ARM ASSET BACKED SECURITIES S.A.
(IN PROVISIONAL LIQUIDATION)

ORDER OF MR JUSTICE SNOWDEN
Made at the Directions Hearing on 16 December 2015

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ARM ASSET BACKED SECURITIES S.A.
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SUMMARY OF ORDER OF MR JUSTICE SNOWDEN

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ARM Asset Backed Securities S.A. (In Provisional Liquidation)

s.168 Application: Summary of Order made at the Directions Hearing on 16 December 2015

We set out below a summary of the Order of Mr Justice Snowden dated 16 December 2015 (attached) made at the directions hearing that took place on 16 December 2015 in connection with the s.168 Application issued by the Provisional Liquidators.

1. Appointment of representative parties

1.1 Gordon Pullan (as the "First Respondent") was appointed to represent the Non-Pending Bondholders in the s.168 Application.

1.2 Walter Pisarski (as the "Second Respondent") was appointed to:

(a) represent the Pending Bondholders in the s.168 Application; and

(b) represent the Pending Bondholders who would benefit from a rateable distribution from any trust of the Pending Monies.

1.3 The Provisional Liquidators (as the "Applicants") were appointed to represent the Pending Bondholders who would benefit from a distribution from any trust of the Pending Monies on the basis of the "first in, first out" rule in *Devaynes v Noble, Clayton's Case* (1816) 35 ER 781. On this basis, the earliest of the Pending Bondholders would lose out to the benefit of the later ones.

2. Orders pursuant to section 234 of the Insolvency Act

2.1 Mr Justice Snowden ordered for the transfer of the Pending Monies held by SLC Registrars Limited ("SLC") and Squaremile Registrars Limited ("Squaremile") to the Provisional Liquidators, to be held by the Provisional Liquidators pending the determination of the Application.

2.2 The transfer, which we anticipate will take place by the end of January 2016, will be effected with the assistance and cooperation of SLC, Squaremile and the Financial Conduct Authority. The transfer will be without prejudice to the rights of any party to the Pending Monies held by SLC and Squaremile and/or the beneficial interests of any party, pending the final determination of the Application.

3. Timetable to trial

3.1 Mr Justice Snowden made the following directions to trial:

DATE - 2016	Event
12 February	First and Second Respondents' Position Papers filed
11 March	Applicants' Position Paper filed
22 April	Last date for the First and Second Respondents' experts' without prejudice meeting
6 May	Supplemental Position Papers filed by the First and Second Respondents on all parties to the Application
24 June	Last opportunity for all parties to the Application to file witness evidence
8 July	Experts reports filed by First and Second Respondents
22 July	Experts' statement of agreed issues filed by the First and Second Respondents
12 August	Applicants' expert report filed, if so advised
26 August	Last date for questions on experts' reports

DATE - 2016	Event
16 September	Experts to serve replies to questions
7 October	Further Supplemental Position Papers filed by all parties
Dependent on date of PTR	Draft directions and case summary filed by the Applicants
Dependent on hearing date	Pre-trial review
Dependent on hearing date	Respondents' skeleton arguments filed
Dependent on hearing date	Applicants' skeleton argument filed
Dependent on hearing date	Supplemental skeleton arguments filed (if required)
After 1 December 2016	Substantive hearing to be listed on the first available date after 1 December 2016. Hearing estimated to be 8-10 days.

3.2 By reference to the availability of the parties' Counsel, the substantive hearing has now been listed to be heard in a five day window from 27 February 2017 with a time estimate of 8-10 days.

3.3 The timetable above does not include the ranking issue. The PLs are hoping that the application to include the ranking issue in the s.168 Application will be issued as soon as possible and that the directions will converge with the timetable above. The PLs believe that the 8-10 day estimate provides adequate time for the ranking issue to be heard and determined.

ARM ASSET BACKED SECURITIES S.A.
(IN PROVISIONAL LIQUIDATION)

ORDER OF MR JUSTICE SNOWDEN
Made at the Directions Hearing on 16 December 2015

COURT SEALED ORDER OF MR JUSTICE SNOWDEN

13 PAGES

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 6914 of 2013

MR JUSTICE SNOWDEN
WEDNESDAY 16 DECEMBER 2015

IN THE MATTER OF ARM ASSET BACKED SECURITIES S.A.
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

B E T W E E N:

(1) MARK JAMES SHAW
(2) MALCOLM COHEN

Applicants

- and -

(1) GORDON WAITE PULLAN
(2) WALTER JURGEN PISARSKI
(3) SLC REGISTRARS LIMITED
(4) SQUAREMILE REGISTRARS LIMITED
(5) CATALYST INVESTMENT GROUP LIMITED

Respondents

ORDER FOR DIRECTIONS

UPON the Application of Mark James Shaw and Malcolm Cohen (the "**Applicants**" and the "**Provisional Liquidators**"), the Provisional Liquidators of ARM Asset Backed Securities S.A. ("**ARM**") by Application Notice dated 20 November 2015

AND UPON the Applicants and the First and Second Respondents seeking directions for the case management and hearing of the Application

AND UPON reading the First Witness Statement of Mark James Shaw dated 20 November 2015

AND UPON hearing Felicity Toube QC and Stephen Robins for the Applicants, Marcia Shekerdemian QC for the First Respondent, and Mark Arnold QC for the Second Respondent

AND UPON reading letters submitted to the Court by the Third and Fourth Respondents and from the Financial Conduct Authority

IT IS ORDERED THAT:

A. Appointment of Representative Parties

1. The First Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the Non-Pending Bondholders as defined in Schedule 1.

2. The Second Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent:

   (a) the Pending Bondholders as defined in Schedule 1; and

   (b) those of the Pending Bondholders who would wish the rights of beneficiaries of any trust of the Pending Monies (as defined in Schedule 1) to be ascertained rateably by reference to their relative contributions.

3. The Applicants be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of those of the Pending Bondholders who would wish the beneficiaries of any trust of the Pending Monies to be ascertained on the basis of *Clayton's Case*.

B. Transfer of the Pending Monies

4. Pursuant to section 234 of the Insolvency Act 1986 SLC Registrars Limited shall transfer the sums of £9,610,573.26, €1,643,316.30 and $192,387.29 currently held in the name of SLC Registrars Limited in accounts at HSBC Bank plc, to the Provisional Liquidators, to be held by the Provisional Liquidators on the same terms as currently held by SLC Registrars Limited and without prejudice to the rights of any party thereto and/or the beneficial interests of any party therein, pending the final determination of this Application.

5. Pursuant to section 234 of the Insolvency Act 1986 Squaremile Registrars Limited shall transfer the sums of £2,237,301.21, €3,802,541.30 and $374,990.54 currently held in the name of Squaremile Registrars Limited in accounts at HSBC Bank plc, to the Provisional Liquidators, to be held by the Provisional Liquidators on the same terms as currently held by Squaremile Registrars Limited and without prejudice to the rights of any party thereto and/or the beneficial interests of any party therein, pending the final determination of this Application.

6. Upon SLC Registrars Limited having transferred the said sum of £9,610,573.26, €1,643,316.30 and $192,387.29 to the Provisional Liquidators, SLC Registrars Limited be removed as a Respondent to this Application.

7. Upon Squaremile Registrars Limited having transferred the said sum of £2,237,301.21, €3,802,541.30 and $374,990.54 to the Provisional Liquidators, Squaremile Registrars Limited be removed as a Respondent to this Application.

C. Case Management Directions

Position papers

8. The First and Second Respondents shall by 4.00pm on 12 February 2016 each serve on all other parties to the Application a position paper (respectively the "**First Respondent's Position Paper**" and the "**Second Respondent's Position Paper**") setting out its respective position in relation to each of the questions to be determined by the Application, as set out in the witness statement of Mark James Shaw dated 20 November 2015.

9. The Applicants shall be at liberty to serve by 4.00pm on 11 March 2016 on all other parties to the Application a position paper (the "**Applicants' Position Paper**").

10. The First Respondent shall by 4.00pm on 6 May 2016 serve on all parties to the Application a supplementary position paper setting out its response to the Second Respondent's Position Paper and addressing the points contained in the Applicants' Position Paper.

11. The Second Respondent shall by 4.00pm on 6 May 2016 serve on all parties to the Application a supplementary position paper setting out its response to the First Respondent's Position Paper and addressing the points contained in the Applicants' Position Paper.

12. The Applicants and the First and Second Respondents shall be at liberty by 4pm on 7 October 2016 to serve on all other parties to the Application a further supplemental position paper, if so advised.

Witness statements

13. The parties to this Application shall be at liberty to serve by 4.00pm on 24 June 2016 on all parties to this Application factual witness statements.

Experts and expert reports

14. The First and Second Respondents have permission to put in evidence and call as expert witnesses in relation to relevant aspects of Luxembourg law, respectively Mr Jean-Paul Spang of Kleyr Grasso and Mr Franz Fayot (the "**Luxembourg Experts**").

15. The Luxembourg Experts will be required to give evidence as to the Luxembourg law relating to (i) trust and proprietary claims; (ii) contracts for and the formalities of issuing bonds in Luxembourg; (iii) the contractual position relating to the bonds; (iv) liquidation and the pari passu rule in Luxembourg; and (v) conflicts of law issues, in each case as set out in Schedule 2.

16. The Luxembourg Experts shall, no later than 4.00 pm on 22 April 2016 meet to identify and discuss the Luxembourg law issues in the proceedings and, where possible, reach an agreed opinion on such issues.

17. The Luxembourg Experts shall, no later than 4.00pm on 8 July 2016 file and serve their expert reports.

18. The Luxembourg Experts shall, no later than 4.00pm on 22 July 2016 file and serve a statement for the court setting out those issues on which they are agreed and those with which they disagree and a summary of their reasons for disagreeing.

19. The Applicants have permission to put in evidence and call a Luxembourg law expert witness if so advised to give evidence on any Luxembourg law issues which have not been addressed by the Luxembourg Experts and/or to draw the attention of the Court to any additional relevant matters (the "**Additional Expert**").

20. Any report by an Additional Expert on behalf of the Applicants shall be filed and served on the parties by 12 August 2016.

21. The parties to the Application are to serve any written questions on the Luxembourg Experts and the Additional Expert (if any) by 26 August 2016 and the Luxembourg Experts and the Additional Expert shall file and serve the answers to such questions by 16 September 2016.

Skeleton arguments and trial bundles

22. Not later than 14 days before the date of the substantive hearing of the Application, the First and Second Respondents shall each lodge at court and serve on all other parties to the Application a skeleton argument.

23. Not later than 7 days before the date of the substantive hearing of the Applicants' Application, the Applicants will lodge at court and serve on all other parties a chronology and dramatis personae and (if so advised) a skeleton argument.

24. Not later than 3 days before the date of the substantive hearing of the Application, the First and Second Respondents may (if so advised) each lodge at court and serve on all other parties to the Application a supplemental skeleton argument.

25. Skeleton arguments on behalf of the parties to this Application shall be filed at Court with the Chancery Judges' Listing Office. If so advised by the Court, the parties shall also send their skeleton arguments to the Court by email, to an email address stipulated by the Court.

26. Skeleton arguments shall comply with Appendix 7 to the Chancery Guide.

27. The parties shall agree an Index to the trial bundle not later than 21 days before the date fixed for the substantive hearing of the Application. Not earlier than 7 days and later than 3 days before the date fixed for the date of the substantive hearing of the Application, the Applicants shall file with the Chancery Listing Office a trial bundle for the use of the Judge in accordance with Appendix 6 of the Chancery Guide.

Listing/trial window

28. The hearing of the Application shall be listed for hearing before a Judge on the first available date after 1 December 2016, with a time estimate of 8-10 days including reading-in time (the "trial window").

29. The Applicants shall make an appointment to attend on the Chancery Listing Officer to fix a trial date within the trial window, such appointment to be not later than 7 days after the Court has ordered the trial window and notice of the appointment shall be given to all other parties to this Application.

Pre-trial review

30. Pre-trial directions are as follows:

    (a) There will be a pre-trial review at least 3 weeks before the trial window starts, such pre-trial review to be arranged by the Chancery Listing Officer in conjunction with the parties to this Application with a time estimate of 2 hours to be heard by the trial Judge if possible.

(b) At least 3 clear days before the pre-trial review the Applicants must file and send to the other parties to the Application, preferably agreed and by email:

(i) draft directions; and

(ii) a case summary.

Liberty to apply

31. Each party shall be at liberty to apply for further directions.

Costs

32. The costs of this Application including the reasonable costs incurred by the First and Second Respondent (to be agreed, or assessed on the indemnity basis) and of the Luxembourg Experts shall be payable as an expense of the provisional liquidation. Neither of the Respondents shall seek an order that their costs be paid by the other Respondent, or by the Provisional Liquidators personally, or by ARM (save to the extent set out in the Representative Beneficiary Agreement between the parties dated 13 February 2015 (the "**RBA**")). The Provisional Liquidators agree that, unless a Respondent acts in material breach of the RBA, or otherwise conducts this Application manifestly unreasonably, ARM shall not seek an order that either Respondent pay any of the Provisional Liquidators' costs of this Application.

Service of the order

The Court has provided a sealed copy of this order to the serving party:

Akin Gump LLP (ref: Sheena Buddhdev)

41 Lothbury

London EC2R 7HF

Schedule 1

Defined Term	Definition
Non-Pending Bondholders	Investors who subscribed for bonds issued by ARM in the period from 2006 to 31 August 2009
Pending Bondholders	Investors who subscribed for bonds scheduled to be issued by ARM in the period from 1 September 2009 to 1 July 2010
Pending Monies	Subscription monies paid by Pending Bondholders which are currently held in the accounts of Jarvis Investment Management Limited, Squaremile Registrars Limited and SLC Registrars Limited

Schedule 2

Agreed questions for Luxembourg Experts

Trusts and Proprietary Claims

1. What are the characteristics of an *in rem* right (droit réel) and in what circumstances can such a right arise?

2. Is money or cash at the bank capable of being the subject of any rights in rem?

3. What are the characteristics of an *in personam* right (droit personnel)?

4. Does Luxembourg law recognise any distinction between legal ownership and beneficial ownership and if so in what circumstances?

5. Is there such a thing as a "trust" in Luxembourg law and if so, how is a trust constituted and what are its essential characteristics?

6. Please explain and give examples of the circumstances in which a claimant might have a proprietary claim to specific assets giving him priority over creditors?

7. Our understanding is that Luxembourg law recognises a fiduciary contract, namely an agreement whereby a fiduciant (principal) agrees with a fiduciary that, subject to the obligations decided by the parties, the fiduciary becomes the owner of assets which shall then form a fiduciary property (article 5 of the Luxembourg Law of 27 July 2003).

   Could ARM be described as a "fiduciaire" for any investor in the period between payment by the investor for the bond and the point at which the bond is issued?

   (i) If so, why?

   (ii) If not why not?

Contracts (general)

8. How is a contract formed under Luxembourg law?

9. How are the terms of a contract proved under Luxembourg Law?

10. What is a *contrat réel* and what is the difference (if any) between a *contrat réel* and a collective loan agreement?

11. What, if any, formalities apply in the case of a contract entered into by a company?

Contracts for the issue of Bonds

12. What is the nature of a contract for the issue of bonds?

    (i) Is it a collective loan agreement and, if so, why?

    (ii) Is it a subscription agreement and, if so, why?

13. Will a contract for the issue of bonds be a collective loan agreement even if no bond is issued (the subscription money having been paid)?

    (i) If so, why?

    (ii) If not, why not?

14. Will a contract for the issue of bonds be a subscription agreement even if no bond is issued (the subscription money having been paid)?

    (i) If so, why?

    (ii) If not, why not?

15. What would the "debt instrument" be in a collective loan agreement?

16. Do you consider that:

    (i) the Pending Bondholders may have obtained an interest in a collective loan agreement and if so, what is the nature and extent of that interest? If not, why not?

    (ii) The Non-Pending Bondholders also obtained an interest in a collective loan agreement and if so, what is the nature and extent of that interest? If not, why not?

Formalities for the issue of Bonds

17. Please briefly describe the typical process by which an issue of bonds is made, starting with (for example) the corporate decision to issue the bonds and ending with the formalities of and consequential upon their issue.

18. Our understanding is that the 1915 Company Law governs the issue of bonds. What types of bond can be created under that law and in each case what are their essential characteristics?

19. In the case of each type of bond what would be sufficient evidence under Luxembourg law of:

    (i) the issue of a bond to an investor;

    (ii) the investor's title to (ownership of) that bond?

20. Does the 1915 Company Law (or any other law) require the issue of a bond to be contained in or evidenced by any particular instrument or in any particular form and if so what instrument and/or in what form?

21. If no such instrument/form has been issued, can the issue and existence of the bond be proved by other evidence and if so what evidence?

22. Some of the Pending Bondholders received interest on their investment. Would the payment of interest to an investor be evidence of the issue of a bond and if not why not?

The Relationship between the Issuer of Bonds and the Investor

23. If an investor has not been issued with a bond but has paid the subscription price to the issuer, is there a contract between the investor and the issuer? If so:

    (i) How is that contract characterised?

    (ii) Is that contract a *contrat réel*, the investor (or lender) having completed his obligation under the contract by making the relevant advance?

    (iii) Is that contract a collective loan agreement?

    (iv) Is that contract a subscription agreement?

    (v) How would the terms of that contract be ascertained?

24. Is the proper characterisation of the contractual relationship between the investor and the issuer that of creditor and debtor, whether or not a bond has in fact been issued to the investor?

25. Once an investor has remitted funds to the Issuer, does it follow that the latter is then contractually obliged to issue the bond, failing which it will be in breach of contract?

26. In those circumstances:

(i) What is the investor's remedy, whether under Article 98 of the 1915 Company Law (if applicable) or otherwise?

(ii) In particular, is the investor entitled simply to demand his money back, or does there have to be an intervening act, such as formal termination or rescission or annulment of the contract (whether by the Issuer or by the Court)?

(iii) Does the investor have a direct *in rem* claim to be repaid the money he paid, or does he simply have an *in personam* claim for reimbursement?

(iv) Does the investor in any circumstances have a proprietary right (that is to say a right of ownership to any particular fund or to any funds in any bank account into which his subscription monies were paid) entitling him to payment out of that fund or bank account ahead of other claimants? Or is the Investor's claim an ordinary claim in debt and/or damages, ranking equally with the claims of all other investors?

(v) What would the position be where the money paid by the investor has been mixed with money paid by other investors?

27. Is an issuer of bonds under any circumstances obliged to bank subscription monies paid by investors in any segregated or other specially designated bank account? If so, in what circumstances?

Regulatory Considerations

28. What is the function and purpose of Luxembourg Securitisation Law of 22.3.2004?

29. Are there any regulations which regulate the way in which monies paid over to a securitization company by investors should be handled, accounted for and banked? Does it make any difference if such monies are banked outside Luxembourg?

30. If ARM represented itself as being a licensed securitisation vehicle – would this give any investor any claim or claims against ARM and if so, what claims? In answering this question please have particular regard:

(i) to the availability of the remedy of rescission in relation to any contract entered into between ARM and any investor;

(ii) to the availability of any other remedy which might have the consequence of avoiding or terminating any such contract;

(iii) to the distinction between *erreur* and *dol* and the remedies for each;

(iv) liability under the Luxembourg law on prospectuses for securities dated 10 July 2005.

The contracts between ARM and the Bondholders (Pending and Non-Pending)

31. Having regard to your answer to question 23 and by reference to the documents you have seen and the information with which you have been provided, please identify each document and any act which you consider to be a component of that contract (for example those that evidence offer and acceptance) and those documents that you do not consider to have been a component of the contract (for example, documents amounting to advertisements or invitations or promotions).

32. If any of the Pending Bondholders signed and returned subscription applications and/or application forms (in a form similar to the attached sample) together with their payment, would the terms and conditions referred to in that application be incorporated into the contract between the Pending Bondholders and ARM?

33. If the Non-Pending Bondholders also signed and returned subscription applications and/or application forms (in similar form), together with their payment, is there any material difference between the contractual relationship as between ARM and the Pending Bondholders and the contractual relationship as between ARM and the Non-Pending Bondholders?

34. You have been supplied with a copy of the Base Prospectus and a copy of the Series Prospectus. What is the status in law of these prospectuses? In what circumstances (if any) can the contents (or any part of the contents) of a prospectus form the terms of any subsequent contract between the issuer of the prospectus and the investor?

35. If the Pending Bondholders and / or the Non-Pending Bondholders had available to them a copy of that prospectus before applying for their bonds, in what circumstances (if any) would the terms and conditions set out in that prospectus govern the relationship between ARM and the Pending Bondholders and / or the Non-Pending Bondholders?

36. Please consider the "limited recourse" provisions contained in conditions 3.1, 10 and 14 of the Base Prospectus. In circumstances where no bonds have been issued, what is the consequence for the operation of these limited recourse provisions?

37. In circumstances where bonds have been issued, what is the consequence for the operation of the limited recourse provisions?

38. If any of the Non-Pending Bondholders obtain the rescission or termination of their contract with ARM, whether for *dol*, *erreur* or any other reason, will they continue to be bound by the limited recourse provisions?

39. Is there any difference in the remedies available to:

    (i) Those Pending Bondholders who have signed subscription agreements and/or application forms containing limited recourse provisions but who have not been issued with bonds; and

(ii) Those Non Pending Bondholders who have signed subscription agreements and/or application forms containing limited recourse provisions and have been issued with bonds if there is no asset underpinning that issue of bonds?

40. Can the operation of the "limited recourse" provisions be avoided in any circumstances by the Non-Pending Bondholders, including, but not limited to:

(i) In what circumstances may a contract be rescinded, annulled or terminated?

(ii) If the contract may be rescinded, annulled or terminated, what is the consequence (if any) for the operation of the limited recourse provisions?

(iii) What is the consequence for the operation of the limited recourse provisions of (a) any illegality underlying ARM's business; or (b) the sale by ARM of its bond portfolio to FCIL?

Liquidation in Luxembourg

41. If the English Court was to order the Pending Monies to be paid to the Pending Bondholders, to what extent (if at all) would this prejudice any claims that the Non Pending Bondholders might have under Luxembourg Law, including any claims for rescission or termination of their contracts with ARM?

Conflicts

42. How is the proper law of a contract determined under Luxembourg law and, applying those principles, what do you consider to be the proper law of the contract (if any) between ARM and the Pending Bondholders and / or the Non-Pending Bondholders?

43. Assuming that ARM and the Pending Bondholders did enter into a binding contract containing a valid express choice of Luxembourg law clause and on the basis that Luxembourg law neither recognises the existence of a trust, nor permits any claim in rem over money:

(i) What is the consequence (if any) under Luxembourg Law of the Pending Monies having been paid to and held in bank accounts in England, where trusts and in rem claims to money are recognised?

(ii) In what circumstances, if any, would English trust law oust the operation of Luxembourg law?

In answering this question please have regard in particular to the provisions of the Hague Convention on the Recognition of Trusts.

