provided expert advice to the fund administrator for a hedge fund that traded OTC derivatives including variance, volatility and correlation swaps. Investigated allegations of position mismarking. Valued fund's positions and evaluated the fund manager's marks. Also assisted the client with responses to questions by regulators.
- Expert for an asset manager of large private and public investment funds. Analysed volatility trading strategies that yielded losses exceeding \$1 billion during March 2020. Reviewed position reports, risk reports and representations made to investors. Modelled the profit/loss of alternate strategies over the period. Provided analytical support to counsel and client during settlement talks with investors and regulators.
- Consultant in an internal investigation of a hedge fund with investments in global equities and equity derivatives. Examined allegations of inaccurate reporting to current and potential investors. Analysed portfolio trades and holdings to replicate and check various reports disseminated on a regular or one-off basis. Assisted counsel with conducting interviews of the portfolio manager and compliance officers. Presented findings to counsel and client.
- Provided expert consulting assistance on several matters analysing trading patterns in response to allegations of market manipulation of US and European markets. Analyses included statistical analyses of trading in equity and various derivative products as well as examination of traders' records and intraday quote and trade activity.
- Examined the risk management system used to track and manage the risk of high-yield, fixed income hedge funds during the credit crisis. Reviewed the calculation of risk measures, implementation of stress scenarios, and liquidity reports produced. Delivered an interim report on robustness of the risk measures, reasonableness of stress scenarios and changes in liquidity over time. Analysed various financing mechanisms, including repos and structured financing agreements, used by the hedge funds. Evaluated complex positions such as ABS CDOs (both cash and synthetic), CDS (both corporate and index based) and CDO2 held by the funds.

TRADING AND EXECUTION COSTS CONSULTING EXPERIENCE

- Provided expert analysis of trading strategies employing equities and equity derivative instruments for a hedge fund manager. Assisted the hedge fund manager in determining whether profits and risks were being appropriately allocated between several hedge funds being managed.
- Analysed trading by several hedge funds around the issuance of PIPES in order to determine whether stock price manipulation occurred.
- Analysed the effects of the alleged mismarking of hedge fund assets on limited partners.

MUTUAL FUNDS CONSULTING EXPERIENCE

- Analysed the effect of alleged mispricing by a mutual fund that invested in a portfolio of several hundred structured finance securities. Repriced the portfolio and determined the effect of the alleged mispricing on the fund's NAV.
- Assisted several investment managers on matters that quantified the components of the costs of trade execution.

- Assisted several investment managers with the identification of market-timing activity in mutual funds and the quantification of any effects from such activity on the funds' other investors. Also, assisted the investment managers in their discussions with regulators.
- Assisted several investment managers with the quantification of any damages resulting from the imposition of trading restrictions on mutual fund investors who practiced frequent trading.

INVESTMENT SUITABILITY CONSULTING EXPERIENCE

- Directed consulting engagements that provided a number of analyses concerning the auction rate securities markets, the structure of certain auction rate securities, trading in those securities, as well as general information on the fixed income markets. The securities have included student loan auction rate securities, municipal auction rate securities, TruPS-linked securities, and CDO- linked securities.
- Conducted benchmark portfolio and other analyses on behalf of a broker-dealer involved in a customer dispute involving allegations of churning and failure to seek best execution prices. Issues involved principal markups and markdowns and internal sales credits for OTC equity, equity option, and fixed income transactions.
- Analysed the proprietary investments of a small foreign bank to determine the extent of reliance on an investment bank for trading strategies in the markets for U.S. Treasuries and Treasury derivatives. Also performed analysis of the suitability of investments and alleged excess mark ups on options.
- Analysed a portfolio of emerging market credit derivatives in order to determine whether the investments were appropriately marketed to investors.
- Analysed the appropriateness of the compensation practices and leveraged trading strategies employed by a closed-end bond fund involved in a dispute with an investor.
- Directed numerous projects analysing trading strategies employing the leveraged exercise of employee stock options in order to determine the extent, if any, of the brokers' responsibility for losses.

PAPERS AND PRESENTATIONS

“Expert Evidence in International Arbitration – Saving the Party – Appointed Expert”, panellist expert, BCLP London, London, 2021

“Market Reality and Market Expectations as a Source of Disputes”, panel discussion

P.R.I.M.E. Finance New York Conference, New York, 2019.

“Post-Post-Crisis: New Trends in Financial Litigation”, panel discussion at P.R.I.M.E. Finance Annual Conference, The Hague, The Netherlands, 2019.

with E. McHugh, Chapter 22 “Causation”, in *The Investment Treaty Arbitration Review*, Fourth Edition, Barton Legum, ed., 2019.

with E McHugh, Chapter 22 “Causation,” in *The Investment Treaty Arbitration Review*, Third Edition, Barton Legum ed., 2018.

“Damages in Financial Services Arbitrations,” in *The Guide to Damages in International Arbitration*, Global Arbitration Review (GAR), Third Edition, John A. Trenor, ed., 2018.

“Complex Valuations: Trust, but Verify,” 11th Annual Trust & Estates Litigation Forum, Provence, France, 2017.

“Damages in Financial Services Arbitrations,” in The Guide to Damages in International Arbitration, Global Arbitration Review (GAR), Second Edition, John A. Trenor, ed., 2017.

“Damages in Financial Services Arbitrations,” in The Guide to Damages in International Arbitration, Global Arbitration Review (GAR), John A. Trenor, ed., 2016.

with T. McKenna, O. Kitaychik, and G. Renzi-Ricci, “Credit Derivatives and Mortgage-Backed Securities,” in The Handbook of Mortgage-Backed Securities, Seventh Edition, Frank J. Fabozzi, ed., (Oxford, 2016).