ARM ASSET BACKED SECURITIES S.A.
(IN PROVISIONAL LIQUIDATION)

ORDER OF MR JUSTICE SNOWDEN
Made at the Directions Hearing on 16 December 2015

APPLICATION NOTICE

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Rule 7.3

IN THE MATTER OF THE INSOLVENCY ACT 1986

Form 7.1A

Application Notice

Name of company or debtor/bankrupt	Company number
ARM ASSET BACKED SECURITIES S.A.	B 111.830
In the HIGH COURT OF JUSTICE, CHANCERY DIVISION, COMPANIES COURT	*For court use only* Court case number:

Type of insolvency proceeding: Provisional Liquidation

Between
Applicant

MARK JAMES SHAW AND MALCOLM COHEN (JOINT PROVISIONAL LIQUIDATORS OF ARM ASSET BACKED SECURITIES S.A.)

and
Respondent

(1) GORDON WAITE PULLAN
(2) WALTER JURGEN PISARSKI
(3) SLC REGISTRARS LIMITED
(4) SQUAREMILE REGISTRARS LIMITED
(5) CATALYST INVESTMENT GROUP LIMITED

Take notice that an appointment to fix a date for the Application has been made:
Date: 3/12/15
Time: 11am
In Interview Room 2 Ground Floor Rolls Building London EC4A 1NL

Is this application in insolvency proceedings which are already before the court?:

YES/NO: YES

If YES, please provide-

Court reference number for the pending proceedings to which this application relates

6914 of 2013

We, Mark James Shaw and Malcolm Cohen of 55 Baker Street, London, WIU 7EU

Intend to apply to the Judge on:-

Date

Time _____ hours

Place _____

_____

301400996

For relief in the following terms:

NOTE: In this Application Notice, capitalised terms have the meanings set out in Schedule 1 hereto unless defined herein.

1. An Order pursuant to section 234 of the Insolvency Act 1986 requiring SLC Registrars Limited to transfer the sums of £9,610,573.26, €1,643,316.30 and $192,387.29 currently held in the name of SLC Registrars Limited in accounts at HSBC Bank plc, to the Provisional Liquidators, to be held by the Provisional Liquidators without prejudice to the rights of any party thereto and/or the beneficial interests of any party therein, pending the final determination of this Application.

2. An Order pursuant to section 234 of the Insolvency Act 1986 requiring Squaremile Registrars Limited to transfer the sums of £2,237,301.21, €3,802,541.30 and $374,990.54 currently held in the name of Squaremile Registrars Limited accounts at HSBC Bank plc, to the Provisional Liquidators, to be held by the Provisional Liquidators without prejudice to the rights of any party thereto and/or the beneficial interests of any party therein, pending the final determination of this Application.

3. An Order that, upon SLC Registrars Limited having transferred the said sums of £9,610,573.26, €1,643,316.30 and $192,387.29 to the Provisional Liquidators, SLC Registrars Limited be removed as a Respondent to this Application.

4. An Order that, upon Squaremile Registrars Limited having transferred the said sums of £2,237,301.21, €3,802,541.30 and $374,990.54 to the Provisional Liquidators, Squaremile Registrars Limited be removed as a Respondent to this Application.

5. An Order that the First Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of the Non-Pending Bondholders.

6. An Order that the Second Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of the Pending Bondholders.

7. Pursuant to section 168 of the Insolvency Act 1986, determination by the Court of the following questions arising in the provisional liquidation of ARM:

   (1) **CASS 7.7.2 Trust**

   (a) Do the client money rules in CASS 7 apply to Pending Monies received from Pending Bondholders (the "**Jarvis Pending Monies**")

by Jarvis Investment Management Limited?

(b) Are the Pending Monies received from Pending Bondholders and held by SLC Registrars Limited and/or by Squaremile Registrars Limited (the "**SLC Pending Monies**" and the "**Squaremile Pending Monies**" respectively) to be treated as having been received and/or held by Catalyst Investment Group Limited and, if so, do the client money rules in CASS 7 apply to them?

(c) If the client money rules in CASS 7 apply to the Jarvis Pending Monies and/or the Squaremile Pending Monies and/or the SLC Pending Monies, is there a statutory trust over those sums (or any of them) by virtue of CASS 7.7.2R?

(d) If there is a statutory trust of those sums (or any of them), who is/are the beneficiar(y)(ies) of that trust or those trusts?

(2) **Pending Monies Trust:**

(a) What law governs the question of whether or not a non-statutory trust arises over the Pending Monies (the "**Applicable Law**")?

(b) Under the Applicable Law, are the Pending Monies held on trust for the Pending Bondholders by ARM, and if so what are the terms, effect, and extent of that trust?

(c) If the answer to question 2(b) is "yes":

(i) do the beneficiaries of that trust (the "**Beneficiaries**") have a claim for any shortfall from the trust assets against any general assets held by ARM?

(ii) should the Beneficiaries account for and/or net off any interest or other payments received from ARM prior to ARM's provisional liquidation?

(d) If the answer to questions 2(b) is "no" (and subject to the answer to question 4(b), (c) and (d) below), do the Pending Monies form part of the ARM estate for the benefit of creditors generally?

(3) **Pending Bondholder Claims**:

(a) If the answer to question 2(b) above is "no", do the Pending

Bondholders have a claim against ARM in contract?

(b) If the answer to question 3(a) is "yes", are the contractual claims of the Pending Bondholders affected by limited recourse provisions in the terms and conditions of the Bonds (the "**LRP**") and what is the effect of the LRP?

(c) For any Pending Bondholders who have claims against ARM on the basis of misrepresentation, negligent misstatement or fraud (or their equivalent under foreign law) ("**Alternative Claims**"), will those Alternative Claims be affected by the LRP and if so how?

(d) If any Pending Bondholders have contractual claims or Alternative Claims against ARM, on what basis (if any) should they account for and/or net off any interest or other payments received from ARM?

(4) **Non-Pending Bondholder Claims:**

(a) For any Non-Pending Bondholders who have contractual claims or Alternative Claims against ARM, will those claims be affected by the LRP and if so how?

(b) Depending on the answers given to any part of question 4(a), are there any remedies available to the Non-Pending Bondholders (under English law or Luxembourg law) which would have the consequence or effect of setting aside or displacing the LRP?

(c) Is there any principle of English law or Luxembourg law which might operate so as to displace the LRP or render them unenforceable, whether as a matter of public policy or otherwise?

(d) What is the effect of the sale by ARM and the Trust to FCIL of ARM's portfolio of Life Policies on:

i. the contracts between the Non-Pending Bondholders and ARM;

ii. the LRP; and

iii. any contractual claims or Alternative Claims the Non-Pending Bondholders have against ARM?

(5) Distributions:

(a) Depending on the answers to the questions set out in the Application, in particular (1), (2) and (4) above:

i. should the beneficiaries' beneficial entitlements be identified on the basis of the rule in *Clayton's Case* or rateably by reference to their relative contributions; and

ii. should the Provisional Liquidators be permitted and directed to distribute any trust money and if so how?

8. An Order that in respect of 7(5) above, insofar as it relates to the rights of the Pending Bondholders among themselves as beneficiaries of any trust of the Pending Monies:

(a) The Provisional Liquidators be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of those of the Pending Bondholders who would wish the beneficiaries to be ascertained on the basis of *Clayton's Case*; and

(b) The Second Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of those of the Pending Bondholders who would wish the rights of beneficiaries to be ascertained rateably by reference to their relative contributions.

9. The Provisional Liquidators, the First Respondent and the Second Respondent have permission to adduce expert evidence on issues of Luxembourg law.

10. Such consequential directions as are appropriate.

11. Such further and/or other relief as the Court thinks fit.

12. An Order that the costs of this Application including the reasonable costs incurred by the First and Second Respondent (to be agreed or assessed on the indemnity basis) be paid as an expense of the Provisional Liquidation. Neither of the First or Second Respondents shall seek an order that their costs be paid by the other Respondent, or by the Provisional Liquidators personally, or by ARM (save to the extent set out in the Representative Beneficiary Agreement between the parties dated 13 February 2015).

The grounds on which the Applicants rely are set out in the witness statement of Mark James Shaw dated 20 November 2015 filed herein, a true copy of which is served herewith.

The names and addresses of the persons upon whom it is intended to serve this application are:-

(1) GORDON WAITE PULLAN:

Proskauer Rose LLP
110 Bishopsgate
London
EC2N 4AY
Ref: Mark Fennessy/Crispin Daly

(2) WALTER JURGEN PULLAN:

Thomas Eggar LLP
14 New Street
London
EC2M 4HE
Ref: Martin Cross/Thomas Barnard

(3) SLC REGISTRARS LIMITED

42-50 Hersham Road
Walton-On-Thames
Surrey
KT12 1RZ

(4) SQUAREMILE REGISTRARS LIMITED

40 Orsett Road
Grays
Essex
RM17 5EB

(5) CATALYST INVESTMENT GROUP LIMITED

68 Lombard Street
London
EC3V 9LJ

The Applicants' address for service is:

Akin Gump LLP, 41 Lothbury, London, EC2R 7HF (Ref: RH/SB)

Date 20 November 2015 Signed/authenticated

SHEENA BUDDHDEV
OF COUNSEL

Akin Gump LLP

If you do not attend, the court may make such order as it thinks just.

SCHEDULE 1

ARM	ARM Asset Backed Securities S.A.
Bonds	Asset-backed bonds issued by ARM
FCIL	Financial Credit Investment 1 D Trust, an entity which is part of the Apollo Global Management group and to whom ARM agreed to sell its portfolio of Life Policies on 2 November 2012
Life Policies	Life insurance policies which were purchased by ARM from the proceeds arising from the issuance or purported issuance of Bonds by ARM
Non-Pending Bondholders	Investors who subscribed for Bonds issued by ARM in the period from 2006 to 31 August 2009
Pending Bondholders	Investors who subscribed for Bonds scheduled to be issued by ARM in the period from 1 September 2009 to 1 July 2010
Pending Monies	Subscription monies paid by Pending Bondholders which are currently held in the accounts of Jarvis Investment Management Limited, Squaremile Registrars Limited and SLC Registrars Limited
Provisional Liquidators	Mark James Shaw and Malcolm Cohen of BDO LLP, 55 Baker Street, London W1U 7EU
The Trust	A Delaware statutory trust called ARM Institutional Investors Delaware Trust established by ARM to acquire the Life Policies

ARM ASSET BACKED SECURITIES S.A.
(IN PROVISIONAL LIQUIDATION)

ORDER OF MR JUSTICE SNOWDEN
Made at the Directions Hearing on 16 December 2015

7TH WITNESS STATEMENT OF MARK JAMES SHAW

86 PAGES

1. Filed on behalf of the Applicants
2. Witness statement
3. Exhibit: MS1
4. Filed: 20 November 2015

Nos. 6914 of 2013

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF ARM ASSET BACKED SECURITIES S.A.

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN:

(1) MARK JAMES SHAW
(2) MALCOLM COHEN

Applicants

- and -

(1) GORDON WAITE PULLAN
(2) WALTER JURGEN PISARSKI
(3) SLC REGISTRARS LIMITED
(4) SQUAREMILE REGISTRARS LIMITED
(5) CATALYST INVESTMENT GROUP LIMITED

Respondents

WITNESS STATEMENT OF MARK JAMES SHAW

I, **MARK JAMES SHAW**, of 55, Baker Street, London, England, W1U 7EU, **DO STATE** as follows:

1. I am a partner at the firm of BDO LLP of the above address ("**BDO**"). I am a chartered accountant in the United Kingdom and an authorised insolvency practitioner in both the United Kingdom and the Dubai International Financial Centre. I currently hold the role of Head of BDO's London Business Restructuring department.

2. By order of the English Court dated 9 October 2013, my colleague at BDO, Mr Malcolm Cohen, and I were appointed as the two joint provisional liquidators (the "**PLs**") of ARM Asset Backed Securities S.A., a *société anonyme* incorporated under the laws of the Grand Duchy of Luxembourg ("**ARM**" or the "**Company**").

3. I am duly authorised by Mr Cohen to make this witness statement on behalf of both of us in our capacity as the PLs.

4. I make this witness statement from matters within my own knowledge and belief, save where otherwise stated (in which instances I shall state the source of such knowledge and belief).

5. There is now produced and shown to me a bundle of true copy documents marked "**MS1**", to which I refer in the course of this witness statement. Unless otherwise stated, references to tab numbers in this witness statement are to the tabs of Exhibit "**MS1**".

6. I make this witness statement in support of the Applicants' application (the "**Application**") dated 20 November 2015 in their capacity as PLs, pursuant to sections 168 and 234 of the Insolvency Act 1986 (the "**Act**"), seeking the determination of the questions and the relief set out below (terms used are defined in the body of this witness statement):

A. Questions

(1) ***CASS 7.7.2R Trust***

(a) Do the client money rules in CASS 7 apply to Pending Monies received from Pending Bondholders (the "**Jarvis Pending Monies**") by Jarvis?

(b) Are the Pending Monies received from Pending Bondholders and held by SLC and/or by Squaremile (the "**SLC Pending Monies**" and the "**Squaremile**

Pending Monies" respectively) to be treated as having been received and/or held by CIGL and, if so, do the client money rules in CASS 7 apply to them?

(c) If the client money rules in CASS 7 apply to the Jarvis Pending Monies and/or the Squaremile Pending Monies and/or the SLC Pending Monies, is there a statutory trust over those sums (or any of them) by virtue of CASS 7.7.2R?

(d) If there is a statutory trust of those sums (or any of them), who is/are the beneficiar(y)(ies) of that trust or those trusts?

(2) ***Pending Monies Trust:***

(a) What law governs the question of whether or not a non-statutory trust arises over the Pending Monies (the "**Applicable Law**")?

(b) Under the Applicable Law, are the Pending Monies held on trust for the Pending Bondholders by ARM, and if so what are the terms, effect, and extent of that trust?

(c) If the answer to question 2(b) is "yes":

(i) do the beneficiaries of that trust (the "**Beneficiaries**") have a claim for any shortfall from the trust assets against any general assets held by ARM?

(ii) should the Beneficiaries account for and/or net off any interest or other payments received from ARM prior to ARM's provisional liquidation?

(d) If the answer to question 2(b) is "no" (and subject to the answers to questions 4(b), (c) and (d) below), do the Pending Monies form part of the ARM estate for the benefit of creditors generally?

(3) ***Pending Bondholder Claims:***

(a) If the answer to question 2(b) above is "no", do the Pending Bondholders have a claim against ARM in contract?

(b) If the answer to question 3(a) is "yes", are the contractual claims of the Pending Bondholders affected by limited recourse provisions in the terms and conditions of the Bonds (the "**LRP**") and what is the effect of the LRP?

(c) For any Pending Bondholders who have claims against ARM on the basis of misrepresentation, negligent misstatement or fraud (or their equivalent under foreign law) ("**Alternative Claims**"), will those Alternative Claims be affected by the LRP and if so how?

(d) If any Pending Bondholders have contractual claims or Alternative Claims against ARM, on what basis (if any) should they account for and/or net off any interest or other payments received from ARM?

(4) ***Non-Pending Bondholder Claims:***

(a) For any Non-Pending Bondholders who have contractual claims or Alternative Claims against ARM, will those claims be affected by the LRP and if so how?

(b) Depending on the answers given to any part of question 4(a), are there any remedies available to the Non-Pending Bondholders (under English law or Luxembourg law) which would have the consequence or effect of setting aside or displacing the LRP?

(c) Is there any principle of English law or Luxembourg law which might operate so as to displace the LRP or render them unenforceable, whether as a matter of public policy or otherwise?

(d) What is the effect of the sale by ARM and ARM Trust to FCIL of ARM's portfolio of Life Policies on:

(i) the contracts between the Non-Pending Bondholders and ARM;

(ii) the LRP; and

(iii) any contractual claims or Alternative Claims the Non-Pending Bondholders have against ARM?

(5) ***Distributions***

(a) Depending on the answers to the questions set out in the Application, in particular (1), (2) and (4) above:

(i) should the beneficiaries' beneficial entitlements be identified on the basis of the rule in *Clayton's Case* or rateably by reference to their relative contributions?; and

(ii) should the PLs be permitted and directed to distribute any trust money, and if so how?

B. <u>Further and/or Other Relief</u>

(1) An order that:

(a) The First Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of the Non-Pending Bondholders.

(b) The Second Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of the Pending Bondholders.

(c) In respect of (5) above, insofar as it relates to the rights of the Pending Bondholders among themselves as beneficiaries of any trust of the Pending Monies:

(i) the PLs be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of those of the Pending Bondholders who would wish the beneficiaries to be ascertained on the basis of *Clayton's Case;* and

(ii) the Second Respondent be appointed as a representative party pursuant to CPR Part 19.7 to represent the interests of those of the Pending Bondholders who would wish the rights of beneficiaries to be ascertained rateably by reference to their relative contributions.

(2) An order that:

(a) Pursuant to section 234 of the Act, SLC Registrars Limited shall transfer the sums of £9,610,573.26, €1,643,316.30 and $192,387.29 currently held in the name of SLC Registrars Limited in accounts at HSBC Bank plc, to the PLs, to be held by the PLs without prejudice to the rights of any party thereto and/or the beneficial interests of any party therein, pending the final determination of this Application.

(b) Pursuant to section 234 of the Act, Squaremile Registrars Limited shall transfer the sums of £2,237,301.21, €3,802,541.30 and $374,990.54 currently held in the name of Squaremile Registrars Limited in accounts at HSBC Bank plc, to the PLs, to be held by the PLs without prejudice to the rights of any party thereto and/or the beneficial interests of any party therein, pending the final determination of this Application.

(c) Upon SLC Registrars Limited having transferred the said sums of £9,610,573.26, €1,643,316.30 and $192,387.29 to the PLs, SLC Registrars Limited be removed as a Respondent to this Application.

(d) Upon Squaremile Registrars Limited having transferred the said sums of £2,237,301.21, €3,802,541.30 and $374,990.54 to the PLs, Squaremile Registrars Limited be removed as a Respondent to this Application.

(3) The PLs, the First Respondent and Second Respondent have permission to adduce expert evidence on issues of Luxembourg law.

(4) The costs of this Application including the reasonable costs incurred by the First and Second Respondent (to be agreed, or assessed on the indemnity basis) are payable as an expense of ARM's provisional liquidation. Neither of the First and Second Respondents shall seek an order that their costs be paid by the other Respondent, or by the PLs personally, or by ARM (save to the extent set out in the Representative Beneficiary Agreement between the parties dated 13 February 2015 (the "**RBA**")). The PLs agree that, unless a Respondent acts in material breach of the RBA, or otherwise conducts this

Application manifestly unreasonably, ARM will not seek an order that either Respondent pay any of the PLs' costs of this Application.

7. In this witness statement, I set out the following:

(a) In Part I: a summary;

(b) In Part II: details of the background;

(c) In Part III: details of the factual investigations carried out by the PLs;

(d) In Part IV: details of the Catalyst companies, the Receiving Agents and others;

(e) In Part V: a description of the Bond documents;

(f) In Part VI: a description of the Investor application and Bond issuance process;

(g) In Part VII: a description of the Investors;

(h) In Part VIII: a description of the assets of ARM and the Pending Monies;

(i) In Part IX: a description of this Application;

(j) In Part X: a description of the PLs' communications with Investors and the selection of the representative beneficiaries.

PART I: SUMMARY

8. As is set out in more detail below, this matter relates to the issuance of approximately £127 million (equivalent) in bonds by ARM[1], a Luxembourg securitisation vehicle, to a large number of retail investors, many of whom are in the UK.

9. ARM was an offshore investment vehicle and did not have any employees. Instead, it relied on a network of third party companies to manage its business, including the marketing and distribution of the bonds, in particular companies within the "Catalyst" group of companies, as well as third parties such as the UK companies which received subscription monies from investors.

[1] Calculated using exchange rates as at 19 November 2015.

10. ARM launched its first bond program in 2006. It was not regulated by the UK Financial Services Authority (as it then was - together with the Financial Conduct Authority, the "**FCA**"), but sometime after having commenced the issuance of the bonds it became apparent that it ought to have been subject to regulation by the Commission de Surveillance du Secteur Financier in Luxembourg (the "**CSSF**"). In 2009, ARM applied for a licence from the CSSF to allow it to issue bonds. In November 2009, pending the outcome of that application, the CSSF instructed ARM to cease issuing bonds. Despite this instruction, the bonds continued to be marketed and subscription monies continued to be received from investors. Ultimately, the CSSF refused to grant the necessary licence and ARM's business became unsustainable, leading to the presentation of the winding-up petition which gave rise to the PLs' appointment on 9 October 2013.

11. This Application is necessary in large part because of two unusual features of this securitisation structure. The first is that the underlying documentation is in many respects unclear and/or internally inconsistent, which leads to questions around the respective rights of the bondholders. The second is that, for the period from November 2009 (when ARM had been instructed to cease issuing bonds) to around July 2010, subscription monies continued to be received from investors in respect of proposed bond issuances. Some of this money was transferred to ARM by UK-based companies who acted as receiving agents but around £17.5 million was (and is) held in accounts of these receiving agents (see paragraphs 190 to 194 below for clarification of the current position in relation to these accounts). It is unclear whether, as a matter of Luxembourg law, the bonds for which these subscription monies were paid were ever in fact issued. This situation leads to questions such as whether this money forms part of the assets of the ARM estate, or whether it is held beneficially for those investors who paid it.

12. BDO became involved in this matter in September 2013 when I was approached by Bingham McCutchen (London) LLP[2], who had also become involved around this time, and asked if I would consider taking the appointment as one of the PLs. For the avoidance of doubt, neither the PLs, nor the advisers now working on this matter had any involvement in ARM's activities described in this witness statement.

[2] Bingham McCuchen (London) LLP combined with Akin Gump LLP on 20 October 2014, who continue to act as the PLs' English solicitors.

13. Subject to the outcome of this Application, the PLs may use a company voluntary arrangement under Part I of the Insolvency Act 1986 to distribute ARM's assets to its creditors. The PLs therefore wish this Application to be determined so a final decision can be made on the most effective way of returning cash to the investors.

14. Before expanding on the factual background in more detail, the Court should be aware that forming an accurate understanding of the background to this matter has been made most difficult both by deficiencies in the documentary records (including correspondence, accounting information and the formal transaction documents) and also by the problems encountered by the PLs in gathering meaningful additional evidence from those individuals who were involved at the time.

15. As is set out in Part III below, in certain respects, the PLs' factual investigations are still continuing. However, the PLs are mindful of the delay which has already been caused by the complicated and cross-border nature of this insolvency process (see paragraphs 59 to 62 below), and feel that it is important not to delay further the bringing of this Application. Accordingly, the contents of this witness statement reflect the PLs' understanding, to the best of their current knowledge, which they consider to be sufficient for the purposes of making this Application.

16. Where additional information comes to light which requires the PLs to amend, refine or supplement the contents of this witness statement, I shall do so promptly and after consulting with the First and Second Respondents to the extent needed.

17. As set out more fully in paragraph 147 below, it is the intention of the PLs to seek permission from the Court to amend this Application after it has been issued in order to introduce further questions for the Court relating to an additional issue. It has not been possible for the PLs to include these questions in the current Application as it is only recently that the PLs have been advised[3] that it would be appropriate to ask the Court to determine the additional issue; after consultation with the lawyers for the First and Second Respondents, it has been agreed that to delay issuing the Application until the PLs are able to present the additional questions to the Court would not be in the interests of the parties to this Application.

[3] Nothing in this witness statement should be taken as waiving any form of legal privilege of either the PLs or ARM (or analogous rights in any jurisdiction).

18. For ease of reference, a glossary of the key terms used in this witness statement is at tab 1. I also include a summary timeline at tab 2, and a *dramatis personae* at tab 3.

PART II: BACKGROUND

19. ARM was established in Luxembourg on 4 November 2005 under Article 39 of the Luxembourg Securitisation Law of 22 March 2004 (the "**Securitisation Law**"). I understand[4] that ARM's organisation was promoted by Catalyst Investment Group Limited ("**CIGL**"), which is described in further detail at paragraphs 91- 98. A copy of ARM's Articles of Incorporation is at tab 4. ARM's current registered office is at 22-24 Rives de Clausen, L-2165, Luxembourg.

20. The current directors of ARM are Mr Timothy Roberts and Mr Ross Carr. An English translation of an extract from the *Luxembourg Registre de Commerce et des Sociétés* (the "**Luxembourg Trade and Companies Register**") is at tab 5A (a copy of the extract in French can be found at tab 5B). Mr Ronan Collins was a director but, on 27 January 2015, he submitted a letter of resignation with immediate effect (tab 6) which was formally recognised on the Luxembourg Trade and Companies Register on 3 February 2015 (tab 5A). At tab 7 is a list of all the former directors of ARM which has been prepared by the PLs' Luxembourg lawyers, Bonn & Schmitt.

21. ARM's share capital is held by Stichting ARM Asset Backed Securities (the "**Stichting**"), a foundation established under the laws of the Netherlands. I understand that a 'stichting' is a non-profit organisation and therefore has no beneficial owners. According to the public register in the Netherlands, the Stichting was incorporated on 8 September 2005 by Mees Pierson Intertrust B.V. (now known as Intertrust Netherlands B.V.) ("**Intertrust Netherlands**"). Intertrust Netherlands is also the Stichting's sole director. The Stichting's constitutional document states that its objects are to obtain or sell shares in the capital of ARM, and to finance or obtain finance, and to provide security for the obligations of the Stichting. An English translation of this document is exhibited at tab 8A (a copy in French is exhibited at tab 8B).

[4] From ARM's Operations Guide and from the judgment of the Luxembourg Court dated 29 November 2011.

22. ARM's business was to issue asset-backed bonds (the "**Bonds**") to retail investors (the "**Investors**"), mostly in the UK but also elsewhere in Europe and in Asia. To the best of my knowledge, it launched its first Bond program in or around May 2006 (see, for example, the English translation of the decision of the Luxembourg court dated 10 November 2011 at tab 26A and the Board Minutes dated 16 February 2006 referring to the launch of this Bond program, a copy of which is at tab 9). I understand that the Bonds were initially issued pursuant to an information memorandum dated 19 April 2006 and later pursuant to base and series prospectuses, both of which are described in further detail below. Between 2006 and 2009, ARM issued eight issues of Bonds (known as "**Issues 1 to 8**"). Further detail in relation to these Issues is set out below.

23. The Bonds were issued by ARM to Investors, and the proceeds were used by ARM to finance the purchase of life insurance policies (the "**Life Policies**") in the United States. Pursuant to a Trust Agreement and Declaration of Trust dated 8 June 2007, ARM established a Delaware statutory trust called ARM Institutional Investors Delaware Trust (the "**ARM Trust**") to acquire the Life Policies (tab 10). The Trustee of the ARM Trust is now Wilmington Trust Company. Broadly speaking, the model was that the holders of the Life Policies sold the benefit of their Life Policies to the ARM Trust for immediate (but discounted) value. ARM funded ARM Trust's acquisition of the Life Policies, and the payment of future premiums, using the Bond subscription monies. Any benefits payable upon the death of the original Life Policy holder were paid to the ARM Trust, which, in turn, transferred the proceeds to ARM. My understanding is that the commercial rationale for ARM's business was that the benefits payable on death under the Life Policies should be greater than the discounted initial purchase cost and future premiums of the Life Policies, thereby in due course generating profits for ARM, and hence investment returns for the Investors. As is noted below, ARM is the beneficial owner of the ARM Trust.

24. I understand from the witness statement of Mr Roberts dated 4 October 2013 in support of the application for the appointment of the PLs ("**Mr Roberts' Witness Statement**") (a copy of which, without exhibits, is at tab 11) and the Decision (the "**Decision**") of the Upper Tribunal in the case of *Andrew Wilkins / Timothy Roberts v the FCA* (the "**FCA Hearing**")[5] that, although ARM maintains its registered office in

[5] See paragraphs 63 to 68 below for details about the FCA Hearing.

Luxembourg in order to maintain tax residency, it has never had a place of business (or any employees) there (see paragraph 7 of Mr Roberts' Witness Statement). In carrying out its business, ARM relied on various third parties, including certain companies within the "Catalyst" group of companies, in particular CIGL and Catalyst Fund Management Limited ("**CFML**"), both of which were regulated by the FCA. In turn, CIGL and CFML used a number of independent financial advisers to market the Bonds (the "**IFAs**"). The Bond subscription monies were received from Investors by certain receiving agents appointed by ARM and CIGL (the "**Receiving Agents**"). Further details in relation to these (and other) arrangements are set out in Part IV below. I attach at tab 12 a structure chart that sets out my understanding of the various stakeholders of ARM and details ARM's key contractual relationships.

25. I understand that, under the Securitisation Law, a securitisation vehicle requires a licence granted by the CSSF if it issues securities to the public on a "continuous basis" (see the letter from the CSSF to ARM's Luxembourg counsel dated 20 November 2009, a copy of which is at tab 13). I understand from the Decision that it was the position of the CSSF that the issuance of four issues or more per year amounted to "continuous".

26. So far as I am aware, ARM never held such a licence from the CSSF (see the CSSF letter of 20 November 2009 at tab 13). I understand from Mr Roberts' Witness Statement (see paragraph 32 of that witness statement at tab 11) that this was because the view had been taken that no such licence was required given the frequency of the issuance of the Bonds. However, I also understand from Mr Roberts' Witness Statement, as well as our review of ARM's board minutes (see for example, the board minutes dated 23 April 2007 at tab 14) that concerns began to be raised after ARM had begun issuing Bonds about whether a licence was, in fact, required. I understand from Mr Roberts' Witness Statement (again, see paragraph 32 of that witness statement at tab 11) and the Decision that advice was sought by ARM from its then Luxembourg lawyers and that, by July 2009 at the latest, ARM had come to the view that a licence was needed. I refer in this regard to a letter from ARM to the CSSF dated 16 July 2009 (tab 15) pursuant to which ARM confirmed that it believed it needed to be authorised and confirmed that it had engaged Luxembourg counsel to assist with its application. This application was made on 23 July 2009 (tab 16).

27. On 20 November 2009, the CSSF instructed ARM to cease issuing Bonds during the licence application process (tab 13).

28. Notwithstanding this instruction, I understand from Mr Roberts' Witness Statement (see paragraph 39 of that witness statement at tab 11), as well as my review of the relevant documentation (e.g. documents provided to me by certain Investors), that the Bonds continued to be marketed by CIGL until May 2010, and subscription monies continued to be paid by Investors in respect of those Bonds until July 2010. During this period (i.e. November 2009 to July 2010), three further Issues of Bonds may or may not have been issued ("**Issues 9 to 11**").

29. I say "may or may not have been issued" because I am advised that there is significant doubt as to whether these Bonds were ever in fact issued. I refer in this regard to the matters which are set out at paragraph 176 below and in particular to the fact that, to the best of my knowledge, there are no board minutes that expressly authorise the issuance of these Bonds. My understanding from discussions with the lawyers for the First and Second Respondents is that it may be common ground between them that no Bonds within Issues 9-11 were in fact issued.

30. Given this status, Issues 9-11 have come to be known as the "**Pending Bonds**", and the subscription monies paid by Investors in connection with the Pending Bonds and which are now held in the accounts of the Receiving Agents have come to be known as the "**Pending Monies**" (see paragraphs 190 - 194 for clarification of the current position in relation to these accounts). The Pending Bonds were intended to be issued in GBP, USD and EUR. The PLs believe that the face value of the Pending Bonds is approximately £27.1 million (equivalent)[6].

31. Much of the financial information provided in this witness statement has been obtained by the PLs from the BDO financial services team which, as set out in paragraphs 73 to 74, has been preparing ARM's management accounts. Given ARM's functional currency is the Euro, as a Luxembourg company, much of the financial information presented in this witness statement is in Euros. Where

[6] This figure has been calculated by a member of my team based on information provided to the PLs by Intertrust Ireland (see paragraph 178 below).

appropriate, for convenience, I have converted relevant USD and Euro figures to GBP.

32. Based on information which we have received from the Receiving Agents and from ARM's bank statements, I understand that prior to the appointment of the PLs, the Receiving Agents (i) transferred to ARM subscription proceeds received by them, some of which included or may have included subscription proceeds from one or more of Issues 9-11; and (ii) made payments to Investors (in the form of redemption payments, interest payments and refunds) as well as to third parties, including the Catalyst entities, some of which may have been made from the subscription proceeds from one or more of Issues 9-11. Accordingly, the current value of the Pending Monies is approximately £17.5 million.

33. Those individuals who subscribed for Issues 9-11 are known as the "**Pending Bondholders**". In contrast, those individuals who subscribed for Issues 1–8 are known as the "**Non-Pending Bondholders**". I use the term Investors in this witness statement to refer to both the Pending Bondholders and the Non-Pending Bondholders, in order not to give the impression of pre-judging the question as to whether the Pending Bondholders are, in fact, creditors of ARM (as opposed to beneficiaries under a trust).

34. In addition to the marketing of the Pending Bonds, ARM continued at this time to make payments in respect of interest and principal (both in respect of the small number of Bonds which matured during this period, and in response to redemption requests) in respect of Issues 1-8 as well as making certain payments in respect of Issues 9-11, as described further below.

35. During this period (i.e. after 20 November 2009), attempts were made by ARM, and/or CIGL on its behalf, to update the IFAs on the licence application process. I refer in this regard to a letter which CIGL wrote to all IFAs within its network in around December 2009 (a copy of which is at tab 17). I understand from the Decision that this letter was sent out following Mr Roberts' approval. The letter states that:

"We are pleased to advise you that in order to offer investors further reassurance in this current climate, ARM...has made the decision to apply for authorization from the...CSSF... Luxembourg's equivalent to the FSA in the UK.....

This process is in its final stages...The next issue date will be sometime before the 31 March 2010 although it is expected to be 1st February 2010."

36. Subsequently, I understand that ARM took certain other steps to address the regulatory issues which had arisen in Luxembourg. One such step was to investigate the possibility of moving ARM's business and assets from Luxembourg to the Republic of Ireland. I refer in this regard to a letter from CIGL to the Pending Bondholders dated 26 March 2010, which I understand from the Decision was sent following Mr Roberts' approval, which states:

"ARM is in the process of making some changes to its corporate structure which ARM believes will be in the best interests of the bondholders. As you are aware, the ARM Programme is listed on the Irish Stock Exchange and we are instructed that the ARM Board believes that it is advantageous for ARM to be either regulated in Luxembourg or have the issuer domiciled in Ireland, under the same organization. ARM will initiate its next issue once these changes have been completed. We have been advised by ARM that it anticipates that this will take place shortly." (tab 18)

37. I understand from the minutes of an ARM board meeting dated 24 June 2010 that, on 26 May 2010, the FCA sent a letter to CIGL (tab 19). I understand that the FCA was prompted to write a letter at this point because it had been notified of a potential issue in relation to ARM and CIGL by the CSSF.

38. I also understand from submissions made at the FCA Hearing that the FCA sought an undertaking from CIGL not to continue marketing the Bonds, which CIGL refused to give. I have obtained from the FCA's website a copy of a First Supervisory Notice addressed to CIGL dated 17 August 2010 (tab 20).

39. According to the 24 June 2010 board minutes referred to above (tab 19), ARM agreed that no Bonds would be issued in the UK after 26 May 2010. ARM's records do not show any new Bond applications being received after around 28 May 2010, although I understand from ARM's accounts and records and from information received from

the Receiving Agents that monies relating to Bond applications continued to be received from Investors mainly until July 2010[7].

40. After 26 May 2010, ARM again made contact with the Pending Bondholders and referred to the proposed change in domicile to Ireland. I refer to a letter dated 24 September 2010 (tab 21) sent by ARM to one of the Pending Bondholders which states, in this regard, that:

"As you are aware, in July 2009 ARM Asset Backed Securities SA ("ARM SA" or the "Issuer") applied for authorisation by the Luxembourg regulator (the "CSSF") to issue securities. This was a requirement of the CSSF and ARM SA has been unable to issue bonds ("ARM Bonds") whilst its application to the CSSF has been under consideration. This means that ARM SA is still not able to issue you the ARM Bond, for which you applied.

ARM SA's application has not been approved and is still before the CSSF. However, ARM SA has, following consultation with the CSSF earlier this year, decided to change the domicile of the Issuer to Ireland. ARM SA is in the process of moving the domicile of the Issuer to Ireland. Assured Risk Mitigation plc ("ARM Ireland") has been established for this purpose, and whilst the move and its corresponding legal documentation has been agreed (but not yet completed), the change in domicile cannot yet be completed.

ARM Ireland is unable to issue ARM Bonds until the change of domicile has been completed, which includes having a supplement to the Base Prospectus dated 18 November 2009 for the updated ARM Bond Programme approved by the Central Bank of Ireland. This is still pending. We are unable to provide you with any certain timetable for the finalisation of this process.

..."

41. This same letter also (i) states that payments have been or will be made to the Pending Bondholder which are equivalent to the interest to which he would have been entitled under the Pending Bond for which he applied; and (ii) offers the Pending Bondholder

[7] The PLs are aware of the receipt of subscription monies on three dates after July 2010: (i) £10,000 received by Jarvis on 15 September 2010; and (ii) £360 and £47,000 received by Squaremile on 12 November 2010 and 15 April 2011 respectively.

the opportunity to withdraw his application and to receive a refund in full (less the payments in lieu of interest which had been received):

"...

You invested the sum of £76,070.68 on 26 February 2010, on the basis that that money would purchase an ARM Bond. In the interim, your money has been held in a holding account, which has paid interest at a rate of 0.14% p.a. In order to ensure that your position was not prejudiced, ARM SA has made payments to you equivalent to the returns that would have been made had the Bond been issued as anticipated. You received or are due to receive the following:

01 April 2010; £673.17

01 July 2010; £1,806.68

01 October 2010; £1,806.68

ARM SA would like to enquire as to whether you still wish to wait for the finalisation of the change of Issuer from ARM SA to ARM Ireland so that ARM Ireland may issue you with a bond. If you do not wish to wait any longer you are able to seek a full refund of your investment monies by completing the attached withdrawal form. Please note that ARM SA will refund your investment in full crediting you with the interest, which ARM received on your monies in the interim, but deducting the amount of any Bond interest accrual payments made to you to date.

It is important for you to decide with your IFA the best course of action for you, taking into account your circumstances (which may have changed since your application).

I am an ISA investor, what if I do not want to wait? You can nominate another ISA manager to which ARM SA will transfer the ISA monies to in order to keep your investment within your ISA framework.

What if I do nothing? If we do not hear from you within 30 days from date of this letter we will assume that you are happy to wait for the finalisation of the change of Issuer from ARM SA to ARM Ireland. Prior to the issue of any ARM Ireland bond to

you ARM Ireland will write to you to provide you with details about ARM Ireland and to offer you again the opportunity to withdraw your investment if you wish.

What if I change my mind later and wish to withdraw? At any time prior to the issue of any ARM Ireland Bond to you, you may complete the attached withdrawal form to request a refund of your investment monies. In any event, prior to the issue of any ARM Ireland Bond to you ARM Ireland will write to you to provide you with details about ARM Ireland and will offer you the opportunity to withdraw at that stage if you wish.

If, after being issued with your ARM Ireland Bond, you later change your mind for any reason ARM Ireland will, in these exceptional circumstances, provide you with an additional 50 day withdrawal period (from the date of Issue) to redeem your ARM Ireland Bond.

In each case ARM Ireland will refund your investment in full, crediting you with the interest, which ARM received on your monies in the interim, but deducting the net value to you of any bond interest accrual payments made to you to date." (tab 21)

42. My understanding from the Pending Bondholders with whom I have discussed this matter is that they received such a letter, and that they believe that most if not all of the Pending Bondholders received a letter in substantially similar terms to that set out above. Based on information provided to the PLs by the Receiving Agents and from ARM's bank statements, I understand that an aggregate amount of approximately €16.3 million was refunded to Investors by, amongst other parties, ARM and certain of the Receiving Agents (see paragraph 209 below), after 24 September 2010, the date when the letter was sent. Whilst the PLs believe that it is likely that these refund payments were made to the Pending Bondholders (the PLs are not aware of any reasons for which Non-Pending Bondholders would have received refunds), the PLs are not in receipt of the information necessary to be able to determine to whom these payments were made[8].

[8] The spreadsheets provided by Squaremile referred to in paragraph 107 identify a proportion of refunds made to Investors. The PLs have been able to reconcile 70% of the refunds identified in the refund spreadsheets with the Pending Bondholders listed on the Intertrust Ireland spreadsheets. The PLs believe that the discrepancy could be down to the possibility of refunds having been paid to nominees or the refund having been given before the name of the Pending Bondholder was logged onto the Intertrust Ireland database.

43. I understand from a document published on the FCA's website on 11 November 2011 entitled "*Information for ARM investors*" (tab 22) that in April 2011 the Central Bank of Ireland imposed certain conditions on ARM in relation to its proposed re-domiciliation to Ireland. ARM was unable to satisfy those conditions, and therefore the proposed move to Ireland did not proceed. In addition, I note that, although the terms and conditions of the Bonds provide for the possibility of the Issuer moving its place of incorporation (see Conditions 11.4.1 – 11.4.3 of the terms and conditions of the Base Prospectus dated 18 November 2009 at tab 23), this is only permitted in circumstances where the Issuer has identified that the costs of meeting its operating or administrative expenses have risen.

44. On 3 August 2011, ARM announced (tab 24) that following its submission for authorisation to the CSSF and its attempt to move its domicile to Ireland, ARM had been unable to issue Bonds since November 2009, and that consequently it had been unable to invest in further Life Policies in order to grow its portfolio. As a result, ARM announced that it had insufficient cash available to pay redemption requests and to pay quarterly income payments. Therefore, ARM confirmed that it would postpone the payment of redemption requests until it had available cash to meet the unusually high level of redemption requests it had received. In addition, ARM confirmed that it did not have sufficient cash to make the 14 July 2011 quarterly interest payment in accordance with the terms of the Bonds[9].

45. On 29 August 2011, the CSSF notified ARM of its decision to refuse to grant it a licence and informed ARM that the CSSF would be appointed as the supervisory commissioner for ARM (tab 25). On 10 November 2011, pursuant to an application made by the CSSF to the Luxembourg Court, Mr Jean-Michel Pacaud, a partner of Ernst & Young SA in Luxembourg, replaced the CSSF as ARM's supervisory commissioner (the "**Supervisory Commissioner**") (an English translation of the Luxembourg Court's ruling can be found tab 26A). Broadly speaking, I understand that the CSSF sought the appointment of Mr Pacaud as the Supervisory Commissioner as it considered that the necessary monitoring of ARM would be complex, likely to persist for some time, and require resources that the CSSF did not possess. The Supervisory Commissioner would also be able to rule on management decisions, such

[9] The PLs understand that interest in the amount of € 2.9 million was paid by ARM in July 2011, the latest payment being made on 29 July 2011.

as ARM's dealings with third parties, where the CSSF may be conflicted (see page 3 of tab 26A). The Supervisory Commissioner's role is explained on Ernst & Young S.A.'s website as follows: "*To explain our role further, it is important to note that ARM is not in liquidation and so the role of supervisory commissioner does not replace the management or board of ARM which continues to operate as a going concern until further notice. Our role is to supervise and authorise all payments and actions proposed by the management of ARM to ensure that the assets of ARM are preserved and the interests of investors and creditors are protected*[10]."

46. Following the appointment of the Supervisory Commissioner, I believe from ARM's accounts that ARM no longer made any payments of interest or principal in respect of either the Pending or Non-Pending Bonds[11]. On 29 November 2011, ARM filed an appeal before the Luxembourg Courts against both the CSSF's decision to refuse to grant it a licence, and against the appointment of the Supervisory Commissioner (the "**Appeal**") (an English translation can be found at tab 27A).

47. I understand from Mr Roberts' Witness Statement (see paragraph 47 of that witness statement at tab 11) that ARM's then directors decided that, in light of the above developments, ARM was no longer in a position to service the premium payments on the Life Policies. Accordingly, ARM sought to sell its assets to Insetco Plc. I refer in this regard to an announcement dated 25 October 2011 in which ARM provided the Investors with an update on the position of ARM at that time and the consequences of the CSSF refusing to grant ARM a licence (tab 28). The announcement also informed the Investors of the potential transaction with Insetco Plc and what the Investors would receive in exchange for their ARM investment in the event that the transaction completed. In the event, this transaction did not proceed and, on 27 January 2012, Insetco Plc announced that the proposed acquisition had lapsed due to a failure to agree terms between ARM, the CSSF, and the Supervisory Commissioner (tab 29).

48. In the meantime, I understand from the First Supervisory Notices at tabs 30 and 31 that, on 9 November 2011, the FCA had exercised its powers under section 45 of the

[10] Found at http://www.de.ey.com/LU/en/Newsroom/News-releases/release_2012_ARM_Luxembourg_Statement-_09032012

[11] To the best of the PLs' knowledge, the last redemption payment was made on 15 August 2011. The PLs believe that the redemption payments related to redemptions on the death of the Investor or otherwise at the option of the Investor in accordance with the terms and conditions of the Bonds.

Financial Services and Markets Act 2000 ("**FSMA**"), Chapter 8 of the Enforcement Guide and Chapter 7.3 of the Supervision Manual to freeze the Pending Monies in the Receiving Agents' accounts (see further at paragraphs 195 - 197 below).

49. In light of the above matters, ARM engaged the actuarial team at Ernst & Young LLP in London to advise ARM on a tender process to sell its portfolio of Life Policies. This process, which took place in 2012, involved approximately a dozen bidders, with whom multiple meetings took place.

50. The process resulted, on 2 November 2012, in ARM and the ARM Trust entering into a purchase and sale agreement with Financial Credit Investment 1 Trust D, an entity which is part of the Apollo Global Management group (the "**FCIL SPA**" and "**FCIL**"), pursuant to which ARM agreed to sell its portfolio of Life Policies to FCIL in return for a purchase price of $68,778,774 to be paid in cash in equal instalments of $7,227,877 from the date of sale to the end of 2021 (and pro-rated for 2012)[12].