“Engaging Your Expert – Getting More Than Just a Report; Cases Involving Complex Transactions and/or Products,” Practising Law Institute, Expert Witness 2013 Program, 2013.

“Simplifying Complex Financial Product Disputes,” C5 Financial Institutions Litigation Conference, London, UK, 2012.

with T. McKenna, “Foreclosure Suspensions and Other Mortgage Disputes,” NERA Working Paper, December 2010.

with F. Sabry, “How Did We Get Here? The Story of the Credit Crisis,” The Journal of Structured Finance, Spring 2009.

with F. Sabry, “Study of the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets,” report commissioned by the American Securitization Forum, 2009.

“Hedge Funds and the Current Crisis – Detailing the Subprime Crisis with Regards to Hedge Funds,” Subprime and the Credit Crisis, International Quality & Productivity Center (IQPC), 2008.

Presentation on the credit crisis as part of The Best of NERA V, a web-based live audiocast on www.sechistorical.org, Washington, DC, 2008. (Also featured on C-SPAN Radio, August 17, 2008.)

with J. Jordan and F. Sabry, “Role and Value of Securitization,” ASF 2008, American Securitization Forum, 2008.

“Credit Market Turmoil: Potential Disputes,” International Quality & Productivity Center’s (IQPC) 3rd Conference on Securities Litigation, 2007.

with D. Ellis and S. Toft, “Liability for Misstatements to the Market and the Role of Expert Economic Testimony – Response to the Davies Review,” Davies Review of Issuer Liability: Final Report prepared by Professor Paul Davies QC on behalf of U.K. HM Treasury, 2007.

“An Overview of the Capital Asset Pricing Model,” New York County Lawyers’ Association Committee on Securities and Exchanges, 2006.

“Broker-Customer Disputes,” Hindsight on 18 Years of Securities Arbitration, New York County Lawyers’ Association, 2005.

with F. Dunbar, “(Market) Timing Is (Not) Everything,” Wall Street Lawyer, Vol. 7, No. 5, (c) 2003 Glasser LegalWorks.

with D. Tabak, “Inflation Methodologies in Securities Fraud Cases: Theory and Practice,” published in Securities Litigation & Enforcement Institute 2003, Practising Law Institute. Previously published as a NERA Working Paper in July 2002.

“Liberalized Portfolio Capital Inflows in Emerging Markets: Sterilization, Expectations, and the Incompleteness of Interest Rate Convergence” (with Jeffrey Frankel), *International Journal of Finance & Economics*, vol. 1:1 (January 1996): 1-24; also published as National Bureau of Economic Research Working Paper No. 5156.

MEMBERSHIPS

P.R.I.M.E. Board Member 2021
American Finance Association
American Economics Association

HONORS

American Economic Association/Federal Reserve System Fellowship, 1995
Graduate Opportunity Fellowship, University of California, Berkeley, 1992
Graduate Opportunity Fellowship, 1991

APPENDIX II

Our Ref: DD/BC/TRD/EG/61334.1

Your Ref:

London | Cambridge | Oxford | Hong Kong | Singapore

**FOR THE ATTENTION OF CHUDOZIE
OKONGWU**

AlixPartners UK LLP

LEGAL INSTRUCTIONS

28 September 2023

Dear Chudozie

**(1) London Capital & Finance Plc (In Administration) & Ors v (1) Mr Michael
Andrew Thomson & Ors (Claim No. BL-2020-001343)**

We are instructed by the Claimants in relation to the above proceedings: London Capital & Finance Plc (**LCF**), London Oil & Gas Limited (**LOG**) and the Joint Administrators of each of LCF and LOG.

Thank you for agreeing to provide an expert report in this matter. The scope of the expert report is set out in detail below but relates to the reasonableness of fees incurred by the Sixth Defendant, Surge Financial Limited (**Surge**) in exchange for services provided to LCF.

In carrying out your duties as an expert witness you may also be asked by the Court or by us to:

- respond to written questions from the Claimants in relation to your report;
- participate in discussions with the opponent's expert; and/or
- give oral evidence at the trial. This may include providing evidence concurrently with the opponent's expert, known as "hot-tubbing".

If you have any questions or would like any more information about any of these points, please let us know.

Timetable

Please review these instructions and the enclosed documents and we will then be in contact to discuss the relevant issues and any questions you may have before you commence writing your report.

Your report is currently to be served on the Defendants by 29 September 2023.

The Court has ordered the sequential exchange of expert evidence in this matter. We have received a copy of the Expert Report of Paul Grainger dated 28 July 2023. Your report will consider and respond to Mr Grainger's report.

Once your report has been served, the Court has ordered that the parties' respective experts are to meet and prepare a joint report which identifies areas of agreement and disagreement between you.

If, as a result of these discussions, there are areas that are not agreed in the joint expert report, the Court has ordered that, to the extent required, supplemental expert reports dealing with these matters shall be prepared and exchanged.

Trial

The trial date has been set for 11 January 2024. It is expected to last for twenty-two weeks. Please let me know immediately if you become aware of any difficulty in attending the trial. You will not be required for the entire twenty-two weeks. You will likely be required for 1 or 2 days.

If you are likely to have difficulty meeting any of the dates in this timetable, please inform me at the earliest opportunity. We will have greater clarity on when you may be required to attend court following the Pre-Trial Review hearing in these proceedings, listed for 20 November 2023.

I set out below the background facts of the case, the issues between the parties and the matters for you to address.

Scope of Expert Evidence, and Instructions

The Parties have permission of the court to adduce expert evidence on the following issue:

"In the period from 2015 to 2019, what was the ordinary market rate (or, in the absence of a relevant market, the rate that would have been agreed between reasonable parties in an arm's length transaction) for services of the type specified in paragraph 5(3) of the Defence of the Fifth and Sixth Defendants?"

Paragraph 5 (3) of the Defence of the Fifth and Sixth Defendants is repeated in full below:

"(3) Surge provided LCF with third party, outsourced investor facing services from July 2015 until LCF entered administration in January 2019. The services provided by Surge to LCF from time to time were as follows:

a) Marketing. Surge provided branding, website design, design of promotional materials, advertising and lead generation via digital and print. The content of Information Memoranda (the "IMs") was drafted and/or approved by LCF and its advisers (Lewis Silkin and, in relation to at least the ISA IMs, Ernst & Young considered and approved the tax section). All other marketing materials were based on the content provided in the IMs and were similarly subject to LCF approval. From Series 3 onwards, all marketing

materials and financial promotions were approved by the relevant Compliance Officer for the purposes of s.21 Financial Services and Markets Act 2000 ("FSMA") (prior to LCF obtaining its own FCA authorisation, s.21 approvals were provided by Sentient Capital London Limited; after LCF obtained its FCA authorisation, it provided s.21 sign-off on all materials).

b) Technology. Surge designed, built, hosted and maintained LCF's website, involving an online application pathway and a customer dashboard (allowing investors to view their investment) and systems integration with other service providers (such as the cash custodian and AML providers).

c) Account management. Surge provided an outsourced call/support centre, including a team of account managers who acted as representatives of LCF, supported by a team of administration staff. Account managers handled day to day communication with potential and actual investors e.g. answering questions from potential investors as to details of the bonds offered and dealt with administrative matters through the lifetime of the bond (which could be up to 5 years). Account managers were reliant on LCF for the substantive content of the information they provided (e.g. they were permitted to provide information as contained in s.21 signed off material (e.g. the IMs), the answers to frequently asked questions and call scripts as provided by LCF; if and insofar as a factual question arose which was not contained in these materials, the question was escalated for LCF to advise. All calls were recorded and regularly monitored by Surge and by LCF's Compliance Officer. LCF also provided ongoing training including call feedback and periodical compliance training. "

Your report will need to consider (among other things):

- a) Whether Surge's commission rates of 22.5% and 25% would have been agreed between reasonable parties in an arm's length transaction and in the context of LCF's stated return of investment to investors (in other words, the economic feasibility of Surge's commission rate).
- b) Whether there was a market for the services provided by Surge; and
- c) If so, how Surge's commission rates of 22.5% and 25% compare with the rates ordinarily charged in that market.

If, having read this letter and the accompanying documents, you feel that you may not have the appropriate experience and expertise to provide a report, please let me know at the earliest opportunity.

Similarly, if you have a conflict of interest which prevents you acting in this matter (which may, for example, include prior dealings with any of the parties or witnesses that you are aware are involved), please inform me of this at the earliest opportunity.

Background

LCF

- LCF was incorporated as South Eastern Counties Finance Limited in England and Wales as a private limited company on 12 July 2012 with company number 8140312.
- LCF purported to carry on a legitimate business raising monies by issuing Bonds to members of the public, which monies it claimed to loan to small and medium sized businesses (“SMEs”) in the UK. It is the Claimants' case that LCF's business was carried on fraudulently, as the Bondholder monies were not loaned to businesses for legitimate commercial purposes but were in fact being misappropriated by some of the Defendants.
- From September 2013, LCF sold bonds to 11,625 public investors (**Bondholders**), with promised returns of up to 8%. LCF then on-lent the money to a small number of borrower companies purportedly having undertaken appropriate due diligence with ongoing monitoring.
- As at December 2018, there were 16,706 LCF Mini-Bond and LCF ISA products in issue, with the amount invested totalling just over £237.2m.
- Despite their description, LCF's ISA products did not qualify as ISA investments because they did not meet the conditions at regulations 8A(2) and (4) of the Individual Savings Account Regulations 1998 that qualifying ISA investments must be transferable.

The Proceedings

The **Claimants** in this claim are:

- (1) London Capital & Finance PLC (In Administration)
- (2) Finbarr O'Connell, Adam Stephens, Henry Shinnars, Colin Hardman and Geoffrey Rowley (Joint Administrators of London Capital & Finance PLC (In Administration))
- (3) London Oil & Gas Limited (In Administration)
- (4) Finbarr O'Connell, Adam Stephens, Colin Hardman and Lane Bednash (Joint Administrators of London Oil & Gas Limited (In Administration))

The **Defendants** in this claim are:

- (1) Michael Andrew Thomson
- (2) Simon Hume-Kendall
- (3) Elten Barker
- (4) Spencer Golding
- (5) Paul Careless
- (6) Surge Financial Limited
- (7) John Russell-Murphy
- (8) Robert Sedgwick
- (9) Grosvenor Park Intelligent Investment Limited
- (10) Helen Hume-Kendall

For the purposes of preparing your report it is not necessary to consider all of the background relating to the claim, which is vast and detailed. However, we enclose the Case Memorandum which provides background to the claim.

Surge's Role

Surge claims that it was engaged by LCF to provide services to LCF, consisting of:

1. Marketing services – this included providing branding, website design, design of promotional materials (including the IMs and Brochures), advertising and lead generation via digital and print.
2. Technology – designed, built, hosted and maintained LCF's website.
3. Account management – provided an outsourced call/support centre, including a team of account managers who acted as representatives of LCF (but were employed by Surge) to interact with potential Bondholders and existing Bondholders.