51. We understand that the sale of ARM's policies to FCIL pursuant to the FCIL SPA was necessary as ARM did not have sufficient cash available to it in order for it to continue making payments on its Life Policies and so a sale of its portfolio was the only option available to ARM to ensure that the Life Policies did not lapse. Although FCIL has consented to my making these aspects of the FCIL SPA public, I am unable to exhibit a copy of the FCIL SPA due to confidentiality undertakings provided by ARM and the ARM Trust to FCIL. It is not possible to allocate either the policies that were sold or the consideration paid under the FCIL SPA to particular Bond Issues or Tranches. For this reason, I view the consideration paid under the FCIL SPA as a single asset of the ARM estate.

52. As a result of the sale of ARM's policies to FCIL, ARM (through the ARM Trust) now owns a receivable from FCIL for the outstanding purchase price under the FCIL SPA (the "**FCIL Receivable**"). Under the terms of the FCIL SPA, FCIL owes the FCIL Receivable to the ARM Trust. ARM is the beneficial owner of the ARM Trust and is therefore the ultimate recipient of the FCIL Receivable.

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[12] The PLs believe that one Life Policy with a face value of approximately $67,000 is still awaiting transfer to FCIL. In addition, the PLs have recently come to understand that in the region of 3 to 4 Life Policies where a claim was in progress following the death of the underlying holder were not transferred to FCIL. The PLs are currently seeking to ascertain the status of payments to be made under those Policies.

53. On 21 August 2013, the Luxembourg administrative court of appeal heard an appeal by ARM of a previous decision dated 6 December 2012 in which the Court considered the CSSF's decision to refuse authorisation and appoint a Supervisory Commissioner to ARM (an English translation of the judgment can be found at tab 32A). The appeal was dismissed (see English translation at tab 33A). In doing so, it also found that ARM no longer had an infrastructure allowing it to carry out its activity in an adequate manner.

54. In a press release dated 4 September 2013, the CSSF confirmed that it had requested the Luxembourg public prosecutor (the "**Public Prosecutor**") to apply to the Luxembourg district court for an order for the dissolution and liquidation of ARM under Article 39 of the Securitisation Law (tab 34). On 24 September 2013, the CSSF published a further press release noting that, upon the dissolution and liquidation of ARM, the mandate of the Supervisory Commissioner would terminate (tab 35).

55. On 4 October 2013, the then directors of ARM presented a petition to the English Court for the winding up of the Company under the Act (the "**Petition**"), and the appointment of Mr Cohen and me as the PLs (tab 36).

56. At the hearing of the Petition before the English Court on 9 October 2013, Mr Justice David Richards was informed of the regulatory issues in Luxembourg relating to ARM's business. The Public Prosecutor and the CSSF were given proper notice of the hearing but did not attend and were not represented.

57. At the hearing, the Judge was satisfied that the centre of main interests of the Company was in England and that the English provisional liquidation would constitute a main proceeding within Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (the "**Insolvency Regulation**").

58. Mr Justice David Richards consequently made an Order for the appointment of Mr Cohen and me as PLs (tab 37). Notice of the Order was provided to the CSSF and the Public Prosecutor.

59. The Order was duly registered with the Luxembourg Trade and Companies Register and published in the Official Gazette (*Mémorial-Recueildes Sociétés et Associations*).

In addition, as one of the PLs, I wrote a letter to the CSSF on 19 November 2013 (tab 38) informing it that, pursuant to section 130(2) of the Act, there was a stay on actions or proceedings against the Company unless the English Court gave leave. In a response dated 26 November 2013, the CSSF informed me that it had taken note of my letter and that a copy had been sent to the Public Prosecutor (tab 39). Notwithstanding the registration and publication of the Order and my letter dated 19 November 2013, on 3 March 2014 the Public Prosecutor applied to the Luxembourg Court for the liquidation and dissolution of the Company in Luxembourg under the Securitisation Law (an English translation can be found at tab 40A).

60. On 19 March 2014, I therefore made an application to the English Court seeking a declaration that the application of the Public Prosecutor in Luxembourg should be stayed by virtue of section 130(2) of the Act and the Insolvency Regulation. On 28 March 2014, Mr Justice Nugee made an order in the terms requested (tab 41).

61. The Order made by Mr Justice Nugee was forwarded to the Luxembourg Court and, after further hearings in Luxembourg, on 26 June 2014, the Luxembourg Court ultimately suspended the dissolution application in Luxembourg until the completion of our administration of the provisional liquidation and any subsequent liquidation in England (an English translation of the judgment can be found at tab 42A).

62. I would note that it is a matter of regret that the commencement of the Luxembourg dissolution process (despite the earlier order of Mr Justice David Richards) required us to make a subsequent application to the English Court and necessitated various hearings before the Luxembourg Court. Until the PLs' application had been resolved in our favour, we were prevented from taking any significant steps to advance the investigation into, and management of, the assets and liabilities of ARM.

63. On 14 August 2013, the FCA issued Decision Notices against Mr Roberts and Mr Andrew Wilkins, a former director of CIGL, pursuant to which:

- Mr Wilkins was prohibited from performing any significant influence function in relation to any regulated activities carried on by an authorised or exempt person or exempt professional firm and was fined £100,000 for breaches of Statement of Principle 6 (due skill, care and diligence); and

- Mr Roberts' approvals to perform controlled functions were withdrawn and Mr Roberts was banned from working in the financial services industry for life. Mr Roberts was also fined £450,000 for breaches of Statements of Principle 1 (integrity) and 6 (due skill, care and diligence).

64. The Decision Notices were appealed by Mr Roberts and Mr Wilkins and the appeal in *Andrew Wilkins / Timothy Roberts v the FCA* was heard before the Upper Tribunal (Tax and Chancery) between 30 January 2015 and 6 February 2015 and on 11 and 12 March 2015. Representatives of my team and of my English solicitors, Akin Gump LLP ("**Akin Gump**") attended the FCA Hearing in an observatory capacity.

65. The Upper Tribunal delivered its Decision on 6 August 2015, a copy of which was provided to me by Akin Gump shortly thereafter (tab 43).

66. With respect to Mr Roberts, the Upper Tribunal has concluded, *inter alia*, that he acted with a lack of integrity by permitting CIGL to collect funds from Investors in respect of Issues 9-11 at a time when ARM was prohibited from issuing Bonds and the full regulatory position had not been properly disclosed to Investors. In doing so, the Upper Tribunal has re-affirmed the FCA's decision to:

(i) withdraw Mr Robert's approval to perform controlled functions at CIGL;

(ii) prohibit Mr Roberts from performing any function in relation to any regulated activities carried on by an authorised person; and

(iii) impose a financial penalty of £450,000.

67. In so far as Mr Wilkins is concerned, the Upper Tribunal has remitted the matter back to the FCA to reconsider its decision in light of the Upper Tribunal's findings. In the view of the Upper Tribunal, whilst Mr Wilkins made certain errors, it does not consider that he acted with a lack of integrity or with a reckless disregard to Investors' interests. The Upper Tribunal has also directed the FCA to reduce the fine previously imposed on Mr Wilkins from £100,000 to £50,000.

68. On 8 September 2015, Akin Gump provided me with a further Decision of the Upper Tribunal in connection with Mr Wilkins (the "**Supplemental Decision**") (tab 44). In the Supplemental Decision the Upper Tribunal reiterates that the FCA failed

sufficiently to make out its case that Mr Wilkins was not competent and confirms that the FCA's allegation that Mr Wilkins was not fit and proper has been dismissed.

69. I also note in this connection that CIGL itself was the subject of a Final Notice dated 30 September 2013 stating that CIGL had contravened certain regulatory requirements and that, were it not for CIGL's financial position, the FCA would have imposed on CIGL a fine of £450,000 (the "**CIGL Final Notice**"). Copies of these Decision Notices and this Final Notice are at tabs 45 to 47.

PART III: FACTUAL INVESTIGATION

70. In order to be able to fulfil our duties as PLs, I, my team, and the PLs' legal advisers (being both Akin Gump and Bonn & Schmitt) have reviewed information and documentation from a number of sources, as set out below.

71. ARM's books and records, which we have been able to locate, have been reviewed. Those documents were originally held at the offices of ARM's former Luxembourg lawyers, Thewes & Reuter. However, since 2 September 2014, they have been located at Bonn & Schmitt's offices in Luxembourg, which is also the Company's current registered address. Bonn & Schmitt are now also the Company's domiciliation agent.

72. Amongst other documents, we have reviewed the following categories of documents (so far as we have been able to locate them): (i) ARM's board minutes; (ii) ARM's audited accounts; (iii) ARM's draft accounts for 2010; (iv) ARM's bank statements from July 2009; (v) correspondence between ARM and third parties; (vi) the Bond documentation described in more detail in Part V below; (vii) agreements between ARM / ARM Trust and third parties; (viii) correspondence with regulators; and (ix) information received from the Receiving Agents (which I understand is the totality of information in their possession and which is capable of being provided to us).

73. With respect to ARM's accounts, I understand that: (i) the last audited accounts that ARM filed were for the year to 30 June 2009; (ii) interim financial statements were published on 26 February 2010 for the financial period from 1 July 2009 to 31 December 2009; (iii) those interim financial statements were restated and republished on 5 May 2011; and (iv) although draft accounts were prepared for the year to 30 June

2010, no later audited accounts have been finalised / filed. Copies of ARM's audited accounts and interim financial statements referred to above are at tabs 48 to 53. So far as the accounts for 2010 are concerned, the PLs are aware that PricewaterhouseCoopers, ARM's previous auditors, raised a number of concerns about these accounts which were never resolved. When I was originally appointed as PL of ARM, I determined that ARM should prepare up to date accounts. This is because I wish to understand how ARM's assets have been applied over time, and also because the provisional liquidation in England will likely not suspend the requirements for ARM to file accounts in Luxembourg (it would not do so in England). Further, I was conscious to have as complete an understanding as possible of the Investor base in circumstances where ARM's records are lacking and the Investors are largely retail in nature. This is to assist with distributions mechanics when the time comes.

74. Initially working with some of ARM's former accounts team, a former member of BDO's financial services team, Mr Talis Karklins, now employed by the BDO financial services team as a consultant, is therefore attempting to create accounts for the 52 months from 1 July 2009 to the PLS' appointment on 9 October 2013 from information contained in ARM's books and records, and received through third party requests, with a view to establishing the payments that were credited to and debited from ARM's accounts. This is a far from straightforward task because of the deficiencies in ARM's accounting information.

75. This exercise is nearing completion and the resulting accounts will subsequently be audited. I will adduce the completed accounts as evidence under cover of a supplemental witness statement for the purposes of this Application. To the extent that any numbers referred to in this witness statement need to be corrected in line with the completed accounts, I will bring those corrections to the attention of the Court and in the supplemental witness statement.

76. We have also reviewed a significant number of documents which we have been provided by Investors, comprising principally Contract Notes, Notations of Interest (both as described further in Part VI below), correspondence with IFAs/CIGL and/or bank statements. Further, we have been working with an informal ad hoc committee

of creditors (described in Part XI below) who have provided us with examples of marketing materials they were given in relation to their investment in the Bonds.

77. We have sought copies of documents from a number of third parties, including Intertrust Ireland, Intertrust Luxembourg, MFSP Financial Management Limited ("**MFSP**"), Equity Trust Co. (Luxembourg) S.A. (now TMF Luxembourg S.A.), K&L Gates (ARM's former English lawyers) and the FCA. Where relevant documents have been obtained through these processes, they have been reviewed and considered by my team and advisers.

78. We also sought copies of certain documents prepared for /or referred to in the FCA Hearing. The Tribunal referred us to the FCA, which did not feel it appropriate to provide us with access to any of these documents.

79. From the commencement of our factual investigations, the PLs believed it was likely that CIGL and / or CFML and / or Mr Roberts (as the sole director of those companies) were likely to have a significant amount of relevant documents in their possession. This belief was reinforced on 18 March 2015 when Akin Gump was informed that, during the course of the FCA Proceedings, CIGL gave Mr Wilkins access to documents via an online platform, such level of access varying from hundreds of thousands of documents to over a million (letter from Mr Wilkins' solicitors, Mishcon de Reya, at tab 54). Akin Gump was not, however, provided with details of the identity of the online provider. The PLs now understand, from subsequent conversations with Mishcon de Reya, that the online platform has been dismantled.

80. The PLs' attempts to obtain access to the documents held by CIGL / CFML and Mr Roberts (as well as through discussions with the FCA) were unsuccessful. Therefore, on 31 March 2015, the PLs made an application seeking an order against Mr Roberts, CIGL and CFML under section 236 of the Act for the delivery of documents in each of their custody and possession. In making that application, the PLs sought a direction from the Court that the hearing of the application be expedited to ensure that documents that are delivered up are received in good time to allow them to be considered for the purposes of this Application. The application was heard on 14 April 2015 and a section 236 order granted (tab 55). None of the respondents

attended or was represented at the hearing. The section 236 order was served on CIGL and CFML at their respective registered offices and on Mr Roberts at his last known address.

81. The respondents failed to comply with the terms of the section 236 order. In fact, the papers served on Mr Roberts and CIGL and CFML were all returned to Akin Gump marked "Return To Sender". The PLs, therefore, made attempts to contact Mr Roberts. In July 2015, we were able to make contact with Mr Roberts in Australia where he has been staying with his daughter. Mr Roberts has informed us that he does not have access to the documents that had been hosted on the online platform and is not aware of where these documents may now be kept. In addition, I was informed by Mr Roberts that he holds a few memory sticks containing CIGL documents but, in his view, the documents are of no relevance to the PLs in administering the ARM estate. I suggested to Mr Roberts that an independent third party be instructed to determine the relevance of the documents for the ARM estate, the costs of which would be borne by the estate. Mr Roberts informed me that he would consider my request, however, that conversation took place on 15 July 2015 and neither Akin Gump nor I have heard from Mr Roberts since.

82. As at the date of this Application, the PLs are continuing with their investigation to identify the location of the documents that had been hosted on the online platform. One line of enquiry being pursued is with CIGL's former lawyers, Fox Williams, who the PLs understand had assisted Mr Roberts in facilitating the establishment of the online platform. The PLs will update the Court of any developments in their investigation to the extent they are relevant to this Application.

83. In addition, we have been and are continuing to be in dialogue with each of the Receiving Agents and have received a significant volume of information from them. I summarise the information received from each Receiving Agent at appropriate points in this witness statement.

84. Finally, so far as documents are concerned, we have also reviewed documents which are publicly available, for example documents which are available from the Irish Stock Exchange, the FCA, and the Luxembourg courts.

85. In addition to the review of documents, we have carried out a number of interviews with ARM's current and former directors, some of whom were also directors of companies closely affiliated with ARM including CIGL, CFML and Squaremile Registrars Limited ("**Squaremile**"). During August and September 2014, members of my team wrote to the following current and former directors of ARM: Serge Bijnens, Ross Carr, Ronan Collins, Niall Lambert, Brendan McCoy, Timmo Mol, Martin Raine, Brian Rayment, Timothy Roberts, Marco Weijermans, Frank Welman, Andrew Wilkins and Rudolf Zanboer, as well as to David Watson, who provided accountancy services to ARM (to whom we have spoken on a number of occasions) (see tabs 56 to 74, which includes follow on correspondence).

86. Following these letters, we interviewed Serge Bijnens, Ronan Collins, Niall Lambert, Brendan McCoy, Timmo Mol, Martin Raine, Brian Rayment, Marco Weijermans, Frank Welman and Rudolf Zanboer. Relevant evidence from those interviews is reflected in this witness statement.

87. So far as Mr Roberts is concerned, he has not responded to our interview requests. Bingham McCutchen (London) LLP[13] did, however, meet with Mr Roberts on numerous occasions, including in relation to the preparation of Mr Robert's Witness Statement. I understand from, amongst other things, submissions and evidence at the FCA Hearing, that Mr Roberts is seriously ill. In addition, I was previously mindful that Mr Roberts was engaged in preparing for, and giving evidence at, the FCA Hearing. In the circumstances, I did not consider it appropriate to continue to press for a formal interview in advance of the FCA Hearing. Given the unsatisfactory outcome of the conversations I have had with Mr Roberts since the FCA Hearing and the fact that he is currently located in Australia, the PLs have concluded that it will not be possible at this point to interview Mr Roberts. The PLs may re-visit the proposition in the future, if any further documentation comes into the possession of the PLs and which necessitates a discussion with Mr Roberts.

88. Similarly, since the conclusion of the oral evidence stage of the FCA Hearing, Akin Gump has written to Mishcon de Reya again requesting an interview and delivery of documents in Mr Wilkins' possession as a former director of CIGL (tab 75). The PLs

[13] As they were at the relevant times.

have been informed that other than some personal notes and emails, Mr Wilkins does not have any relevant documents in his possession (tab 76).

89. I attach at tab 77 a table summarising the status of the various information gathering workstreams as they relate to existing and former directors of ARM.

90. I am not presently aware of any other avenues of factual investigation which the PLs should be considering. Be that as it may, to the extent that the PLs come into possession of documentation and information that is pertinent to this Application after it has been issued, we will adduce that evidence under cover of a supplemental witness statement. Again, we will consult as appropriate with the First and Second Respondents on this.

PART IV – FURTHER DETAIL ON THE CATALYST COMPANIES, THE RECEIVING AGENTS AND OTHERS

The Catalyst Companies

91. ARM's principal relationship for the conduct of its day-to-day business affairs was with the Catalyst group of companies, in particular CIGL and CFML. CIGL and CFML are both incorporated in England and, at all material times, were authorised by the FCA in the conduct of regulated investment business. Whilst CIGL remains authorised by the FCA, CFML ceased to be authorised by the FCA on 8 May 2014. I understand from Mr Roberts' Witness Statement that, at their peak, CIGL and CFML employed more than 40 members of staff in London.

92. Mr Roberts is the sole director of both CIGL and CFML as confirmed by the records at Companies House. In my recent conversations with Mr Roberts, he has informed me that he resigned as director from the Catalyst companies in April 2011. I have asked for evidence of his resignation but have yet to be provided with it. I am informed by Akin Gump who has reviewed filings with Companies House (tabs 78 and 79) that the following have also served as directors of CIGL and CFML respectively since the period during which ARM has been established:

CIGL:

- Brian Rayment (5 May 2011 to 9 May 2013)

- James Dale (2 December 2010 to 16 February 2012)
- Edward Lord Razzall (10 October 2007 to 23 August 2012)
- Timothy Toyne Sewell (10 October 2007 to 20 August 2012)
- Andrew Wilkins (1 August 2007 to 23 March 2010)
- Andrew Farmiloe (15 December 2004 to 22 August 2007)
- Kenneth Burrage (7 September 2004 to 20 August 2007)
- Robert Haddow (25 July 2000 to 20 April 2006)

CFML:

- Brian Rayment (1 November 2009 to 9 May 2013)
- James Dale (2 December 2010 to 27 July 2012)
- Edward (Lord) Razzall (2 December 2010 to 27 July 2012)
- Timothy Toyne Sewell (2 December 2010 to 27 July 2012)
- David Watson (15 February 2010 to 02 December 2010)
- Martin Raine (2 November 2006 to 19 February 2008)

93. The filings also show that as at 7 August 2012 (the latest date for which the information is available), CIGL was 93% owned by Mr Roberts, with the remaining shares held by a number of other individuals. As at 2 November 2012 (the latest date for which the information is available), CFML was 77% owned by Mr Roberts, with the remaining shares held by Brian Rayment.

94. On 1 October 2007, ARM entered into a business service agreement (tab 80) with CIGL, pursuant to which CIGL assumed full responsibility for providing a range of services to ARM as set out in Schedule 1 to that agreement, including day-to-day management of ARM's business, implementing fund conception, providing marketing support (including designing, approving and distributing marketing materials and information about the Bonds) and structuring the mechanism through which the Bonds were sold and distributed.

95. Also on 1 October 2007, ARM entered into a distribution / agency agreement with CIGL (tab 81) pursuant to which CIGL was appointed as the primary distributor of ARM's financial products, and was an authorised person entitled to promote ARM's Bonds. As such, CIGL acted as primary distributor of the Bonds in the UK market, marketing them to Investors via a network of IFAs, who gave advice and facilitated sales of the Bonds to the Investors.

96. Both agreements with CIGL are governed by English law.

97. In the First Supervisory Notice dated 17 August 2010 (tab 20), the FCA described CIGL as:

"... a product provider and the "primary distributor" of ARM's bonds. [CIGL] is responsible for the sale of ARM's products through intermediaries. [CIGL] distributes ARM's products via UK and international intermediaries. The network is not one of appointed representatives, rather a sales network. [CIGL] supplies marketing and information materials to intermediaries, and holds events to explain the products to intermediaries. [CIGL] receives a proportion of the available commission for each product sold. [CIGL] also acts as "arranger" for ARM's products, monitoring, managing and communicating with all the counterparties and service providers involved, as well as providing corporate advice to these firms. [CIGL] receives a regular monthly fee from ARM for discharging its "arranger" services."

98. It can be seen from the financial statements filed by CIGL in 2007 (which can be found at Companies House) that the issue and sale of the Bonds became CIGL's main source of revenue in that year and in subsequent years including in 2010 notwithstanding that no Bonds were issued in that year (tab 82). By way of illustration, of a turnover of £7,161,837 in 2008, sales to ARM amounted to £6,859,923. In 2009, sales to ARM accounted for £8,475,439 against a turnover of £9,102,809. In 2010, sales to ARM amounted to £5,589,506 against a turnover of £6,541,573. Each of the financial statements from 2007 confirms that CIGL's principal activity was wholly undertaken in the United Kingdom (tabs 83 to 85).

99. On 25 May 2010, ARM entered into an investment management agreement (the "**IMA**") with CFML (tab 86) pursuant to which CFML was responsible for the management of the Life Policies. Pursuant to the terms of the IMA, CFML had complete discretion in relation to the management of the portfolio. However, CFML as investment manager was not permitted to hold itself out as a representative of ARM and it agreed to comply with all directions given to it by ARM (see clause 8) of the IMA. The IMA is governed by English law.

100. On 27 October 2010, ARM entered into an agency agreement with Catalyst Financial Services S.A. ("**CFS**") (tab 87), a company registered in Luxembourg, pursuant to

which CFS was appointed as ARM's agent for the purposes of, amongst other things, providing sales, marketing and distribution support services to ARM. I note from at least one of the acknowledgement of holdings documents (described further at paragraph 172 below) that CFS had a previous role as an underwriter of certain of the Bonds (see tab 88), although I have not seen any further documentation in this regard (e.g. an underwriting agreement between ARM and CFS). I understand from Mr Roberts' Witness Statement that the intention was for CFS to take on a sales role in relation to Investors in continental Europe but, in practice, its operations were negligible (see paragraph 23 at tab 11). The CFS agency agreement is governed by English law.