Surge claims that in return for providing LCF the above services, it was agreed that it would be paid a fee equating to 25% (or 22.5% in relation to certain of the bonds issued) of all Bondholder monies raised by LCF (the "**Surge Fee**"). It is the Claimants' case that this was effectively a "commission" on Bondholder monies raised.

LCF failed to disclose the Surge Fee to Bondholders. Instead, it claimed that LCF raised monies by charging borrowers a one-off fee equal to 2% of the amount of the loan with interest in the region of 10% per annum.

The Claimants allege that Surge received approximately £60,861,452.18 in fees. This figure is broadly agreed by Surge, although the actual figure may differ.

The Claimants consider that Surge acted in practice as a sales agent for LCF. Notwithstanding the way in which Surge has sought to characterize its services (as set out above), the Claimants consider that Surge was essentially charging a sales commission to LCF for the sale of LCF's bonds to members of the public.

Documents provided to you

We enclose the following documents.

Court documents:

- Case Memorandum;
- Re-Re-Amended Particulars of Claim dated 20 May 2022;
- Fifth and Sixth Defendants' Amended Defence dated 19 April 2022;
- Claimants' Amended Reply dated 4 May 2022; and
- Expert Report of Mr Paul Grainger dated 28 July 2023 and accompanying documents (see below).

Guidance documents

- Civil Procedure Rules Part 35, and the Practice Direction to Part 35

- Guidance for the Instruction of Experts in Civil Claims 2014
- The Academy of Experts and Expert Witness Institute joint Code of Practice
- Model Form of Expert Witness CV

Contemporaneous Documents (where references are provided it is to the parties' Extended Disclosure)

- For completeness, we are providing you with copies of all of the documents that Mr Grainger has identified in Appendix 3 of his Report, this includes:
 - Surge Financial statements to 30 September 2018
 - LCF audited accounts from 30 April 2016 and 30 April 2017
 - Unsigned Contracts between Surge and LCF
 - HM Treasury Report: Research into Non-Transferable Debt Securities dated 1 November 2019

Duties of an expert

Please ensure you read Civil Procedure Rules Part 35 (especially 35.3, 35.6, 35.10, and 35.12) and the Practice Direction to Part 35 (especially paragraphs 2 and 3), along with the Guidance for the Instruction of Experts in Civil Claims 2014 ("**the Guidance**"). These documents explain your duties as an expert witness and are all attached to this letter.

You owe a duty to the Claimants to exercise reasonable skill and care in carrying out your instructions and you should comply with any relevant professional code of practice, but your overriding duty is always to the Court itself.

Your primary function is to assist the Court and, in this capacity, you must provide your objective, unbiased opinion in relation to those matters which are within your expertise. Your opinion must be independent, regardless of the pressures of litigation and you must maintain professional objectivity, not assume the role of an advocate. A useful test of independence is whether you would express the same opinion if given the same instructions by another party to the proceedings (including an opposing party).

You should also be aware of the overriding objective that Courts deal with cases justly and at proportionate cost. You are under an obligation to assist the Court in this respect. This includes dealing with cases expeditiously, fairly and keeping the work and costs in proportion to the value and importance of the case to the parties. As you may be aware, in certain circumstances experts may be subject to a sanction such as disallowance or reduction of fees. Further, as set out in paragraphs 89 – 92 of the Guidance, sanctions may apply for a failure to comply with the provisions of CPR 35, the PD and any Court orders.

You should ensure that you comply with these duties and all other requirements set out in materials we have provided to you.

Your report

You must have regard to the requirements set out in CPR 35, the Practice Direction to Part 35, and the Guidance as to the form and content of your report. In particular, your report must:

- (i) be addressed to the Court;
- (ii) (give details of your qualifications, for example by attaching a copy of your CV. Where highly specialised expertise is required to form an opinion, please include details of the particular training and / or experience that qualifies you to provide the specialised evidence. For assistance, please see the attached Model Form of Expert Witness CV;
- (iii) set out the substance of all material instructions, whether written or oral, on the basis of which the report was written. This statement must not be inaccurate or misleading and includes (a) setting out the questions which we asked you to answer above, and (b) identifying the case documents with which you have been provided, also set out above;
- (iv) include a summary of your conclusions;
- (v) take into account all material facts, including those which detract from your opinion;
- (vi) confine your opinion to matters which are material to the dispute, as part of your review of the issues you are instructed to consider;
- (vii) set out the details of any literature or other material on which you have relied in forming your opinion;
- (viii) clearly delineate between matters of fact and opinion;
- (ix) make clear which of the facts stated in the report are within your own knowledge;
- (x) state any assumptions you have made in arriving at your opinion, and how reasonable those assumptions are, or how likely they are to be correct;
- (xi) where there are material facts in dispute – state an opinion on the basis of each version of the facts. Only express a preference for one version of the facts over another if due to your experience and expertise you consider one version to be less probable;
- (xii) where there exists a range of opinions on a matter you address – summarise that range of opinions and provide reasons for the opinion you give;
- (xiii) make it clear if your opinion is provisional or qualified, for example where more information is required to form a definite view;

- (xiv) make it clear when a particular question or issue falls outside your area of expertise;
- (xv) conclude with:
- (xvi) a statement that you understand and have complied with your duty to the Court, including the requirements of CPR Part 35, the Practice Direction to Part 35, and the Guidance; and
- (xvii) a statement of truth in the form contained in paragraph 3.3 of the Practice Direction to Part 35; and
- (xviii) be signed.

Please let me know immediately if at any time after producing your report you change your views or it is otherwise necessary to update or supplement it, for example because new evidence has come to light.

Data Protection

In accepting these instructions you agree that, to the extent you are required to collect and process personal data, and you are determining the purposes and the means of the processing within the terms of the retained EU law version of the General Data Protection Regulation ('UK GDPR') and the Data Protection Act 2018 (the 2018 Act) and all rules, regulations and orders made under UK GDPR or the 2018 Act (the Data Legislation), you are acting as a data controller and will comply with the Data Legislation in carrying out your instructions and preparing your report.

In the event that you are required in accordance with article 33 of UK GDPR to notify to the Information Commissioner's Office a personal data breach in connection with the carrying out of your instructions and the preparing of your report, you shall notify us immediately upon you becoming aware of such breach.

Right to Ask For Directions from the Court

Expert witnesses are entitled to ask the Court for directions to assist them in carrying out their functions if they feel that this is necessary. If you intend to make an application for directions, please discuss this with me first.

Questions on Experts' Reports

Once your report has been served, the other party has the right to ask, within 28 days of service of the expert's report, proportionate questions in order to clarify the report. If the other party sends you any such questions, please let me know as soon as you receive them.

Provided that the questions are proportionate, you have a duty to answer them within any period agreed by the parties or directed by the Court, and your answers will form part of your report. Please let me see a copy of your answers before they are finalised.

If you have an issue with answering any of the questions raised, for example: because you believe that the questions are disproportionate, not properly aimed at clarifying the report, or out of time, please discuss this with me.

I may also consult you on any questions to be put in relation to the other party's report.

I look forward to discussing these issues with you once you have reviewed the enclosed documents. In the meantime, if you have any questions in relation to your role as an expert in this matter, please do not hesitate to contact me.

Yours faithfully



Mishcon de Reya LLP

Direct Tel: +44 (0)20 3321 7075

Email: danny.davis@mishcon.com

APPENDIX III

MATERIALS CONSIDERED

A. Documents Provided by Mishcon de Reva LLP

Court Documents:

Case Memorandum.

Re-Re-Amended Particulars of Claim, dated 20 May 2022.

Fifth and Sixth Defendants' Amended Defence, dated 19 April 2022.

Claimants' Amended Reply, dated 4 May 2022.

Grainger Report, dated 28 July 2023.

Accompanying Documents to Grainger Report:

- Surge – Blackmore Contract, dated 14 April 2018;
- Third Party Costs Analysis prepared by Surge;
- Other Accompanying Documents.

Guidance Documents:

Civil Procedure Rules Part 35, and the Practice Direction to Part 35.

Guidance for the Instruction of Experts in Civil Claims 2014.

The Academy of Experts and Expert Witness Institute joint Code of Practice.

Model Form of Expert Witness CV.

Payments Related to Surge's Bank Account:

Surge's Bank Account Statement.

Information Sheet with Excerpts from Surge's Bank Account Statement.

Sample of Documents Executed Between Investors and LCF:

Bond certificate of registration of Carol Young (MDR_ST_00065927).

Completed LCF Application Form of Sheila Cowling (MDR_ST_00152904).

Completed LCF Application Form of Joanne Ellis-Clarke (MDR_ST_00152873).

Completed LCF Application Form of Derrick Halls (MDR_ST_00152865).

Bond certificate of registration of Laura Robertson (MDR_ST_00065728).

Bond certificate of registration of David Garfield (MDR_ST_00065730).

Surge Fee Allocation Spreadsheets:

Surge Fee Allocation Sheet (MDR00201706).

Surge Fee Allocation Sheet (earlier version of MDR00201706) (MDR00177594).

Documents Related to the Consultancy Fee Paid to Spencer Golding:

Email from John Russell-Murphy to Paul Careless and Steve Jones dated 2 October 2017, with chain (SUR00084106).

Invoice from SG Golding Consulting dated 20 September 2017 (SUR00084107).

Invoice from SG Golding Consulting dated 1 November 2018 (SUR00122175).

Invoice from Surge Financial Limited dated 5 January 2016 (SUR00004802).

Email from Paul Careless to Patrick McCreesh and Phillip Nunn dated 9 February 2016 (SUR00007996).

Relevant Emails and Attachments:

Email from Kerry Graham to various parties dated 18 November 2015, with chain (MDR00022136).

Email from Kerry Graham to Mark Partridge, cc'ing Paul Careless, dated 28 October 2016 (MDR00224136).

"Surge activities by percentage of total" (Attachment to MDR00224136) (SUR00051622).

Email between Mark Partridge and Paul Careless, with chain, dated 24 July 2015 (SUR00129198).

Extract from Affidavit Filed in these Proceedings, and Selected Exhibited Documents:

Extract from first affidavit of Colin Hardman.

Email from Nick Davies to Simon Hume-Kendall dated 18 June 2018 (MDR00155008).

Emails referenced at paragraph 629(c) & 629(f)(v) (CXH/1123, 1124, 1155, 1156) (MDR00155012 (pages 88-90 and 99)).

Extract from FSCS website regarding Beaufort Securities Ltd (SUR00158244).

Beaufort Securities – Annual Report and Accounts – 31 December 2015.

Extract from Witness Statement Filed in these Proceedings, and Selected Exhibited Documents:

Extract from second witness statement of Colin Hardman.

Emails referenced at paragraph 43(c) of the Second Witness Statement of Colin Hardman (MDR00155012 (page 88)).

Information Memoranda – Mini Bond Series:

Series 2 – Information Memorandum (MDR00207063).

Series 3 – Information Memorandum (MDR_ST_00053302).

Series 3 – Supplemental Information Memorandum (MDR_ST_00053301).