101. It came to our attention from notices given by the Registrar of Companies that CIGL and CFML were to be struck off (tabs 89 and 90). On 17 November 2014, 2 December 2014 and 23 June 2015, Akin Gump therefore wrote to the Registrar of Companies and requested that CIGL and CFML not be struck off until the provisional liquidation (and any subsequent liquidation) of ARM had been concluded (tabs 91, 92 and 93). Consequently, following the receipt of Akin Gump's letter dated 23 June 2015, the Registrar of Companies has suspended the proposal to strike off CIGL and CFML until 24 December 2015 (tab 94).

102. Based on information I have reviewed in ARM's books and records, and from conversations I have had with Investors, I understand that, in addition to the United Kingdom, the Bonds were also marketed in other countries, particularly Malta, but also elsewhere in Europe and in Asia. Indeed, I understand that ARM engaged MFSP to act as its sales intermediary (tab 95) in Malta and although I have not seen any documentation regarding this (e.g. an agency agreement between ARM and MFSP), I understand that MFSP provided similar services to ARM in Malta, to those services which CIGL provided to ARM in England (i.e. marketing and distributing of the Bonds). Save for a number of application forms which appear to have been completed by MFSP on behalf of their clients, I have very little documentation or information relating to any of the third parties involved in the process of marketing and promoting the Bonds in those jurisdictions.

The Receiving Agents

103. The Receiving Agents were appointed to receive the subscription monies in respect of the Bonds. I describe below the Receiving Agents that, to the best of my knowledge, were appointed to undertake these activities and the terms on which they were appointed. It is the Receiving Agents who received the Pending Monies and whose bank accounts have been frozen by the FCA. Further detail of the accounts maintained by the Receiving Agents is set out in Part VIII below.

104. As set out in paragraph 204 below, the PLs understand that for investments made in Malta, subscription proceeds were received directly by MFSP and then transferred to ARM, SLC or Squaremile. The minutes of the Board Meeting dated 15 April 2010 which refer to monies being intended to be refunded to Receiving Agents outside the UK (tab 96) is consistent with the PLs' understanding of the subscription monies being refunded by ARM to MFSP (see paragraph 208 below).

105. Pursuant to a services agreement dated 1 July 2010 between ARM and Squaremile (the "**Squaremile Services Agreement**"), ARM appointed Squaremile as receiving agent, paying agent and UK registrar for the Bonds (tab 97). To the best of my knowledge, this is the only agreement entered into by ARM and Squaremile although I understand from the information provided by Squaremile to the PLs that subscription monies were received by Squaremile prior to this date. Squaremile is a company incorporated in England and Wales with its registered address at 40 Orsett Road, Grays, Essex, RM17 5EB (tab 98).

106. Clause 2 of the Squaremile Services Agreement lists the services to be provided by Squaremile to ARM. The services include the following:

(a) "*banking of subscription monies in an interest bearing client account in ARM's name daily*" (Clause 2.1.2); and

(b) "*transferring funds to ARM's nominated custodian at the close of each quarterly tranche*" (Clause 2.1.5).

107. It appears from information provided to the PLs by Squaremile that Squaremile also carried out certain other functions. The information provided to the PLs includes,

amongst a range of other information, subscription lists for all three Receiving Agents including Investors' names, details of a very significant number of interest payments made to Investors across all Issues (including those made by MFSP) and a proportion of refunds made to Investors across all Issues.

108. The Squaremile Services Agreement is governed by English law.

109. One of the other Receiving Agents acting on behalf of ARM was SLC Registrars Limited ("**SLC**") which is a company incorporated in England and Wales with its registered address at 42-50 Hersham Road, Walton-On-Thames, Surrey, KT12 1RZ (tab 99). On this occasion, it was CIGL that entered into a services agreement with SLC on 13 February 2008 (the "**SLC Services Agreement**") (tab 100). In the SLC Services Agreement, CIGL is defined as the "Issuer", which (as is noted at paragraph 21 of Mr Roberts' Witness Statement at tab 11) is misleading given that CIGL did not actually issue any Bonds.

110. Clause 1 of the SLC Services Agreement sets out the services to be provided by SLC as "receiving agent" including:

(a) *"check and process valid applications received from investors";*

(b) *"bank subscription monies in an interest bearing client account on receipt, interest to accrue for the benefit of the Fund unless agreed otherwise";* and

(c) *"at the close of the Offer transfer cleared funds held on the subscription account to the Issuer or as it may direct".*

111. The SLC Services Agreement does not contain an express governing law clause.

112. On 7 June 2007, CIGL entered into an outsourcing agreement with Jarvis Investment Management Limited ("**Jarvis**") (the "**Outsourcing Agreement**") pursuant to which CIGL appointed Jarvis to provide a range of services on behalf of CIGL (tab 101). Jarvis is a company registered in England and Wales whose registered office is at 78 Mount Ephraim, Royal Tunbridge Wells, Kent, TN4 8BS (tab 102). I understand from discussions between my team and Jarvis that it acted in the capacity as a PEP or ISA manager and as CIGL's custodian. Investors would open accounts with Jarvis directly or monies would be transferred to Jarvis from other plan managers.

113. Amongst the "Client Services" which Jarvis was obliged to perform were the "*receipt, holding and payment of Client Money through accounts opened and maintained by Jarvis with banks nominated by them in its name or the name of the Client or any Customer (as determined by Jarvis) for payment on the instructions of the Client to the Client or any Customer or in payment of amounts due in settlement of any bought bargain*" (Schedule 2, paragraph 6). "Customer" is defined in the Outsourcing Agreement as "*any person who has been accepted by Jarvis as a customer of the Client for the purposes of the Client Services.*"

114. Pursuant to Schedule 10, paragraph 2.1 of the Outsourcing Agreement, Jarvis is described as the "*duly authorised agent of each Customer and as agent for each Customer agrees that, upon the opening of an account for a Customer by Jarvis, the Customer concerned will become a party to this Agreement and will be bound by its terms.*" Further, pursuant to Schedule 10, paragraph 3.1, the "*Client may request Jarvis to open one or more accounts in the name of its Customers in accordance with such procedures as Jarvis may stipulate.*" Furthermore, according to paragraph 3.5 Schedule 10, "*Following the opening of an account on behalf of a Customer the Client and Jarvis will co-operate in transferring all cash balances relating to the Customer to Jarvis to be held by Jarvis as Client Money and all securities to be held in custody.*"

115. Paragraph 4.1 of Schedule 10 of the Outsourcing Agreement provides that "*Any money in any currency received by Jarvis for the account of any Customer will be received and held by Jarvis in trust in accordance with the FSA Rules in particular the Client Money Rules. Client Money will be held in an omnibus client money account with an approved bank nominated by Jarvis in which Jarvis will hold a pool of money it is holding on behalf of customers including the Client's Customers.*" "Client Money" is defined in the Outsourcing Agreement as money (in any currency) belonging to a Customer received and held by Jarvis.

116. Based on the PLs' and Akin Gump's discussions with Jarvis, I understand that Jarvis took the view that it was acting as custodian for CIGL and that the underlying Investors were customers of CIGL; Jarvis only acted on instructions from CIGL, although it viewed ARM and CIGL as somewhat indistinguishable.

117. As well as the above services, I understand from the discussions that have taken place with Jarvis personnel that, in some instances, Jarvis was involved in the process of paying interest to Investors. It should be noted that Jarvis is an FCA authorised firm, whereas SLC and Squaremile are not.

Other Third Parties

118. ARM's business model relied on an international sales force of IFAs which gave advice and facilitated sales of the Bonds to Investors. From ARM's books and records, it is my understanding that one of the principal IFAs involved in the sale of the Bonds was Rockingham Independent Limited. I also understand from submissions made at the FCA Hearing on 3 February 2015 that two other large IFAs that were involved were MFSP and Greystone Financial Services Limited. I do not currently have any further information and/or documentation which shows by whom the IFAs were engaged, or the terms of their engagement. It is also not clear to me why ARM chose to implement the Receiving Agent structure as a means of collecting subscription monies.

119. For completeness, I note that, on 25 January 2006, ARM entered into an umbrella agreement relating to "assured risk management bonds" with Life Settlements International, LLC (as amended from time to time, the "**Umbrella Agreement**") (tab 103). It is my understanding that the words "assured risk management bonds" are, in fact, a reference to the Bonds issued under the Assured Income Plan (see paragraph 152 below). The Umbrella Agreement specified that the offering of the relevant Bonds was issued under permissions granted by the FCA to CIGL because, we assume, ARM had no such permissions and could not otherwise offer bonds in the United Kingdom. It was anticipated in the Umbrella Agreement that the Bonds would be actively marketed and sold across Europe, the Middle East and the Far East. ARM wrote to Fortis Intertrust Luxembourg on 13 November 2006 (tab 104) noting that certain amendments needed to be made to the terms of the Umbrella Agreement, and that in order to expedite the issue of certain Bonds, it was agreed that CIGL (described as the "Arranger") would take certain responsibility for certain claims pending a formal amendment of the Umbrella Agreement (we have not seen any evidence that the Umbrella Agreement was amended as anticipated).

120. In addition to those parties mentioned above, there were a wide range of other third parties who were also involved, for example the other parties listed in the Bond documentation, and parties with whom ARM Trust entered into origination agreements. Save as referred to in this witness statement, I do not believe the other third parties play a material role in connection with the matters which are the subject of this Application.

PART V – THE BOND DOCUMENTATION

121. As a preliminary point, I would note that, based on my experience of acting as an insolvency practitioner in relation to other securitisation structures, the documentation which relates to the Bonds issued by ARM is not of a standard which is commensurate with the value of the Bonds which were issued. There are a number of aspects which are unclear, inaccurate and/or internally inconsistent. It is therefore even more difficult to deal with a number of the issues that have arisen. Set out below is my current best understanding of the position.

122. On 19 April 2006, ARM published an information memorandum (the "**Information Memorandum**") (tab 105) that was subsequently supplemented by various undated supplemental information memoranda, each relating to a different series of Bonds (the "**Supplemental Information Memoranda**" and together with the Information Memorandum, the "**IM Materials**"). An example Supplemental Information Memorandum is attached at tab 106. The Information Memorandum refers to ARM's USD 250,000,000 collateralised capital growth bond programme.

123. The IM Materials were prepared by CIGL, and each contains a disclaimer noting that they constitute a financial promotion for the purposes of section 21 of FSMA, that they have been approved by CIGL "*acting solely for [ARM] and no-one else*" and that CIGL "*will not be responsible to anyone other than [ARM] for providing the protections afforded by [CIGL] or for providing financial advice in relation to the subject matter*" of the IM Materials. The Supplemental Information Memoranda are addressed to investment professionals only and note that they should not be passed to, or relied upon by private customers. However, the Information Memorandum does not include this wording and appears to have been designed for private consumers

rather than for IFAs. My understanding is that the IM Materials were the pre-cursors to the prospectus materials, which are described in further detail below.

124. On 3 August 2007, ARM published a Base Prospectus in respect of a USD 250,000,000 asset-backed securitisation bond programme in compliance with Directive 2003/71/EC and Commission Regulation (EC) 809/2004, 05 2004 L149(1). A further Base Prospectus was published in respect of ARM's USD 250,000,000 asset-backed securitisation bond programme on 11 September 2008. A supplement to this prospectus was published by ARM on 27 July 2009. Copies of these Base Prospectuses and the Supplement are at tabs 107 to 109. On 18 November 2009, ARM published a Base Prospectus in respect of its USD 1,000,000,000 asset-backed securitisation bond programme. A copy of the Base Prospectus published on 18 November 2009 is at tab 23. I refer to these documents collectively as the "Base Prospectuses" in this witness statement. Where reference is made to the specific provisions of the "**Base Prospectus**", that reference is to the provisions of the Base Prospectus dated 18 November 2009.

125. From a review of the Base Prospectuses, I understand that, apart from the Base Prospectus dated 11 September 2008, the Base Prospectuses were all approved by the Irish Financial Services Regulatory Authority. So far as the 11 September 2008 Base Prospectus is concerned, it appears from the face of that document that an application was made to the Irish Financial Services Regulator for its approval but I have not been able to locate any information (whether from the Irish Stock Exchange itself, or otherwise) which confirms that it was ultimately approved.

126. Akin Gump has reviewed the terms of the IM Materials and each of these Base Prospectuses to determine whether there are any material differences between them for the purposes of this Application. Although the Base Prospectuses are not in entirely the same form, I have been informed by Akin Gump that there are no material differences between them which would impact on this Application. I have also been informed by Akin Gump that there are no material differences between the IM Materials and the Base Prospectuses which would impact on this Application.

127. The Base Prospectus provides that ARM has issued and may from time to time issue Bonds in series or as distinct and separate products. At page 35, the Base Prospectus

includes the terms and conditions which should apply to all the Bonds, irrespective of the Issue to which they relate. The Base Prospectus provides:

"The following are the terms and conditions of the Bonds which, subject to amendment, will be endorsed on each Definitive Bond and will be attached and (subject to the provisions thereof) apply to the registered bond. The full terms and conditions of the Bonds will be contained in each Series Prospectus."

The phrase "Definitive Bond" is not defined in the Base Prospectus. I assume that it is a reference to the issuance of definitive bonds in place of interests in a global note (see further below). So far as I am aware, no Definitive Bonds were ever issued.

128. The Base Prospectuses relate to the issuance by ARM of both "Income Bonds", which paid a coupon of up to 10% per annum, and "Capital Growth Bonds" which rolled up the coupon of up to 10% per annum, to be added to the principal and repaid at maturity. From our records, it appears that the proportion of Income Bonds to Capital Growth Bonds was approximately 73% to 27%. The Bonds were issued with terms of five, seven or ten years, at the option of the Bondholder and the target return on the Bonds varied from 7.5% to 10.0% per annum. For coupon-bearing Bonds, coupon notices were to be sent to each Investor on a quarterly or annual basis.

129. My understanding is that there have been 11 Issues of Bonds where each Issue refers to a period of time within which Bonds were (or were intended to be) issued. Based on my discussions with Mr Collins in his capacity as a former director of ARM, I understand the relevant periods for each Issue were as follows:

ISSUE	DATES
1	Up to 1 January 2008
2	Up to 1 April 2008
3	Up to 1 July 2008
4	Up to 1 October 2008
5	Up to 1 January 2009
6	Up to 1 April 2009
7	Up to 1 July 2009
8	Up to 1 October 2009
9	Up to 1 January 2010
10	Up to 1 April 2010
11	Up to 1 July 2010

130. As set out in paragraph 166 below, payments made by Investors needed to be cleared a full calendar month before the issue date for a particular Issue, failing which that investment would fall into the next quarterly allocation (i.e. the next Issue). In the circumstances, the PLs believe that subscription proceeds were received for a particular Issue before the issue date of the prior Issue.

131. I should note at this point that there is considerable inconsistency in the terminology used in the Bond documentation in relation to "Series", "Issue" and "Tranche".

132. By way of example, I note that in the subscription agreements and in the Permanent Global Note (as defined in paragraph 141 below) the Tranches are identified by a letter, and the Series by a number, whereas, in the Base Prospectus, the Tranches are identified by a number, and the Series by a letter. This inconsistency also appears in the contemporaneous correspondence and other documentation. For the purposes of this witness statement however, I use the terms as set out below.

133. Within each Issue, a number of different Series of Bonds was available with each different Series being identified with a different letter. Each Series had certain characteristics, i.e. it related to either a Growth Bond or an Income Bond; it had a certain tenor; it had a certain coupon rate / return at maturity; and it was in a certain currency.

134. A Series could be offered on more than one occasion, and on each such occasion, it was a separate Tranche of that Series which would be offered (each identified by a separate number). Each Tranche would have identical characteristics, save for maturity date which would vary with the issue date. A Tranche would open for investment and Investors' funds would need to be cleared a full calendar month before the issue date of the Bonds otherwise the investment would automatically fall into the next quarterly allocation. The Bond for that Tranche would then be issued on the issue date to all those who had invested in that Tranche. It is possible for one Tranche to fall within one Issue, but for a separate Tranche within the same Series to fall within a different Issue. Based on the Bond registers provided by Intertrust Ireland as referred to in paragraph 178 below, we understand there to have been

approximately 243 Tranches in total, 166 in respect of Issues 1-8[14] and 77 Tranches in respect of Issues 9-11. Whereas each of the 166 Tranches in Issues 1-8 was allocated an ISIN[15], only 49 of the 77 Tranches in Issues 9-11 appear to have been allocated ISINs (see paragraph 176(d) below).

135. As set out above, the IM Materials pre-date the Base Prospectus and Series Prospectuses and I understand that the early Tranches of Bonds were issued by ARM pursuant to the IM Materials, and the later Tranches of Bonds were issued by ARM pursuant to the Base Prospectus and Series Prospectuses. The Information Memorandum is dated 19 April 2006, and the Supplementary Information Memoranda that we have seen are undated. We are aware of 56 Series Prospectuses: the first Series Prospectus we have seen is dated 24 January 2008 (tab 110) and the last one we have seen is dated 13 April 2010 (tab 111).

136. Each Series Prospectus describes a Series which is identified by a letter (e.g. "Series D"). Akin Gump has also reviewed each of the Series Prospectuses we have located to see if they differ in material respects that may be relevant to this Application. I am informed by Akin Gump that they do not. In the circumstances, I refer to below, and exhibit at tab 112, Series Prospectuses DA, dated 8 April 2010 (the "**Series Prospectus**").

137. I understand that most of the Bonds within Issues 1-8 were listed on the Irish Stock Exchange, although I note that the Irish Stock Exchange does not appear to have any records of Series A, B and C having been listed. I note in this regard that those early Series of Bonds were issued pursuant to the Information Memorandum, which states that "*The Programme is not listed, however it is the intention of the Issuer to apply for listing of the Bonds on such stock exchange(s) as it may decide in its sole discretion*". It was only on 2 August 2007 that the board resolved to list the ARM Bonds on the Irish Stock Exchange (tab 113). In addition, the Irish Stock Exchange has confirmed to Akin Gump that they have no record of five other Bond Tranches from later Issues, for reasons which are unclear.

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[14] The PLs have located 170 global notes but understand that there were no investments in respect of 4 Tranches.

[15] An International Securities Identification Number (ISIN) is a code that uniquely identifies a specific securities issue.

138. The Terms and Conditions of the Bonds are not repeated in the Series Prospectus. Instead, page 14 of the Series Prospectus provides:

"*Save as varied above under "Summary of the Terms of the Issue", the Terms and Conditions of the Bonds are as set out on pages 34 to 48 (inclusive) of the Base Prospectus.*"

139. At page 11, it is stated that "*The Bonds will be governed by, and construed in accordance with, Luxembourg law.*"

140. As set out in the Series Prospectus, the Bonds are issued in registered form and will initially be represented by interests in a temporary global note or by a permanent global note, in either case in registered form, which may be deposited with a common depositary on behalf of Euroclear Bank S.A/N.V. as operator of the Euroclear System and Clearstream Banking, SA. My understanding is that there is a global note for each Tranche. We currently have copies of 170 global notes, which date from 30 November 2006 to 1 October 2009. I am informed by Akin Gump that they have spoken to an employee of Banque Internationale à Luxembourg ("**BIL**"), who has confirmed that it is the common depositary for these purposes. BIL has confirmed that it also holds 170 global notes.

141. I am informed by Akin Gump who has reviewed each of the global notes in our possession that all of the global notes are substantially in the same form other than that they each reflect the different economics relating to the relevant Tranche. In the circumstances, exhibited at tab 114 is a sample permanent global note in respect of a tranche of Bonds issued under Series DA (the "**Permanent Global Note**"). The Terms and Conditions of the Bonds are replicated in the Permanent Global Note. Although there are some differences between certain of the Conditions contained in the Permanent Global Note and the Base Prospectus, there are no material differences for the purposes of this Application. The Permanent Global Note states that "*These Bonds shall be governed, and construed in accordance with, the laws of the Grand Duchy of Luxembourg.*"

142. I understand that all the global notes were subscribed for by one of a small number of companies, including JIM Nominees Limited, Hansard Europe Limited and Irish Life International Limited. I refer in this respect to certain subscription agreements

between ARM as "Issuer" and these other companies as "Subscriber". My understanding is that there would have been one subscription agreement for each global note. At this point, however, my team and Akin Gump have located only 36 subscription agreements. Akin Gump has also reviewed each of these subscription agreements to see if they differ in material respects that may be relevant to this Application. I am informed by Akin Gump that they do not. In the circumstances, I refer to below and exhibit at tab 115 a copy of the subscription agreement for "Tranche I", "Series 13" with an issue date of 1 July 2009 (the "**Subscription Agreement**").

143. The Terms and Conditions of the Bonds are also set out in the Subscription Agreement. Akin Gump have reviewed the Terms and Conditions in the Subscription Agreement and have informed me that, in all material respects relevant to this Application, they are the same as that contained in the Base Prospectus. Condition 22 of the Terms and Conditions in the Subscription Agreement provides that "*The Bonds are governed by, and will be construed in accordance with Luxembourg law.*"

144. From the documentation and information that has become available to date to me and my team, my team has been able to prepare a spreadsheet which lists the issuances of Bonds by ARM by Issue (1-8), Series and Tranches of Bonds (tab 116).

145. From our review of the Bond documentation described above, we have identified two particular uncertainties which complicate the PLs' ability to determine the respective rights of the Investors.

146. First, the Bond documentation appears to contain limited recourse language. I understand that all of the references will be brought as necessary to the attention of the Court at the hearing of this Application. By way of example, however, I note that Condition 3.1 states that ARM's obligations are "... *limited in all circumstances to the Underlying Assets of the Issuer*" (see page 35 of the Base Prospectus, and see also Condition 10 at page 41 and Condition 14 at page 44, and the description of this risk factor on page 19). "*Underlying Assets*" comprise "*cash, cash equivalent and cash flows from the pool of SLS, and will be held in the Cash Entitlement Account. Other qualifying Underlying Assets may also be held*" (see page 38 and Condition 6 of the Base Prospectus). I am advised by my lawyers that it is not clear whether these

limited recourse provisions affect (and, if so, how) any contractual claims which the Non-Pending Bondholders or Pending Bondholders may have against ARM and/or any tortious or other claims which either the Non-Pending Bondholders or Pending Bondholders may have against ARM.

147. Second, it is unclear from the documentation how the Bonds are ranked as between themselves. I am advised that this is a matter that is governed by Luxembourg law. The PLs had not previously intended for the Court to determine whether the Bonds are ranked. However, as the scope of this Application has broadened to cover certain Luxembourg law issues which are relevant to the question of ranking, the PLs have very recently been advised that it would be helpful for the Court to determine this issue as well. Given that the inclusion of the ranking issue will require the identification of a further representative party, the appointment by that party of legal representation and, together with the parties to this Application, the determination of the questions to be put to the Court, which the PLs believe will take around two months, the PLs, together with the First and Second Respondents, have taken the view that this Application should be issued as soon as possible and that it be amended as soon as practicable to include questions for the Court on ranking. The PLs and the First and Second Respondents believe that the inclusion of the ranking issue can be accommodated without jeopardising the hearing date of this Application.