Series 4 – Information Memorandum (MDR_ST_00017000).

Series 4 – Supplemental Information Memorandum (MDR_ST_00032658).

Series 5 – Information Memorandum (MDR_ST_00090094).

Series 5 – Supplemental Information Memorandum (MDR_ST_00032649).

Series 6 – Information Memorandum (MDR_ST_00040127).

Series 6 – Supplemental Information Memorandum (MDR_ST_00032651).

Series 7 – Information Memorandum (MDR_ST_00047547).

Series 7 – Supplemental Information Memorandum (MDR_ST_00032655).

Series 8 – Information Memorandum (MDR_ST_00033505).

Series 10 – Information Memorandum (MDR_ST_00145654).

Series 11 – Information Memorandum (MDR_ST_00155374).

Information Memoranda – ISA Series:

ISA Series 1 – Information Memorandum (MDR_ST_00154857).

ISA Series 2 – Information Memorandum (MDR_ST_00154858).

ISA Series 3 – Information Memorandum (MDR_ST_00154859).

ISA Series 4 – Information Memorandum (MDR_ST_00154860).

Facility Agreements and Associated Documents:

Draft Schedule 3 to Neutral Statement of Uncontested Facts – Facility Agreements.

Facility Agreement between CV Resorts Limited and LCF dated 12 May 2017 (MDR00005204).

Deed of Debenture between CV Resorts Limited and LCF dated 12 May 2017 (MDR00005207).

Deed of Debenture between Waterside Villages Limited and LCF dated 12 May 2017 (MDR00005425).

Deed of Debenture between Global Resort Property PLC and LCF dated 12 May 2017 (MDR00005514).

Guarantee and Indemnity between various parties and LCF dated 12 May 2017 (MDR00009405).

Deed of Debenture between Elysian Resorts Group Limited and LCF dated 12 May 2017 (MDR00225548).

Facility Agreement between Cape Verde Support Limited and LCF dated 29 April 2017 (MDR00005203).

Guarantee and Indemnity between various parties and LCF dated 29 April 2017 (MDR00005206).

Deed of Debenture between Cape Verde Support Limited and LCF dated 29 April 2017 (MDR00005205).

Deed of Debenture between London Group LLP and LCF dated 29 April 2017 (MDR00007514).

Deed of Debenture between London Group LLP and LCF dated 29 April 2017 (MDR00225080).

Facility Agreement dated 12 May 2017 between Colina Property Holdings Limited and LCF (MDR00005229).

Guarantee and Indemnity between various parties and LCF dated 12 May 2017 (MDR00005231).

Deed of Debenture between Colina Property Holdings Limited and LCF dated 12 May 2017 (MDR00007543).

Facility Agreement between Colina Support Limited and LCF dated 29 April 2017 (MDR00005226).

Guarantee and Indemnity between various parties and LCF dated 29 April 2017 (MDR00009246).

Deed of Debenture between Clin Support Limited and LCF dated 29 April 2017 (MDR00225551).

Facility Agreement between Costa Property Holdings Limited and LCF dated 12 May 2017 (MDR00005247).

Guarantee and Indemnity between various parties and LCF dated 12 May 2017 (MDR00005249).

Deed of Debenture between Costa Property Holdings and LCF dated 12 May 2017 (MDR00007530).

Deed of Debenture between Elysian Resorts Group Limited and LCF dated 12 May 2017 (MDR00005548).

Facility Agreement between Costa Support Limited and LCF dated 29 April 2017 (MDR00005244).

Guarantee and Indemnity between various parties and LCF dated 29 April 2017 (MDR00005518).

Deed of Debenture between Costa Support Limited and LCF dated 29 April 2017 (MDR00006843).

Facility Agreement between Express Charters Limited and LCF dated 25 January 2017 (MDR00005401).

Deed of Debenture between Express Charters Limited and LCF dated 25 January 2017 (MDR00005407).

Written Resolution of Express Charters Limited in respect of Facility Agreement with LCF (MDR00005406).

Facility Agreement between River Lodge Equestrian Centre UK Limited and LCF dated 9 October 2017 (MDR00106780).

Facility Agreement between River Lodge Equestrian Centre UK Limited and LCF dated 9 October 2017 (MDR00188617).

Guarantee and Indemnity between River Lodge Equestrian Centre UK Limited and LCF dated 9 October 2017 (MDR00007535).

Deed of Debenture between River Lodge Equestrian Centre UK Limited and LCF dated 9 October 2017 (MDR00009314).

Deed of Debenture between River Lodge Equestrian Centre UK Limited and LCF dated 9 October 2017 (MDR00006314).

Facility Agreement between Spencer Golding t/a Home Farm Equestrian Centre and LCF dated 20 November 2015 (MDR00057727).

Facility Agreement between Spencer Golding t/a Home Farm Equestrian Centre and London Capital Marketing dated 1 November 2018 (MDR00194431).

Facility Agreement between Atlantic Petroleum Support Limited and LCF dated 29 April 2017 (MDR00006056).

Guarantee and Indemnity between various parties and LCF dated 29 April 2017 (MDR00112052).

Deed of Debenture between Atlantic Petroleum Support Limited and LCF dated 29 April 2017 (MDR00006057).

Facility Agreement between London and Tourism Developments PLC and LCF dated 2 August 2015 (MDR00068824).

Guarantee and Indemnity between London Group PLC and LCF (MDR00005390).

Facility Agreement between LOG and LCF dated 15 March 2016 (MDR00006307).

Facility Agreement between LOG and LCF dated 15 March 2016 (MDR00007544).

Facility Agreement between LOG and LCF dated 15 March 2016 (MDR00007548).