148. A review of the trust documentation supports the proposition that assets purchased from a particular pool of Bond proceeds would be segregated or compartmentalised (see pages 14 and 15 of the Trust Agreement and Declaration of Trust dated 8 June 2007 tab 10). This is supported by the limited recourse provisions in the Bond documentation (briefly referred to in paragraph 146 above). However, to the best of my knowledge, based on information provided to me by certain of the former directors of ARM, and a review of ARM's books and records, no steps were taken to segregate the underlying assets, and the Bonds were in practice therefore treated as ranking *pari passu* by ARM on a day-to-day basis. As set out in this witness statement, there is now *de facto* segregation as between the Pending Monies (held in the accounts of the Receiving Agents) and other assets, being the cash at bank and the FCIL Receivable (see further paragraphs 183 - 185 below).

PART VI - THE INVESTOR APPLICATION AND BOND ISSUANCE PROCESS

149. I summarise below my understanding of the subscription process.

150. As set out above, CIGL was the primary distributor of ARM's bonds to the IFAs and other investment intermediaries (e.g. the SIPP providers), and it was also responsible for producing certain brochures which were used to promote the Bonds to IFAs and Investors ("**Brochures**").

151. I understand from discussions with certain Investors that the Brochures, and a document entitled "Frequently Asked Questions" ("**FAQs**"), were the main marketing materials which were provided by the IFAs to Investors. A copy of the only version of the FAQs of which I am aware is exhibited at tab 117. Again from my discussion with various Investors, and as mentioned in the FCA Hearing, I understand that certain IFAs may have provided Investors with copies of the Base Prospectus and/or the Series Prospectus, but I cannot be sure this was the case. I have also seen an undated "*Reasons why*" document (tab 118) which appears to have been prepared by ARM for IFAs that describes the general premise for the issuance of the Bonds. This document expressly notes that it should not be passed onto, or relied upon, by private customers.

152. My team and Akin Gump have copies of three types of brochures produced by CIGL. According to the Financial Services Compensation Scheme ("**FSCS**") website, it appears there may have been two further versions[16]. At this stage, we have been unable to locate copies of those versions. Those copies that we have access to are exhibited at tabs 119 to 121. These are as follows: (i) the "ARM Assured Income Plan 10/10" Brochure; (ii) the "ARM Assured Income Plan" direct investment Brochure; and (iii) the "ARM Capital Growth Bond" direct investment Brochure. I have been informed by certain Investors (although I have not been able independently to confirm) that, whilst the vast majority of Investors subscribed for Bonds through an IFA, a proportion subscribed for Bonds directly with CIGL, hence the direct investment Brochures. To the extent that CIGL produced a Brochure for the ARM Capital Growth Bond where the Bonds were subscribed for via IFAs, I have not seen

[16] http://www.fscs.org.uk/what-we-cover/questions-and-answers/qas-about-arm-and-catalys-j847tta1d/#What_is_ARM_Asset_Backed_Securities_SA_and_what_has_happened_to_it_

a copy. I am advised by Akin Gump who has reviewed each Brochure that there are no differences between them which are material for the purposes of this Application. The back page of each Brochure provides that it has been approved for the purposes of section 21 of FSMA 2000 by CIGL.

153. The Brochures provided the Investors with information about the Bonds and included the Terms and Conditions of the Bonds. On my behalf, Akin Gump has reviewed the Terms and Conditions at the back of each Brochure as against the Terms and Conditions in the Base Prospectus. Save as set out below, I understand from Akin Gump that the Terms and Conditions in each of the three Brochures are materially the same as those in the Base Prospectus.

154. I note, however, that, whilst the Terms and Conditions in the Base Prospectus contain a clause which limits Investors' recourse to the "*Underlying Assets*" of the Issuer before an "*Event of Default*", this limited recourse provision does not appear to be replicated in the Terms and Conditions attached to the Brochures. In the context of enforcement, following an "*Event of Default*" and once the Bonds have become due and payable, the limited recourse wording in the Terms and Conditions of the Brochures replicates that found in the Base Prospectuses. There are, however, references to limited recourse to the assets of ARM in the Brochures themselves (see pages 23 and 27 of the ARM Assured Income Plan 10/10 Brochure at tab 119). In addition, whilst the Terms and Conditions in the Base Prospectus refer to the ranking of the Bonds (see clauses 3.2 and 3.3 of the Base Prospectus), a similar provision is not found in the Terms and Conditions attached to the Brochures. There is, however, a reference to the ranking of the Bonds in the body of the Brochure itself.

155. The FAQs set out a number of questions and answers relating to the Bonds. I note that the following statement is made on page 1 of the FAQs:

> *"**2.** Who is the Issuer of both the Growth Bond and the Income Plan?*
>
> *ARM Asset Backed Securities S.A. ("ARM"), a Luxembourg based Special Purpose Vehicle (See Q3) and licenced securitization vehicle...." (emphasis added).*

156. As set out above, I believe that, to the extent this statement was referring to the necessary licence required from the CSSF to issue securities to the public on a continuous basis, then it is wrong.

157. The investment process for Investors required them to complete an Application Form, although many of the Investors with whom I have discussed the process of subscription have confirmed that they do not recall filling in an Application Form. They believe that the Application Form was completed for them and on their behalf by their IFA.

158. For those Investors wishing to subscribe for the Bonds directly, the application was completed in their name. For those Investors who invested via vehicles such as a Self-Invested Personal Pension ("**SIPP**"), it is my understanding that the Application was made in the name of the pension/scheme on behalf of the Investor.

159. In reviewing the books and records of ARM, my team has located fifteen different types of Application Forms for the Assured Income Plan and four versions of the Application Form for the Capital Growth Plan. An example of each different Application Form is appended at tabs 122 to 140. Four of the Application Forms for the Assured Income Plan appear to have Rockingham's name stamped on the front whilst the others simply have the ARM logo. As it was part of CIGL's mandate to process applications to subscribe for the Bonds, I would have expected there to be a significant number of Application Forms amongst the books and records of CIGL, but as noted above although we are taking steps to obtain these we have not yet obtained access to them.

160. On my behalf, Akin Gump has reviewed each of these 19 Application Forms. I am informed that 18 of them incorporate the Terms and Conditions of the Bonds as found in the Brochure or, instead, replicate them. By way of example, one Application Form which can be found at tab 134 states:

"I/We declare that to the best of my/our knowledge and belief all statements in this application are true and complete. I/We understand that this Application Form and the terms and conditions contained within the ARM Assured Income Plan Brochure form the basis of the contract between ARM Asset Backed Securities S.A. and

myself/ourselves. I/We have read the ARM Assured Income Plan Brochure, including the associated risk and understand the nature and effect of this contract....."

161. The remaining type of Application Form does not make any reference to the Terms and Conditions in the Brochure nor does it contain any terms or conditions, although we believe that this is because our copy of this Application Form is incomplete (tab 123).

162. Further, 17 of the 19 Application Forms contain the following wording (tabs 124 to 140):

"I/We acknowledge that Catalyst Investment Group Ltd is acting exclusively on behalf of the Issuer, ARM Asset Back Securities S.A. and no one else in connection with this Investment. I/We accept that Catalyst Investment Group Limited will not regard any other person as its customer or be responsible to any other person for providing the protections afforded to customers of Catalyst Investment Group Limited nor for providing advice in relation to the transactions and arrangements detailed in the ARM Income Plan Brochure. I/We am/are aware that I/we must reach my/our own Investment decision and consult with an independent financial adviser where appropriate before making an Investment."

163. Additionally, of the 15 Assured Income Plan Application Forms, 14 have the following wording:

"I am/We are aware that I/we will receive interest from the date upon which my/our funds clear but that the bond will not formally be issued and therefore start from the next 1 January, 1st April, 1st July or 1st October as the case may be. I/We also understand that I/we will not receive my/our certificate until after the date of issue of the bond. Please note that payments must be cleared a full calendar month before the respective issue date otherwise it will automatically fall into the next quarterly allocation."

164. The Application Forms that have been reviewed require the Investor to provide a cheque in the amount of the investment being made payable to either "*Squaremile Registrars Ltd/ARM Income Plan – Client A/C*" or "*SLC Registrars Ltd/ARM Income Plan – Client A/C*" and many of the Applications Forms include wording that the

Investors authorise "*the relevant parties: to hold my/our cash subscription, Direct Investments, interests (as applicable), dividends and other rights or proceeds in respect of those investments and any cash or other proceeds*".

165. For those Investors making an ISA investment, the Application Form provided:

"Jarvis Investment Management Plc has been appointed by Catalyst Investment Group Limited, as authorised by ARM Asset Backed Securities S.A., to carry out ISA/PEP management administration for the ARM Assured Income Plan..."

166. Further, each of the Application Forms that Akin Gump has reviewed provides that:

"*I/We also understand that I/we will not receive my/our certificate until after the date of issue of the bond. Please note that payments must be cleared a full calendar month before the respective issue date otherwise it will automatically fall into the next quarterly allocation.*"

Accordingly, it appears that in practice the investment period for each Issue ended one month prior to the actual or intended issue date of the Bonds in that Issue.

167. I understand that in their capacity as Receiving Agents, Squaremile and SLC would process Applications received from Investors and, deal with general enquiries from investors. By way of overview, I understand the process by which Applications would be processed is as follows:

(a) Squaremile and/or SLC would receive an Application Form, either from the Investor directly or via an IFA or Jarvis, together with a payment for the investment in the form of a cheque or via CHAPS or BACS and KYC documentation.

(b) The Receiving Agent concerned would:

(i) check the Application Form to ensure it did not contain any errors;

(ii) verify that the amount received from the Investor corresponded with the amount that was intended to be invested;

(iii) review and consider the KYC documentation; and

(iv) follow up on any queries with the Investor.

(c) The Applications would then be logged onto the relevant database and any cheques received would be banked.

(d) On a daily or weekly basis, the Receiving Agent would provide CIGL with a schedule of new Investors and the amounts invested[17].

(e) On a weekly or monthly basis, the Receiving Agent would provide CIGL with a statement of aggregate amounts held[18].

(f) As and when directed by CIGL, the Receiving Agent would pay out monies to ARM.

168. So far as Jarvis is concerned, I understand that it was not involved in the processing of Application Forms. On receipt of subscription monies either directly from an Investor or from another plan manager, Jarvis would inform CIGL of the receipt of those monies. CIGL would then send to Jarvis a placing document[19] with the details of the relevant Issue, Series and Tranche the Investor was investing in. That investment would then be booked onto Jarvis' systems.

169. If an Investor chose to subscribe, and made the necessary payment, he would receive a "**Contract Note**" which I understand was deemed by CIGL to be a "receipt" for transferring subscription funds to the Receiving Agents. I note in this regard that the Contract Notes were issued by CIGL upon confirmation to it of receipt by the Receiving Agents of the subscription proceeds notwithstanding that this might pre-date the date on which the Bonds were actually issued.

170. I have exhibited at tab 141 an email from Mr Andrew Mason of Rockingham to certain unnamed recipients (whom I assume to be Pending Bondholders) in which Mr Mason provided the Pending Bondholders with answers to various questions put to CIGL about the ARM Assured Income Plan. One of the questions asked at page 4 of that email is whether a Contract Note is legally binding. The response given by CIGL

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[17] The PLs have not been provided with any screenshots/examples of the schedule of new Investors that would have been provided to CIGL.
[18] The PLs have not been provided with any screenshots/examples of the statement that would be been provided to CIGL.
[19] The PLs have not been provided with any examples of a placing document.

was "*A contract note essentially acts as a receipt of the application it is not a legally binding agreement at this stage.*"

171. To the best of my knowledge, the PLs currently have copies of 940 Contract Notes provided by Investors as evidence of their payment of subscription monies. Based on a review by Akin Gump of a random sample of 100 Contract Notes, there appear to be three different forms of Contract Note, which are exhibited at tabs 142 to 144. The form of Contract Note at tab 145 would appear to be significantly the most common. On the basis of the sample review, I am advised that there appear to be no significant differences between the Contract Notes which are material for the purposes of this Application. Accordingly, examples of such a Contract Note for both a Pending and Non-Pending Bondholder are at tabs 143 and 144 respectively.

172. In addition, I have seen two "acknowledgements of holdings" (each an "**Acknowledgement of Holdings**") which I understand were the pre-cursors to Contract Notes (see examples at tabs 88 and 145). The Acknowledgements of Holdings refer to Bonds issued subject to the terms and conditions of the Information Memorandum, whereas the Contract Notes refer to Bonds issued subject to the terms and conditions of the Base Prospectus. The Acknowledgements of Holdings we have seen were from 2006 (i.e. pre-dating the Base Prospectus). It is also worth noting that the Acknowledgements of Holdings refer to the Bonds being issued in bearer form, whereas the Contract Notes refer to them being issued in registered form.

173. Each of the 19 types of Application Form that are in the PLs' possession refers to the Investors receiving a "**Notation of Interest**" (which I note are sometimes referred to in the documents as a "Bond Certificate"):

"The Bonds are held in global note form and upon issue each investor will receive a notation of interest in the relevant global note. ING Luxembourg acts as custodian and principal paying agent for the global notes. Equity Trust Co. (Luxembourg) S.A. act as registrar and will be responsible for maintaining a register and records of all registered interests."

174. Exhibited at tabs 146 and 147 are examples of Notations of Interest that certain Investors have provided to me. To the best of my knowledge, the PLs currently have copies of 274 Notations of Interest (197 of which are described as Notations of

Interest and 77 of which are described as Bond Certificates). My understanding is that these Notations of Interest were issued to Investors once the relevant global note had been issued. I have also seen a cover note from Squaremile to a Non-Pending Bondholder in which the Notation of Interest was described as "*your bond certificate confirming your investment in the [ARM Assured Income Plan]*" (tab 148). Based on a review by Akin Gump, there appear to be no differences between the Notations of Interest which are material for the purposes of this Application. To the best of my current knowledge, none of the Pending Bondholders received Notations of Interest.

175. Where Non-Pending Bondholders subscribed for an interest-bearing Bond, they would receive a periodic coupon notice. We have presently located a single example of a coupon notice which was sent by Intertrust to an Investor on 28 June 2011 (tab 149), as well as set of coupon notices, all dated 21 December 2010, sent by Brian Rayment, Chief Operating Officer of CIGL to a number of Investors (tab 150).

176. In light of the above, I believe there are certain facts and matters which, amongst others, may be relevant to the issue of the Pending Monies, including:

(a) I understand from ARM's books and records, and from information which we have been provided with by the Receiving Agents, that subscription monies were paid by Investors in respect of Issues 9-11;

(b) it would appear that certain Investors who subscribed for Issues 9-11 received a Contract Note (i.e. an acknowledgement of receipt);

(c) I understand from announcements on the Irish Stock Exchange's website[20] that none of the Bonds which are listed on the Irish Stock Exchange were issued later than 1 October 2009, (which, as set out in paragraph 129, I believe was the issue date for Issue 8). I understand from these announcements that the last Bonds to be listed were Series Q Tranche 6, on 13 April 2010. I understand from my review of the applicable Permanent Global Note that Series Q Tranche 6 was issued on 1 October 2009, i.e. within Issue 8;

[20] http://www.ise.ie/Market-Data-Announcements/Announcements/?action=SEARCH&COMPANY_NAME=arm+asset-backed&COMPANY_NAME_ESCAPED=arm%2520asset-backed&START_DATE_DAY=1&START_DATE_MONTH=2&START_DATE_YEAR=2005&END_DATE_DAY=1&END_DATE_MONTH=2&END_DATE_YEAR=2015&x=45&y=12

(d) as set out in paragraph 134 above, ISINs appear to have been obtained for 49 of the 77 Tranches in Issues 9-11. More particularly, I understand that each of the Tranches for Issue 9 was allocated an ISIN together with certain of the Tranches in Issue 10. So far as the allocation of ISINs to the proposed 1 January 2010 Bonds are concerned, I note from the ARM Operations Guide (a copy of which is at tab 151[21]) that ISINs were applied for at least one month prior to closing. I also refer in this regard to: (i) an email from Ms Spinks of CIGL to a Ms Maron dated 18 December 2009 which refers to the fact that new ISINs do not need to be applied for in respect of the Bonds with the 1st January 2010 issue date (a copy of which is at tab 152); (ii) an Excel report which Akin Gump extracted from the Thomson Reuters Eikon platform[22] (a copy of which is at tab 153); and (iii) an undated letter from CIGL to a Mr Barnes (whom I believe to have been an IFA) a copy of which is at tab 17;

(e) the resolution of the board of directors dated 18 December 2009 (tab 154) states that the directors had decided to put on hold the issuance of Bonds whilst the CSSF was reviewing ARM's application. In addition, the minutes of the ARM board meeting held on (i) 24 June 2010 (tab 19) demonstrate that the directors were unclear of ARM's obligations and the extent to which ARM should issue the Pending Bonds, and (ii) 15 April 2010 (tab 96) states that "investors had subscribed for bonds which had not yet been issued";

(f) to the best of my current knowledge, no global notes were issued in respect of Issues 9-11;

(g) the FCA's Final Notice, dated 30 September 2013 (tab 47) states (in Annex B, paragraph 1.3) that CIGL represented that it "*knew that new funds received into tranches 10 and 11 would be held by receiving agents without being passed to ARM unless and until ARM was permitted to issue bonds*";

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[21] At this stage, the PLs have been unable to confirm the provenance, role or date of this Guide.

[22] Eikon is a set of software products provided by Thomson Reuters for financial professionals to monitor and analyse financial information. It provides access to real time market data, news, fundamental data, analytics and trading information.

(h) ARM issued a letter to Investors on 24 September 2010 (tab 21) stating that "*ARM SA has been unable to issue bonds...whilst its application to the CSSF has been under consideration*";

(i) ARM issued an update notice to investors on 25 October 2011 (tab 28) stating that "*ARM has been unable to issue new bonds since November 2009*", confirming a previous announcement dated 2 November 2010 (tab 155);

(j) the resolution of ARM's board of directors dated 18 December 2009 (tab 154) states that ARM is "*currently putting any further issue [of certain Bonds] on hold until further notice from the CSSF*";

(k) in support of this, I understand that Clearstream has confirmed to Akin Gump that to the best of its knowledge the Bonds underlying the Tranches referred to in the 18 December 2009 resolution were never issued by ARM and the associated ISINs were later cancelled (tab 156);

(l) the CIGL Final Notice states that "[n]o new ARM bonds have been issued since 1 October 2009. On 20 November 2009, ARM came to an agreement with the CSSF that it would discontinue the issuance of new bonds pending the CSSF's decision regarding its authorisation application". As set out in paragraph 27 above, on 20 November 2009 the CSSF instructed ARM to cease issuing Bonds during the licence application process; and

(m) I have not seen any evidence that Investors who paid subscription monies in respect of Issues 9-11 received a Notation of Interest.

177. My understanding from discussions with the lawyers for the First and Second Respondents is that it may be common ground between them that in light of, inter alia, the above facts and matters, no Bonds within Issues 9-11 were in fact issued.

PART VII – THE INVESTORS

178. The maintenance of the Bond register appears to have been the responsibility of Intertrust Ireland pursuant to an agreement dated 25 February 2011 (tab 157). On 19 March 2015, the PLs received from Intertrust Ireland copies of Bond registers for the years 2009-2011 which I understand to be the most comprehensive available

compendium of investments made by the Investors in each of the Issues 1-11. Using this source, my team has compiled an extensive database of all the Bonds, and the Non-Pending Bondholders. I refer to this database, a copy of which is at tab 158, as the "BDO Non-Pending Bondholder Spreadsheet". For the purposes of this Application, I have redacted the individual names from this spreadsheet.

179. The bar chart and the pie chart accompanying the BDO Non-Pending Bondholder Spreadsheet (tab 159) shows that approximately £58m (58 per cent) of the Non-Pending Bondholders by value are resident or incorporated in the United Kingdom (using current exchange rates). The other key jurisdictions where Non-Pending Bondholders are resident are Malta (approximately £23m (23 per cent) by value) and Belgium (£12m (12 per cent) by value).

180. Based on the Intertrust Ireland bond register my team has also compiled a list of the details of all the Pending Bondholders. I refer to this database, a copy of which is at tab 160, as the "**BDO Pending Bondholder Spreadsheet**". For the purposes of this Application, I have redacted the individual names from this spreadsheet. The PLs continue to update the BDO Pending Bondholder Spreadsheet as and when new information regarding historic refunds is received.

181. The table below illustrates the face value of the Pending Bonds on a jurisdiction by jurisdiction basis. This information has been prepared by the PLs by filtering the addresses of the Pending Bondholders found in the Intertrust Ireland Bond register by jurisdiction and aggregating the value of investments on a jurisdiction basis.

Country	**£ Equivalent**		**%**
China	19,200		0.07%
Italy	25,000		0.09%
Malaysia	20,000		0.07%
Malta	9,810,065		36.25%
UK	17,189,147		63.52%
Total	**27,063,412**		100%

182. A number of Investors have sought to be compensated by the FSCS in connection with claims held by them as against CIGL and the IFAs. I understand from my

discussions with the FSCS that, at present, the FSCS has paid compensation amounting to approximately £64.9 million to Investors[23]. This has resulted in approximately 52% of investments by face value of Bonds having been compensated by the FSCS in return for an assignment to the FSCS of all their rights in connection with the Bonds. This figure continues to grow, and there is no statutory deadline for Investors accepting compensation from the FSCS. For present purposes I note that the FSCS is offering compensation to both Non-Pending Bondholders and Pending Bondholders on the basis that they both suffered losses from the activities of CIGL.

PART VIII – THE ASSETS OF ARM, AND THE PENDING MONIES

183. Although the PLs are continuing their forensic exercise to determine the full extent of ARM's assets and liabilities, it currently appears that ARM's principal assets are: (i) cash held in three bank accounts (Euro, USD and GBP) in London under the control of the PLs for the benefit of ARM and its creditors (the "**London Accounts**"); and (ii) the balance of the FCIL Receivable. ARM also maintains a bank account with ING in Luxembourg. The current balance on that account is approximately €(46,000)[24]. Depending upon the outcome of this Application, the Pending Monies may also form part of ARM's assets.

184. ARM has received payment of four instalments of the FCIL Receivable to date: $113,939 on 2 November 2012; $3,613,939 on 31 December 2012; $7,227,887 on 20 May 2014; and $7,227,877 on 5 February 2015. Accordingly, the balance of the FCIL Receivable is $50,595,139 payable in 7 equal instalments of $7,227,877 on the last working day of each year until 2021[25].

185. The USD London Account has been credited with the two most recent FCIL Receivable instalments, and has been debited by the PLs' fees, costs and expenses. The current balance standing to that account is approximately $8.6 million. The

[23] Whilst I understand that £64.9 million has been paid out to Investors by the FSCS as compensation, the aggregate value of the assignments that the FSCS has taken is £86.8 million.
[24] The PLs had requested that the account be closed and are querying with ING why certain unapproved fees appear to have been charged and drawn by ING post that request.
[25] It may be possible for the PLs to offer an option to those creditors who elect to take an accelerated and discounted payment in respect of the FCIL Receivable, rather than having to wait until the final instalment has been received by ARM. Not least given their age profile, this option may be attractive to a number of Investors. In order to seek to put the PLs in a position in which this option can be offered, the PLs are seeking to reach agreement with FCIL on an accelerated payment of some or all of the FCIL Receivable. For the avoidance of doubt, the PLs do not intend to force any Investor to do this; it will be a matter of choice for each Investor.

current balance of each of the other London Accounts is approximately €1 million and £39.

186. So far as the Pending Monies are concerned, I set out below a summary of the PLs' understanding of:

(a) the current holding of the Pending Monies by the Receiving Agents; and

(b) the movement of monies as between the Receiving Agents and ARM which provide an indication of the various components making up the Pending Monies, more particularly:

(i) transfers of monies from the Receiving Agents to ARM from 1 July 2009 until the Pending Monies were frozen by the FCA in November 2011;

(ii) refund payments made by ARM and/or the Receiving Agents to Investors from 1 July 2009, including following receipt of subscription proceeds from Investors for investments in Issues 9-11;

(iii) payments from ARM and/or the Receiving Agents to Investors in the form of redemptions after 1 July 2009, including following receipt of subscription proceeds from Investors for investments in Issues 9-11; and

(iv) interest payments made to Investors from 18 September 2009[26], including following receipt of subscription proceeds from Investors for investments in Issues 9-11.

The current holding of the Pending Monies by the Receiving Agents

187. As set out in paragraph 30 above, the PLs understand that the face value of the Pending Bonds is approximately £27.1 million (equivalent).

188. From the data provided to the PLs by each of the Receiving Agents, the PLs have not been able to quantify with accuracy the subscription proceeds received by each Receiving Agent for each of Issues 9-11. Based on the timing of receipt of

[26] This is the first recorded date for payments of interest in the data in the possession of BDO.

subscription proceeds from the ARM bank statements and from the information provided by Squaremile, SLC and Jarvis, the table below shows the PLs' understanding of the approximate breakdown of the receipt of the subscription proceeds as between the Receiving Agents and the various third parties:

Amount[27]	Recipient
€ 26,289,780	SLC (received directly)
€ 20,600,959	Squaremile (received directly)
€ 1,068,182	Jarvis (received directly)[28]
€ 3,147,203	ARM (received directly)
€130,867	ARM (received from Irish Life International)
€1,535,470	ARM (received from CIL HE Nominees)
€ 235,862	ARM (received from SIPP Collections/SIPP Deal)
€ 1,480,413	ARM (received from Hansard Europe Limited)
€ 7,468,651	ARM (received from MFSP)
€ 61,957,389	**Total**

189. As illustrated in the table above, of the total subscription proceeds received for Issues 9-11, approximately €47.9 million was received by the three Receiving Agents (highlighted in purple) and approximately €14 million was received directly and indirectly by ARM (highlighted in blue). With reference to the €3.1 million receipts received directly by ARM after 1 September 2009, it is unclear to the PLs whether these amounts relate to subscription proceeds or not and, accordingly, investigations are ongoing.

190. On the basis of account balances provided by each of the Receiving Agents the amount of the Pending Monies currently frozen in the Receiving Agents' accounts equates to £17,540,898.02[29]. The breakdown of the Pending Monies as between each Receiving Agent and by currency is set out in the table below:

[27] The amounts represent the Euro equivalent using the exchange rate when the funds were received.
[28] The PLs understand that (i) an aggregate amount of €1,116,042 of subscription monies received by SLC and Squaremile, and (ii) €84,438 subscription monies received by ARM were transferred to Jarvis following receipt.
[29] Calculated on the basis of exchange rates published by Bloomberg on 19 November 2015.

	£	€	$	Total £ (equivalent)
SLC	9,601,573.26	1,643,316.30	192,387.29	10,879,453.49
Jarvis	1,513,151.38	-	-	1,513,151.38
Squaremile	2,237,301.21	3,802,541.30	374,990.54	5,148,378.92
Total Funds	13,352,025.85	5,445,857.60	567,377.83	
Conversion to £	13,352,025.85	3,818,090.76	370,781.41	17,540,983.79
Conversion Rates	1	1.4263	1.5302	

191. I summarise below information that has been provided to the PLs by each Receiving Agent on how the amounts identified above have been and are held.

192. SLC: The following is based on information provided to us by SLC, and discussions between my team and the technical director at SLC, Mr Doug Armour.

(a) SLC held, and continues to hold, three accounts at HSBC Bank plc ("**HSBC**"): a GBP account (account number 41319698 containing £9,601,573.26), a Euro account (account number 60182916 containing €1,643,316.30) and a USD account (account number 60182908 containing $192,387.29).

(b) The GBP account currently pays interest at approximately 0.05% per annum which, pursuant to the terms of the SLC Services Agreement, accrues for the benefit of ARM. The PLs have been informed by Mr Armour that interest accrued to date amounts to approximately £89,000. Neither the Euro account nor the USD account are interest- bearing.

(c) The Euro account and the USD account hold only Pending Monies. The GBP account contains both Pending Monies and funds transferred to SLC by non-Investor clients unrelated to ARM (i.e. it is a pooled client money account). The £9.6 million held by SLC in its GBP account referred to in the table above comprises Pending Monies only.

193. Squaremile: The following is based on information provided to us by Squaremile and from discussions between my team and Mr Raine, a director of Squaremile.

(a) Squaremile holds three accounts at HSBC which contain Pending Monies: a GBP account (account number 23665348 containing £2,237,301.21), a Euro account (account number 68679738 containing €3,802,541.30) and a USD account (account number 68675598 containing $374,990.54). These accounts contain only Pending Monies.

(b) The GBP account presently pays interest at approximately 0.05% per annum. It is Squaremile's position that any interest accrued to date is for the benefit of Squaremile. I understand that neither the Euro account nor the USD account are presently interest-bearing and that, to the extent those accounts paid interest historically Squaremile also takes the position that they are entitled to retain the interest[30].

(c) We have been informed by Squaremile that from the Pending Monies they currently hold, all fees and commissions were deducted up front.

194. Jarvis: The following is based on information provided to us by Jarvis, and discussions between my team and the Managing Director of Jarvis, Mr Andrew Grant, a Director, Mr Nick Crabb, and the Head of Operations, Mr Colin Steadman.

(a) Jarvis holds one account at National Westminster Bank plc ("**NatWest**") with account number 78322936. It is a pooled client money account, containing £1,513,151.38 in respect of the Pending Monies. It also contains £5,667.77 of funds relating to investments by Non-Pending Bondholders[31]. Each of the 166 Investors is identified in Jarvis' records by an individual internal account number.

(b) The account is interest-bearing however the rate is negligible or zero.

(c) Jarvis has provided the PLs with details of the accounting entries it holds for each of the Pending Bondholders who paid in these funds.

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[30] On 14 September 2015, the PLs entered into a settlement agreement with Squaremile pursuant to which they paid Squaremile 50% of (i) fees due and owing to Squaremile, and, (ii) interest earned on the Squaremile accounts in full and final settlement of all of Squaremile's claims. The PLs believe that this settlement is fair and reasonable for Squaremile and all of ARM's other creditors. The settlement funds paid to Squaremile have come out of the estate's general funds.

[31] The PLs have been advised by Jarvis that some customers would have minimal amounts remaining on their accounts due to reconciliation issues and that any amounts under £1000 are likely to be attributable to a remaining balance rather than a Pending Monies investment.

195. I summarise below the First Supervisory Notices, which the FCA served on 9 November 2011 with respect to the Pending Monies.

196. The First Supervisory Notice served on HSBC (tab 30) identifies the six bank accounts held in the names of Squaremile and SLC that the FCA froze (see clause 1.5). In fact, I understand from discussions with Mr Armour at SLC, that the SLC accounts which have been frozen do not hold any Pending Monies. My team has been informed by Mr Armour that on becoming aware that the FCA had apparently frozen the wrong accounts, SLC wrote to the FCA to inform it of its error but SLC did not receive a response[32]. In the circumstances, I understand that SLC has been taking a prudent approach and has treated the Pending Monies as frozen.

197. The First Supervisory Notice served on NatWest (tab 31) states that the FCA has frozen the account bearing sort code 55-70-13 and account number 78322936 held in the name of Jarvis but "*only in relation to those funds in the Accounts referable to the list of reference numbers given in the Appendix to this notice*" (see clause 1.5 and the definition of "Account"). The Appendix lists 166 reference numbers, which, as explained in paragraph 194(a) above, are individual account numbers for each Investor for Jarvis' internal record keeping system.

Cash transactions involving ARM and the Receiving Agents

198. The analysis set out below has been prepared with the assistance of Mr Karklins who has been assisting the PLs with the recreation of ARM's accounts from July 2009 (as described in more detail above). It seeks to summarise the more detailed review and analysis of a number of sources of information including the following:

(a) ARM bank statements from 1 July 2009. ARM held 3 accounts (GBP, Euro and USD) with ING in Luxembourg. A significant number of cash transactions undertaken by ARM on a day-to-day basis were undertaken through these three accounts including the receipt of subscription proceeds for the sale of ARM bonds. The bank statements reviewed by Mr Karklins indicate that ARM made no attempt to segregate subscription proceeds by Issue, Series and/or tranche or by Investor.

[32] The PLs have requested a copy of the letter to the FCA from SLC but as at the date of this Application it has not been received.

(b) Fund reports provided by Jarvis to ARM from 1 July 2009[33];

(c) Fund reports provided by SLC to ARM from 1 July 2009[34]; and

(d) Squaremile bank statements and fund reports from 1 July 2009[35] recently provided to the PLs.

199. This section is intended to provide a high level overview of the various cash transactions involving ARM and the Receiving Agents and therefore provides a summary only of the extensive financial information now in the PLs' possession. The First and Second Respondents to this Application and their respective instructed solicitors have been offered the opportunity to inspect or be provided with copies of the above referenced documents. They have also been given the opportunity to discuss the documents and analysis set out below with the PLs and/or Mr Karklins.

200. Transfers of payments by the Receiving Agents to ARM: For the reasons set out below, I understand that it is not possible to determine the precise quantum of subscription monies transferred by SLC and Squaremile to ARM attributable to Issues 9 to 11. It is the PLs' understanding from conversations with personnel from Jarvis and which has been confirmed by the fund reports that have been provided by Jarvis, that it made no payments to ARM in respect of subscription monies received from Investors for Issues 9 to 11.

201. For each of SLC and Squaremile, the PLs are unable to identify amounts transferred to ARM and attributable to Issues 9-11 for the following reasons:

(a) Subscription monies paid by Investors were not segregated in SLC's or Squaremile's accounts on an Issue by Issue basis;

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[33] The fund reports are monthly reports in Word produced by Jarvis identifying payments into and out of Jarvis' pooled accounts from 1 July 2009. Given the accounts are pooled, Jarvis did not provide BDO with bank statements.

[34] The fund reports are monthly reports in one Excel file produced by SLC identifying payments into and out of SLC's pooled accounts from 1 July 2009. Given the accounts are pooled, SLC did not provide BDO with bank statements.

[35] The fund reports are a number of Excel spreadsheets prepared by Squaremile summarising receipts and payments from 1 July 2009.

(b) Neither Squaremile nor SLC maintain an internal record keeping system to be able to attribute payments in and out of their respective accounts for each individual Investor;

(c) An analysis of cash transactions from each Receiving Agent to ARM shows (as demonstrated below) that subscription monies were comingled with cash balances sitting in each Receiving Agent's accounts from the previous investment period; and

(d) Transfers of monies by each Receiving Agent to ARM at various times after the investment period for Issue 9 opened were made from comingled monies.

202. Exhibited at tab 161 is a summary spreadsheet prepared by Mr Karklins identifying for each of SLC and Squaremile cash transactions from 1 July 2009, the date the PLs' records start, up to and including 9 November 2011, the date the Pending Monies were frozen. The spreadsheet shows that each of SLC and Squaremile held cash balances on the date they commenced receipt of subscription proceeds for a new Issue such that monies in their accounts from a particular Issue were comingled with monies from a prior Issue or Issues. Accordingly, whilst it can be seen that transfers of monies were made by each of SLC and Squaremile after the investment period for Issue 9 opened, it cannot be said with any certainty that those transfers were solely attributable to Issue 9, 10 or 11 subscription proceeds. It is possible that to the extent Squaremile and/or SLC held any cash referable to Issue 7 or Issue 8 at the point they made payments out to ARM in respect of Issues 9 to 11, certain of the monies paid out could well have included subscription proceeds from Issues 7 or 8.

203. To assist the Court in its understanding of the way in which transfers of money were effected by both SLC and Squaremile on receipt of subscription proceeds for a particular Issue, I set out below an overview of the receipts and transfers from the banks accounts held by SLC and Squaremile for the period 1 July 2009 to 11 November 2011, when the Pending Monies were frozen by the FCA. The dates used for each investment period reflect the terms of the Application Notice, as set out in paragraph 166 above, which required Investors' funds to be cleared a full calendar month before the respective issue date failing which they would automatically fall into the next quarterly allocation.

SLC

Amount held by SLC on 01/07/2009	€ 2,620,065[36]
Amount received from 01/07/2009 to 31/08/2009 (the investment period for Issue 8)[37]	€ 8,655,850 consisting of: Subscription proceeds: €8,655,070 Opening balance adjustments: €780
Amount paid out from 01/07/2009 to 31/08/2009	-€1,011,579 consisting of: Payments to Catalyst[38]: - €749,397 Transfers from SLC to Jarvis[39]: - €189,663 Refunds and write-off of unpaid cheques: - €72,322
Amount held by SLC 31/08/2009	€10,264,335

Amount held by SLC on 01/09/2009	€10,264,335
Amount received from 01/09/2009 to 31/11/2009 (the investment period for Issue 9)	€5,499,044 consisting of: Subscription proceeds: €5,494,236 Other movements: €450
Amount paid out from 01/09/2009 to 30/11/2009	-€11,784,367 consisting of: Transfers to ARM ING accounts: – €10,669,768 Transfers to Catalyst: - €763,153 Transfers to Jarvis: - €299,616

[36] All amounts in Euros in these tables are equivalent amounts using exchange rates as at the dates when funds were received. The Euro opening balances in this note as at 1 July 2009 have been calculated using the exchange rate as at that date.
[37] Whilst the investment period for Issue 8 commenced on 1 June 2009, the PLs are in possession of data from 1 July 2009 onwards only.
[38] It is the PLs' belief that these are likely to be commission payments.
[39] See paragraphs 168 and 188 on transfers of subscription monies from SLC and Squaremile to Jarvis.

	Refunds, bank charges: - €51,830
Amount held by SLC 30/11/2009	€3,974,654

Amount held by SLC on 01/12/2009	€3,974,654
Amount received from 01/12/2010 to 28/02/2010 (the investment period for Issue 10)	€7,372,711 consisting of: Subscription proceeds: €7,351,028 Receipts from Catalyst: €18,091 Interest: €3,592
Amount paid out from 01/12/2009 to 28/02/2010	-€4,356,832 consisting of: Transfers to ARM ING Account: -3,434,671 Payments to Catalyst: – €688,490 Bank Charges: - €2,031 Transfers to Jarvis: - €156,638 Refunds and returned cheques: - €75,002
Amount held by SLC 28/02/2010	€6,990,533

Amount held by SLC on 01/03/2010	€6,990,533
Amount received from 01/03/2010 to 31/05/2010 (the investment period for Issue 11)	€11,077,011 consisting entirely of subscription proceeds
Amount paid out from 01/03/2010 to 31/05/2010	-€1,393,435 consisting of: Payments to Catalyst: – €1,027,084 Bank Charges: - €330 Transfers to Jarvis: - €264,515 Refunds: - €101,507

Amount held by SLC 31/05/2010	€16,674,109

Amount held by SLC on 01/06/2010	€16,674,109
Amount received from 01/06/2010 to 09/11/2011 (the date the Pending Monies were frozen)	€3,091,489 consisting of: Subscription proceeds: €2,350,430 Interest income: €31,382 Cancelled cheque: €17,074 Foreign exchange, non-cash movement: €692,602
Amount paid out from 01/06/2010 to 09/11/2011	-€7,426,540 consisting of: Refunds: - €5,792,177 Payments to Catalyst: – €45,519 Bank Charges: - €140 Transfers to ARM ING account: - €878 Foreign exchange recalculation: - €1,366,213 Transfers to Jarvis: €221,661
Amount held by SLC 09/11/2011	€12,339,057
Amount held by SLC 09/11/2011 in GBP using today's exchange rate	£10,873,863.32[40]

[40] See paragraph 190 above for amounts currently held by SLC.

Squaremile

Amount held by Squaremile on 01/07/2009	€1,685,577.88
Amount received from 01/07/2009 to 31/08/2009 (the investment period for Issue 8)[41]	€ 4,988,031 consisting of: Subscription proceeds: €4,679,711 Cash received from Catalyst: €308,144 Deposit interest: €176
Amount paid out from 01/07/2009 to 31/08/2009	-€793,424 consisting of: Payments to Catalyst: - €472,213 Transfers to Jarvis: - €139,344 Payments to third parties on behalf of ARM: - €120,445 Return of subscription proceeds: - €61,333 Bank charges: - €77 Opening balance adjustments: -Euro 12
Amount held by Squaremile 31/08/2009	€5,880,185

Amount held by Squaremile on 01/09/2009	€5,880,185
Amount received from 01/09/2009 to 30/11/2009 (the investment period for Issue 9)	€8,619,314 consisting of: Subscription proceeds: €8,444,682 Cash receipts from Catalyst: €174,444 Interest income: €188
Amount paid out 01/09/2009 to 30/11/2009	-€5,641,972 consisting of: Transfers to ARM ING accounts: –€

[41] Whilst the investment period for Issue 8 commenced on 1 June 2009, the PLs are in possession of data from 1 July 2009 onwards only.

	4,595,168 Payments to Catalyst: - €703,022 Transfers to Jarvis: - €190,075 Refunds and bank charges: -Euro 89,452 Non cash movement – foreign exchange : - €64,255
Amount held by Squaremile 30/11/2009	€8,857,527

Amount held by Squaremile on 01/12/2009	€8,857,527
Amount received from 01/12/2009 to 28/02/2010 (the investment period for Issue 10)	€5,077,024 consisting of: Subscription proceeds: €5,074,416 Interest income: €2,608
Amount paid out 01/12/2009 to 28/02/2010	-€8,483,559 consisting of: Transfers Jarvis: - €74,066 Bank commissions: - €78 Payments to Catalyst: - €581,096 Transfer to ARM ING Account – €7,793,319 Return of subscription proceeds: - €35,000
Amount held by Squaremile 28/02/2010	€ 5,450,992

Amount held by Squaremile on 01/03/2010	€5,450,992
Amount received from 01/03/2010 to 31/05/2010 (the investment period for Issue 11)	€5,540,512 consisting of: Subscription proceeds: €5,537,819 Interest income: €934 Receipts from Catalyst: €1,759
Amount paid out 01/03/2010 to 31/05/2010	-€1,744,965 consisting of:

	Transfer to ARM ING account: - €63,000 Refunds: - €190,065 Payments to Catalyst: - €1,399,307 Bank charges: - €182 Transfer to Jarvis – €92,411
Amount held by Squaremile 31/05/2010	€9,246,540

Amount held by Squaremile on 01/06/2010	€9,246,540
Amount received from 01/06/2010 to 09/11/2011 (the date the Pending Monies were frozen)	€3,344,308 consisting of: Subscription proceeds: €1,544,260 Receipts from ARM ING account: €1,515,108 Interest: 42,359 Non cash movement – foreign exchange: – €242,581
Amount paid out 01/06/2010 to 09/11/2011	-€6,081,587 consisting of: Transfer to ARM ING account: - €1,806,842 Refunds: - €3,865,865 Payments to Catalyst: - €34,188 Bank charges: - €127 Foreign exchange loss calculated: - €374,565
Amount held by Squaremile 09/11/2011	€6,509,261
Amount held by Squaremile 09/11/2011 in GBP using today's exchange rate	£5,254,242.40[42]

[42] See paragraph 190 above for amounts currently held by Squaremile.

204. Transfers of payments by MFSP: A relatively large proportion of investments in the Pending Bonds were made in Malta. From the fund reports provided to the PLs by SLC and Squaremile, the PLs understand that in addition to the €7,468,651 subscription proceeds paid by MFSP to ARM after 1 September 2009 referred to in the table at paragraph 188 above[43], MFSP also transferred subscription proceeds from Issues 9 -11 to SLC and Squaremile. On the basis of payment receipts identified in the SLC and Squaremile fund reports as originating from MFSP, the PLs understand that MFSP transferred the following amounts to SLC and Squaremile after 1 September 2009:

(a) €4,840,874 (equivalent) – from MFSP to SLC; and

(b) €12,389,603 (equivalent) – from MFSP to Squaremile.

205. It remains possible that MFSP may have made other payments to SLC and Squaremile as certain references in the fund reports only quote an application number and not the name of the adviser. All these amounts are included in the summary tables at paragraph 203.

206. Refunds: From the ARM bank statements and the fund reports provided by the Receiving Agents, I understand that refunds were made to Investors by:

(a) ARM directly;

(b) ARM through Rockingham Retirement Trustees, Standard Life Trust Company Limited, SIPP accounts, Irish Life International Limited, Private Insurer SA, Cil He Nominees Limited, Clearstream, Winterthur Pension and MFSP;

(c) Squaremile;

(d) SLC; and

(e) Jarvis.

[43] Whilst the ARM bank statements do not identify the receipts from MFSP totalling € 7,468,651 as relating to a particular Issue, the various refund payments made by ARM to MFSP totalling the same amount are annotated with "Tranches 12-13 refunds" (we assume "Tranche" to mean "Issue") (see paragraph 208 below). Given that, to the PLs' knowledge, ARM never sought to issue Bonds beyond Issue 11, the PLs can only assume that these refunds in fact related to Issues 9 to 11.

207. From the fund reports provided by Jarvis and SLC and from the ARM and Squaremile bank statements, with the assistance of Mr Karklins the PLs have undertaken the following analysis of refunds made to Investors from 1 July 2009 to 31 December 2009 and, from 1 January 2010 to 31 December 2014:

(a) Refunds made from 1 July 2009 to 31 December 2009 total € 452,055 (equivalent) which consists of:

(i) € 148,594 refunds made by SLC;

(ii) € 150,725 refunds made by Squaremile;

(iii) € 21,869 refunds made by Jarvis; and

(iv) € 130,867 refunds made by ARM through ARM's ING accounts.

(b) Refunds made from 1 January 2010 to 31 December 2014 total € 23,724,790 (equivalent) which consists of:

(i) € 4,090,930 refunds made by Squaremile;

(ii) € 5,943,686 refunds made by SLC;

(iii) € 349,351 refunds made by Jarvis; and

(iv) € 13,340,824 refunds made by ARM though ARM's ING accounts.