Letter from LCF to LOG dated 1 December 2017 (MDR00134724).

Facility Agreement between LOG and LCF dated 18 October 2018 (MDR00006305).

Deed of Debenture between LOG and LCF dated 20 June 2016 (MDR00006102).

Guarantee and Indemnity between various parties and LCF dated 29 April 2017 (MDR00006058).

Call Option Agreement between LCF and London Power Corporation Limited dated 2 November 2018 (MDR00219431).

Facility Agreement between Waterside Support Limited and LCF dated 29 April 2017 (MDR00005265).

Guarantee and Indemnity between various parties and LCF dated 29 April 2017 (MDR00009272).

Guarantee and Indemnity between various parties and LCF dated 7 November 2017 (MDR00007581).

Deed of Debenture between Waterside Support Limited and LCF dated 29 April 2017 (MDR00007479).

Facility Agreement between Waterside Villages PLC and LCF dated 12 May 2017 (MDR00005264).

Guarantee and Indemnity between various parties and LCF dated 12 May 2017 (MDR000094875).

Deed of Debenture between Waterside Villages PLC and LCF dated 12 May 2017 (MDR00005266).

Loan Agreement between LOG, p/f Atlantic Petroleum (Faroe Islands), Atlantic Petroleum UK Limited, Atlantic Petroleum North Sea Limited dated 25 May 2016 (MDR00005413).

Assignment of Loan between LOG and Atlantic Petroleum Support Limited dated 28 April 2017 (MDR00005409).

Share Purchase Agreement between Simon Hume-Kendall and London Power & Technology (2018) Limited (MDR00222524).

Novation of Loan between LOG and London Group Limited and London Power & Technology Limited dated 15 February 2019 (MDR00219998).

Novation of Loan between LOG and London Group Limited and LPE Enterprises Limited dated 15 February 2019 (MDR00214295).

Bonds Process Summary Document:

Bonds Process Summary Document (MDR00211057).

Surge Witness Statements:

Witness Statement of Paul Careless.

Witness Statement of Kerry Venn.

RP Digital Bank Statement and Invoices:

RP Digital Bank Statement for period of 5 December 2015 – 4 January 2016 (SUR00009475).

RP Digital Invoice 1016 (SUR00004079).

RP Digital Invoice 1019 (SUR00004140).

RP Digital Invoice 1020 (SUR00004244).

RP Digital Invoice 1022 (SUR00004308).

B. Other Documents Relied Upon:

“Second Supervisory Notice”, dated 17 January 2019 (Exhibit - 1).

“CDLI Snapshot”, dated 30 June 2023 (Exhibit - 2).

Ares Capital Corporation Website, available at: <https://www.arescapitalcorp.com/> (Exhibit - 3).

Ares Capital Corporation, “Investor Presentation, Quarter Ended March 31, 2022” (Exhibit - 4).

“LCF – Appointment of An Administrator”, dated 18 February 2019, available at: <https://find-and-update.company-information.service.gov.uk/company/08140312/filing-history> (Exhibit - 5).

“Blackmore – Appointment of an administrator”, dated 7 May 2020, available at: <https://find-and-update.company-information.service.gov.uk/company/10273135/filing-history> (Exhibit - 6).

“First Northbridge – Appointment of an administrator”, dated 8 June 2020, available at: <https://find-and-update.company-information.service.gov.uk/company/11446347/filing-history> (Exhibit - 7).

Insight Discovery, “Lifting the lid on the mysterious world of third party marketing” (Exhibit - 8).

Sondhelm Partners, “Third-Party Marketers and Placement Agents: A Boutique Asset Managers’ Path to Raising Capital”, dated 18 October 2022 (Exhibit - 9).

“Vanguard Investments Funds ICVC Prospectus”, dated 31 July 2023 (Exhibit - 10).

“Vanguard Investments Series Plc Prospectus”, dated 1 August 2023 (Exhibit - 11).

“All Funds _ Vanguard UK Investor”, available at: <https://www.vanguardinvestor.co.uk/what-we-offer/all-products> (Exhibit - 12).

“Vanguard - How can we help”, available at: <https://www.vanguardinvestor.co.uk/need-help> (Exhibit - 13).

“Vanguard - Our team”, available at: <https://www.vanguard.co.uk/professional/contact-us/advisers> (Exhibit - 14).

“Vanguard - Active Fixed Income Funds”, available at: <https://www.vanguard.co.uk/professional/product> (Exhibit - 15).

Financial Conduct Authority (FCA), “Asset Management Market Study, Interim Report”, dated November 2016 (Exhibit - 16).

AON, “Direct Lending: An Investment Opportunity Within Private Debt”, dated March 2018 (Exhibit - 17).

“Carlyle Tactical Private Credit Fund, Prospectus”, dated 28 April 2023 (Exhibit - 18).

Carlyle Tactical Private Credit Fund Website, available at: <https://www.carlyle.com/fund> (Exhibit - 19).

Callan, “Our First Private Credit Fees and Terms Study: What We Found in 2023”, dated 6 July 2023 (Exhibit - 20).

Cliffwater, “Cliffwater 2023 Study on Private Fund Fees & Expenses for Direct Lending”, dated 18 April 2023 (Exhibit - 21).

Brealey, Myers and Allen, “Principles of Corporate Finance”, 9th edition (Exhibit - 22).

“Report of the Independent Investigation into the Financial Conduct Authority’s Regulation of London Capital & Finance plc”, dated 23 November 2020 (Exhibit - 23).

The Irish Times, “Lavish salaries, large directors loans’ at liquidated Dolphin International Group”, dated 14 March 2021 (Exhibit - 24).

Business Post, “Defendants in Dolphin Trust-linked cases set for mediation”, dated 6 September 2023 (Exhibit -25).

Cliffwater Direct Lending Index Website, available at: <https://www.cliffwaterdirectlendingindex.com/> (Exhibit - 26).

APPENDIX IV

Table IV.1
Bond Series Summary

Bond Series	Sold Period	Principal Amount¹	Term	Coupon (per Annum)	Payment Frequency	Required Rate of Return²
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Series 1 Bonds	2013	£ N/A	N/A	N/A %	N/A	N/A %
Series 2 Bonds	Sep 2013 - Jan 2016	N/A	1, 2 and 3 years	8.50	Quarterly	21.8 ^{10,11}
Series 3 Bonds	Dec 2015 - Oct 2018	25,000,000	1 year	3.90	Payable on redemption	41.8
Series 4 Bonds	Nov 2015 - Dec 2018	25,000,000	2 years	6.50	Semi annually	25.3
Series 5 Bonds	Dec 2015 - Feb 2017	25,000,000	3 years	8.00	Quarterly	21.5
Series 6 Bonds	Feb 2016 - Dec 2018	25,000,000	2 years	6.50 ⁴	Payable on redemption	25.4 ¹²
Series 7 Bonds	Jan 2016 - Dec 2018	25,000,000	3 years	8.00 ⁵	Payable on redemption	21.0 ¹²
Series 8 Bonds	Feb 2017 - Sep 2017	25,000,000	3 years	8.00	Quarterly	21.5
Series 9 Bonds	Feb 2014 - Sep 2015	700,000	5 years ³	11.00	Annually ⁶	21.4 ¹³
Series 10 Bonds	Aug 2017 - Dec 2018	50,000,000	3 years	8.00	Quarterly ⁷	21.5
Series 11 Bonds	Jun 2018 - Dec 2018	50,000,000	5 years	8.95	Annually ⁸	18.1 ¹⁴
Series 1 ISA Bonds	Dec 2017 - Jul 2018	50,000,000	3 years	8.00	Quarterly ⁹	21.5
Series 2 ISA Bonds	Dec 2017 - Dec 2018	50,000,000	2 years	6.50	Semi annually ⁹	25.3
Series 3 ISA Bonds	Jun 2018 - Dec 2018	50,000,000	5 years	8.95	Annually ⁸	18.1 ¹⁵
Series 4 ISA Bonds	Jun 2018 - Dec 2018	50,000,000	3 years	8.00	Quarterly	21.5

Notes and Sources:

Information obtained from each LCF Series Information Memorandum, Surge Fee Allocation Sheet (MDR00201706),

and "Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc", dated 23 November 2020 (Exhibit - 23).

Bond Series 9 is not included in the Surge Fee Allocation Sheet (MDR00201706) and Information Memorandum is not available.

Sold period is based on information included in the "Report of the Independent Investigation into the Financial Conduct Authority's Regulation of London Capital & Finance plc", dated 23 November 2020 (Exhibit - 23).

¹ Maximum principal amount to be issued.

² Annualised rate of return. This is calculated using the following (a) the earliest Settlement Date (column 2), (b) Maturity (column 4), (c) Coupon rate (column 5) plus the lender's interest of 1.75%, (d) Frequency (column 6), and (e) Price, calculated as redemption value net of Costs of Funds (25% unless otherwise stated) and Collection Costs (0.5% unless otherwise stated).

³ Under the terms of the Series 9 Bonds, a holder of the Series 9 Bonds can require LC&F to redeem all (but not some) of their Series 9 Bonds early at any time on or after 3 September 2017.

⁴ Interest accrued during the preceding year is compounded on the one-year anniversary of the date the relevant Series 6 Bond was issued.

⁵ Interest accrued during the preceding year is compounded on the one-year anniversary, and the two-year anniversary, of the date the relevant Series 7 Bond was issued.

⁶ Paid annually on each issuance anniversary date.

⁷ Payment frequency as shown in Surge Fee Allocation Sheet (MDR00201706) because the Series 10 – Information Memorandum (MDR_ST_00145654) contains conflicting information.

⁸ Paid annually on 5th April.

⁹ Payment frequency as shown in Surge Fee Allocation Sheet (MDR00201706) because the Series ISA 1,2,3 and 4 Information Memoranda contain conflicting information.

¹⁰ The Surge Fee Allocation Sheet (MDR00201706) does not provide a breakdown of the Cost of Funds and the Collection Cost for the Series 2 Bonds.

However, given that it shows that the net amount available to lend is 75%, I assume that the Cost of Funds is 25% and that the Collection Cost is 0%.

¹¹ The yield calculation assumes a three-year term because the majority of the Series 2 bonds issued have a term of three years.

¹² The interest accrued during the preceding year for the Series 6 Bonds is compounded on the one-year anniversary of the issuance date.

Similarly, the interest accrued during the preceding year for the Series 7 Bonds is compounded on the one-year and two-year anniversary of the issuance date.

Therefore the Internal Rate of Return (IRR) is used for these two bond series.

¹³ The Surge Fee Allocation Sheet (MDR00201706) does not provide any information for the Series 9 Bonds.

Therefore I assume that, as with most of the other series, the Cost of Funds is 25%. I assume, to be conservative, that the Collection Cost is 0%.

¹⁴ Cost of Funds for Series 11 Bonds is 22.5% as shown in the Surge Fee Allocation Sheet (MDR00201706).

¹⁵ Cost of Funds for Series 3 ISA Bonds is 22.5% as shown in the Surge Fee Allocation Sheet (MDR00201706).