208. From the ARM bank statements, the PLs have been able to identify that of the €13,340,824 refunds made by ARM between 1 January 2010 and 31 December 2014, a number of refunds were paid by ARM to MFSP on 22 and 23 December 2010 totalling € 7,468,651. The total corresponds with the aggregate amount transferred by MFSP to ARM after 1 October 2009 (see the table in paragraph 188 above). Whilst the ARM bank statements do not identify the receipts from MFSP totalling € 7,468,651 as relating to a particular Issue, the various refund payments made by ARM to MFSP totalling the same amount are annotated with "Tranches 12-13 refunds" (we assume "Tranche" to mean "Issue"). Given that, to the PLs' knowledge, ARM never sought to Issue Bonds beyond Issue 11, the PLs can only assume that these refunds in fact related to Issues 9 to 11.

209. Of the €23,724,790 (equivalent) refunds paid in the period from 1 January 2010, I understand that €16,302,792 was paid post 24 September 2010, the date the PLs believe ARM circulated a letter to the Pending Bondholders offering them the opportunity to withdraw their applications and to obtain refunds on their investments. Whilst the PLs believe that it is likely that the €16,302,792 (equivalent) of refunds made after 24 September 2010 were made to the Pending Bondholders (the PLs are not aware of the basis upon which Non-Pending Bondholders would have received refunds), other than for refund payments made by Jarvis, the PLs are not in receipt of the information necessary to be able to determine to whom these payments were made. The PLs are similarly unable to determine the identity of the recipients of refunds of approximately €7.8 million (equivalent) paid between 1 July 2009 and 23 September 2010.

210. Accordingly, on the basis of information currently available to the PLs:

(a) we have so far been able to reconcile c.70% of the refunds identified in the Squaremile refund spreadsheets with the Pending Bondholders listed on the Intertrust Ireland Bond registers. We believe that the discrepancy could be down to the possibility of refunds having been paid to nominees or the refund having been given before the name of the Pending Bondholder was logged onto the Intertrust Ireland database; and

(b) I understand that other refund payments were made to the Pending Bondholders directly by ARM, via a nominee and/or by SLC and Jarvis, none of which is identified on the Squaremile refund spreadsheets. Other than for Jarvis, the PLs do not, however, have sufficient information to be able to determine to whom these refunds were made. Whilst it is very likely that the €16.3 million (equivalent) of refunds made after 24 September 2010 were made to the Pending Bondholders, the PLs are not in receipt of information to confirm this.

211. Redemptions: From the ARM bank statements, I understand that in the period from 1 July 2009 to 15 August 2011, ARM made 46 redemption payments totalling € 4.46 million (equivalent) from its pooled ING accounts to:

(a) Investors directly (although these are a handful in number only);

(b) Investors through MFSP, Rockingham Retirement Trustees, Irish Life International Limited, SIPP Collections account, Crescent Trustees, Cil He Nominees Limited, Hansard Europe Limited; and

(c) Investors through Squaremile and Jarvis.

212. I assume, but do not have the underlying information to be able to confirm, that these redemption payments were made in accordance with the terms of the Bonds.

213. For those Investors who received redemptions directly from ARM, I understand we have information to be able to identify them by name. For the purposes of this Application, the PLs have not undertaken the exercise of identifying from the Jarvis fund reports the names of the Investors who received redemptions from Jarvis[44]. We have not sought to undertake an exercise of confirming the recipients of redemptions paid by Squaremile as it would be a significant exercise and one in respect of which we do not believe we have the necessary information in any event.

214. Interest: From the ARM and Squaremile bank statements, I understand that interest payments due to Investors from 1 January 2010 in the amount of €18,398,282 (equivalent) were paid by ARM from its pooled ING accounts to:

(a) Investors directly;

(b) Investors through Rockingham Retirement Trustees, Pensions Bank Limited, SIPP Collections account, Irish Life International Limited and Cil He Nominees Limited;

(c) Investors through Jarvis, Squaremile and Squaremile Hong Kong[45].

215. The PLs have not sought to undertake an exercise of reviewing interest files provided to us by Squaremile (which exceed 400 in number) to attempt to identify the recipients of interest payments. This would be a very significant exercise and one in respect of which we do not believe we have all the necessary information in any

[44] The PLs will undertake the task of identifying the names of the Investors who received redemptions if it becomes necessary.

[45] Mr Karklins has been able to determine from the ARM bank statements that the practice from 1 October 2009 to 31 December 2009 differed and that interest payments were paid by ARM to only Squaremile and Squaremile Hong Kong and not by ARM to Investors directly or through a nominee. We are not in receipt of information to understand why the practice changed on 1 January 2010.

event. It is not therefore possible for us to confirm to whom interest payments were made (save in a very small number of cases where ARM made the payment directly).

216. In addition, it is not possible from the current information for the PLs to confirm the original source of the monies used for the interest payments (as they were made from ARM's comingled accounts with ING)

217. In respect of all of the above, the PLs will, naturally, perform whatever work is needed in due course to properly agree Investor claims for the purpose of distributions.

PART IX: THE APPLICATION

The section 234 application

218. As part of this Application, at the directions hearing and as a preliminary matter, the PLs seek an order pursuant to section 234 of the Act requiring each of SLC and Squaremile to transfer the Pending Monies held by each at HSBC to accounts under the control of the PLs. The transfer would be without prejudice to the rights of any party to the Pending Monies held by SLC and Squaremile and/or the beneficial interests of any party, pending the final determination of this Application.

219. The PLs have been informed by Jarvis that the Pending Monies held by it are currently held within ISA wrappers, with Jarvis as the ISA manager, and that to transfer those monies to an account in the name of a non-ISA manager might affect the tax treatment of those monies. For this reason, the PLs are not (at this stage) seeking a section 234 order against Jarvis. Given that the outcome of this Application will have an impact upon the treatment of the Pending Monies held by Jarvis, Jarvis has confirmed in writing (tab 162) that notwithstanding that it is not a party to this Application, it agrees to be bound by the order of the Court following the determination of this Application as that order relates to it and the Pending Monies held by it.

220. Accordingly, references to the Pending Monies in the following paragraphs under the sub-heading "*The section 234 application*" are those held by SLC and Squaremile only.

221. An order under section 234 of the Act may be made against any person who has in his possession or control any property, books, papers or records to which the company appears to be entitled. In the present case, for the reasons set out below, the PLs respectfully submit it is appropriate for the Court to exercise its powers in respect of the Pending Monies, monies which after the hearing of this Application may form part of the ARM estate, and to grant the order being sought.

222. The principal reason for seeking an order under section 234 of the Act is to enable the PLs to perform their duty as PLs. The order appointing the PLs requires them to:

(a) protect, secure and take possession of property or assets of ARM that it appears to be entitled to; and

(b) do all things as may be necessary or expedient for the protection of ARM's property.

223. Absent an order from the Court, the PLs will not be able to fulfil their duty.

224. Secondly, as set out in paragraph 196 above, from a conversation with Mr Armour of SLC on 13 March 2015, the PLs now understand that although the FCA has frozen three accounts at HSBC in the name of SLC, these accounts do not, in fact, hold the Pending Monies standing to the credit of SLC. Instead, the Pending Monies have always been held, and continue to be held, in three separate accounts in the name of SLC, also with HSBC, but not subject to a freezing order.

225. Although Mr Armour has confirmed that, out of prudence, SLC has sought to treat the Pending Monies it holds as frozen, in order to ensure that the Pending Monies are secure and not at risk, in the PLs' view, the amounts standing to the credit of SLC should be transferred to accounts controlled by the PLs.

226. Thirdly, and lastly, as set out above, the Pending Monies have been accruing nil or minimal interest and, in respect of Squaremile, such interest that has accrued may not be for the benefit of ARM in any event. The PLs have made enquiries with its relationship banks and understand that once in the control of the PLs, the GBP denominated Pending Monies, which amount to approximately £11.8 million, representing nearly three quarters of the sum total of the Pending Monies, could be

deposited in an instant access account accruing interest in the region 0.4% per annum (approximately £47,200 per annum).

227. For the reasons set out above, I believe it is in the interests of the estate and the creditors for the Court to make an order under section 234 of the Act and to allow the transfer of the Pending Monies into accounts in the name of and controlled by the PLs.

228. The PLs and Akin Gump have discussed the transfer of the Pending Monies from the accounts of SLC and Squaremile at HSBC to accounts under the control of the PLs with the FCA (which I understand has consulted with the Prudential Regulation Authority on this issue). The PLs have been informed by the FCA that it is supportive of the transfer. I exhibit at tab 163 a copy of a letter provided by the FCA confirming its support.

229. The PLs and Akin Gump have also discussed the transfer of the Pending Monies with SLC and Squaremile who have each confirmed their support to the transfer. I exhibit at tab 162 copies of the letters provided by each of the Receiving Agents confirming their support. In view of their support and co-operation and in the interests of costs, SLC and Squaremile do not intend to be represented at the hearing of this preliminary matter.

230. To enable the transfer of the Pending Monies if the Court is minded to grant the section 234 order, the FCA will be required to remove the variations of permission currently in place by withdrawing the First Supervisory Notices over the Pending Monies.

231. If the Court is minded to grant the order for the transfer of the Pending Monies, the PLs will open new interest bearing, to the extent possible, accounts which mirror the accounts at HSBC: the Pending Monies will be held on the same identifiable basis as they are currently held. These new accounts will be separate from the PLs' other accounts which hold funds belonging to the ARM estate.

232. For the avoidance of doubt the PLs will proceed on the basis that any and all current rights over the Pending Monies will be preserved and shall request the court to make an order specifically in these terms.

The section 168 Application

233. There are several issues which arise in light of the facts and matters set out above and which cause difficulties for the PLs in determining ARM's assets and liabilities. As can be seen from Part VIII above, a determination by the English Court as to whether the Pending Monies do or do not form part of the ARM estate will make a significant difference to the distributions ultimately received by the creditors of ARM. As it is not possible to model all possible outcomes of this Application, for illustrative purposes only the PLs have modelled three scenarios which are helpful in demonstrating that a finding that the Pending Monies do or do not form part of the ARM estate will make a significant difference to distributions received by, in particular, the Non Pending Bondholders. A copy of the estimated statement of outcomes modelling these three scenarios is exhibited at tab 164.

234. In understanding the issues that arise, the PLs have taken preliminary advice on certain Luxembourg law issues concerning the Pending Monies from Bonn & Schmitt. I am not presently proposing to rely on this advice in this Application (and hence a copy is not exhibited to my witness statement) because that advice is only preliminary in nature. I have however shared a copy of that draft advice with the First and Second Respondents and the Ad Hoc Committee (as defined below). I have done so on the basis that there is, and should be deemed to be, no wider waiver of privilege in any documents or communications between ARM / the PLs and their lawyers. Of course, if the Court wishes me to produce the draft advice to the Court, I would have no objection in doing so.

235. The first set of issues relates to the status of the Pending Monies and, in particular, whether there is a statutory trust over those monies. So far as Jarvis is concerned, it is an FCA-authorised firm. Accordingly, its holding of client money may be subject to the FCA's client money rules, as set out in the FCA's client assets sourcebook at CASS 7 (and I note in this regard the reference to the Client Money rules in paragraph 4.1 of Schedule 10 of the Outsourcing Agreement – see paragraph 115 above). Although neither SLC nor Squaremile are FCA-authorised firms, as both entities were, as I understand it, undertaking regulated financial services, it may be that the monies held by them are also caught by a statutory trust (or at least a trust on the same terms and having the same effect). If the Court determines that either all or some of

the Pending Monies are caught by a statutory trust, it will be important for the PLs to understand the beneficiar(y)(ies) of that trust. These issues are reflected in questions (1) (a) to (d) in the Application. The PLs have included CIGL as the Fifth Respondent to this Application to ensure that the outcome of questions 1(a) to (d) are binding on it.

236. If the Court holds that there is no statutory trust over any of the Pending Monies, it will become necessary for the PLs to understand whether those monies are held on trust for the benefit of the Pending Bondholders, or whether they form part of the ARM estate. On the basis of English law advice which I have received, which remains privileged, I believe that resolving this question involves conflict of law issues (as to whether Luxembourg or English law applies); issues concerning whether the Bonds were in fact issued (which I believe is a matter of Luxembourg law); and questions of fact as to whether the Pending Monies were held on a segregated basis in respect of each Investor by the Receiving Agents.

237. If a trust is found to exist then there are certain questions as to the terms, effect and extent of that trust (including, for example, which of the Pending Bondholders are beneficiaries under that trust, whether they have a shortfall claim against ARM's general assets to the extent there is no longer sufficient money in the Receiving Agents' accounts to repay them in full and, whether they should have to give credit for any payments received by them from ARM including in lieu of interest prior to the provisional liquidation of ARM.). These issues are reflected in questions (2) (a) to (c) in the Application.

238. On the other hand, if it is determined that these monies are not held on trust, then it will be important for the PLs to understand whether the Pending Bondholders have contractual claims against ARM. On the basis of the preliminary Luxembourg law advice which I have received from Bonn & Schmitt (see paragraph 234 above), I believe that answering this question will require an analysis of whether there is a contractual relationship between ARM and the Pending Bondholders and, if so, what the terms of that contract are (including whether any contractual claims are affected by the limited recourse provisions referred to above (and, if so, how)). These issues are reflected in questions 3(a) and (b).

239. In my discussions with the Investors, it has been suggested to me that they may have claims against ARM arising out of certain representations which were expressly or impliedly made by ARM or on its behalf, for example the statement referred to in paragraph 155 above to the effect that ARM was a licensed vehicle. It has also been suggested to me that investments made by Investors may have been procured by fraud. This Application is not an appropriate mechanism for the determination of the question of whether such claims exist, as it is likely to be fact-dependent for each Investor. However, assuming for present purposes that such claims could be made out, it would be helpful for the PLs to understand whether: any such claims will be limited recourse claims, given the limited recourse language in the Bond Documentation (see paragraph 146 above); such claims are now time-barred[46]; and whether the Pending Bondholders should give credit for any payments they may have received in lieu of interest in calculating their loss for the purposes of such claims. These issues are reflected in questions 3(c) and (d).

240. So far as the Non-Pending Bondholders are concerned, given the references in the Bond documentation to limited recourse (and the inter-relationship between the limited recourse provisions and the ranking / segregation provisions), it would be helpful for the PLs to understand whether those Non-Pending Bondholders' contractual claims are affected by the limited recourse provisions and, if so, how. The same questions in relation to any misrepresentation, misstatement or fraud claims as set out above in the context of the Pending Bondholders would also apply to equivalent claims which may be brought by the Non-Pending Bondholders. These issues are reflected in question 4 (a).

241. Assuming the Court determines that the claims of the Non-Pending Bondholders are affected by the limited recourse provision, the PLs would like to understand whether there are any remedies available to the Non-Pending Bondholders or any principles of law, both under English law or Luxembourg law, which would have the consequence or effect of setting aside, displacing or rendering unenforceable the limited recourse provisions. A finding that the limited recourse provisions are capable of being

[46] On 5 June 2015, the PLs executed a Deed Poll, approved by the First and Second Respondents' lawyers, pursuant to which the time for all and any claims which a person may have against ARM is suspended from 3 April 2015 until the earlier of (i) 30 days after the publication by the PLs of a notice on their website that the Deed Poll is to be terminated and the running of time is to recommence, or (ii) the making of a winding-up order in respect of ARM.

displaced or rendered unenforceable could, depending on the outcome of earlier questions to be determined by the Court, have a material impact on the ultimate recoveries of the Non-Pending Bondholders. These issues are reflected in questions 4(b) and (c).

242. Given that ARM sold its portfolio of Life Policies to FCIL, the PLs would also like understand whether that sale could have a bearing on the contractual relationship between the Non-Pending Bondholders, the applicability of the limited recourse provisions, to the extent they apply, and any claims that the Pending Bondholders have against ARM whether in contract or in tort. These issues are reflected in question 4(d).

243. Assuming as part of this Application the Court determines that all or some of the Pending Monies or any other monies held by ARM are subject to a trust(s), and that the beneficiaries of the trust are identified as Investors, the last category of questions to be determined by the Court concern how the PLs should approach the question of how the trust assets should be distributed as between the identified beneficiaries. The PLs would like guidance from the Court on how distributions should be effected as between the identified beneficiaries including whether the distributions should be rateable, by reference to the beneficiaries' relative contributions or based on the rule in *Clayton's Case* which is otherwise known as "first in, first out". The PLs also seek guidance from the court on the practicalities associated with the distribution of any assets found to be trust assets. These issues are reflected in question 5(a).

PART X – COMMUNICATION WITH THE INVESTORS, AND SELECTION OF THE REPRESENTATIVE BENEFICIARIES

244. The PLs have taken steps to coordinate and communicate with the significant number of Investors. These steps have included publishing updates and "frequently asked questions" on a dedicated website; holding periodic meetings with the Investors as a group; and having numerous discussions with individual Investors.

245. Subsequent to a meeting of Investors held on 3 February 2014, I decided to set up an ad hoc committee of Investors (the "**Ad Hoc Committee**") with whom I could engage on issues arising in the provisional liquidation proceedings. Investors nominated and voted for the appointment of members to the Ad Hoc Committee, and we expressly

invited representation from both Non-Pending Bondholders and Pending Bondholders. Notwithstanding this, by the time of the deadline for nominating members, only Non-Pending Bondholders had been put forward for appointment. Consequently, at the time the Ad Hoc Committee was formed it comprised four Non-Pending Bondholders, as well as the FSCS and MFSP (reflecting the Investors who were based in Malta), which represented both Non-Pending Bondholders and Pending Bondholders. I decided to ask the FSCS to join the Ad Hoc Committee on an ex officio basis, given that it was likely to become the largest single creditor. This is also analogous to the procedure under the special administration regime for investment firms.

246. Around the same time, an informal committee consisting of two Pending Bondholders was formed with the purpose of gathering all known facts and information in support of their contention that the Pending Monies should be returned to the Pending Bondholders. The group came to be known by those Pending Bondholders as the **"Pending Investor Group".**

247. With the possibility of this Application in mind, in early January 2015 the PLs took the view that the Ad Hoc Committee ought to represent a cross section of all the Investors. To that end, and with the agreement of the existing members of the Ad Hoc Committee, the two members of the Pending Investor Group were invited onto the Ad Hoc Committee.

248. The first meeting of the expanded Ad Hoc Committee took place on 20 January 2015 and it was at that meeting that the Non-Pending Bondholders and Pending Bondholders agreed that, subject to appointment by the Court, Mr Pullan and Mr Pisarski, who were both members of the Ad Hoc Committee, should represent the interests of the Non-Pending Bondholders and Pending Bondholders respectively in this Application.

249. Mr Pullan was nominated and chosen to act as the representative of the Non-Pending Bondholders on the basis that he has been an active member of the Ad Hoc Committee since its inception, had invested a significant sum in the Bonds, and is solely a Non-Pending Bondholder (i.e. neither he nor any of his family members invested in Issues 9 to 11 Bonds). Mr Pullan accepted the compensation offered by

the FSCS in March 2015, on the basis of a bespoke assignment agreement pursuant to which it was expressly noted that, notwithstanding that Mr Pullan had accepted the FSCS compensation, he would be entitled to retain all such rights as are necessary for him to continue to be able to act as a representative beneficiary for the purposes of this Application. A copy of the assignment agreement is at tab 165. In addition, due to his large holding Mr Pullan has not been fully compensated and therefore retains a residual interest in the outcome of this Application to remain a representative party.

250. Mr Pisarski was nominated and chosen to act as the representative of the Pending Bondholders on similar grounds. Mr Pisarski has been an active member of the Pending Investor Group since its formation and also invested a significant sum in the ARM investment product. I understand from Mr Pisarski that he is solely a Pending Bondholder (i.e. neither he nor any of his family members invested in Issues 1 to 8 Bonds) (I attach his Contract Note at tab 166).

251. As at the date of this Application, I understand that Mr Pisarski has applied to the FSCS for compensation; even if Mr Pisarski is compensated by the FSCS, due to his large holding Mr Pisarski will not be fully compensated and therefore will retain a residual interest in the outcome of this Application to remain a representative party. The FSCS has confirmed that it would have no objection to him doing so and that the assignment agreement would feature the same bespoke terms as were agreed with Mr Pullan.

252. On 6 February 2015, the PLs published an update on the ARM website which, amongst other things, notified Investors of the selection of Messrs Pullan and Pisarski of the intended representative beneficiaries for the Application (subject to Court approval) and confirmed details of their lawyers (tab 167). As at the date of this witness statement, the PLs have not been notified by any Investors of any concerns about the proposed appointment Messrs Pullan and Pisarski in this respect, nor any requests from any other Investors to be joined in the Application.

253. In circumstances where the Court holds that the Pending Monies are held on trust for the Pending Bondholders, as set out in paragraph 243 above questions arise about the distribution of the Pending Monies among the Pending Bondholders. Subject to appointment by the Court, Mr Pisarski has agreed to represent the interests of those of

the Pending Bondholders who would wish the rights of beneficiaries to be ascertained rateably by reference to their relative contributions.

254. In the interests of costs and to get this Application issued, the PLs believe it would be appropriate for them to be appointed as the representative party to represent the interests of those of the Pending Bondholders who would wish the rights of the beneficiaries to be ascertained on the basis of *Clayton's Case*. The PLs believe that the fact that they are not Pending Bondholders does not prevent them from being appointed in the Application to represent part of the Pending Bondholder constituency for the purposes of this discrete issue. However, if following the PLs appointment as a representative party it comes to our attention that there is concern amongst the Investors about the PLs assuming this role, we will consider our representation carefully and, if necessary, apply to the Court for appropriate directions.

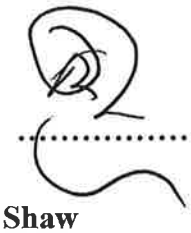
255. I would also like to make the Court aware that the approach of having a Pending Bondholder and Non-Pending Bondholder in the roles of First and Second Respondents was also specifically requested by the Ad Hoc Committee. I specifically explored more streamlined ways of making this Application and explained the pros and cons in terms of cost, time and purity, but the structure now proposed was the one clearly required by the Ad Hoc Committee.

256. By agreement with the Ad Hoc Committee, and Messrs Pullan and Pisarski in particular, subject to the position to be taken by the PLs as set out in paragraph 254 above, the PLs are proposing to take a broadly neutral position in the Application, save insofar as they consider necessary to comply with their duties as PLs (or to the extent the Court requires assistance from the PLs on any particular issue). As part of the process for preparing this Application, and in particular given the difficulties with establishing the factual background in this matter, and in a desire to have as cost-efficient an approach to the Application as possible, drafts of this witness statement, and the application form, have been shared with Messrs Pullan and Pisarski and their legal advisers (whose reasonable costs ARM has agreed to pay). We have also provided them an index to all the documents in the PLs' possession or control and have provided copies to them of such documents as they have requested. Messrs Pullan's and Pisarski's comments as to the factual background, and the questions which it would be helpful for the Court to decide, have been duly considered and are

reflected within this witness statement. The PLs have adopted this approach to ensure the Application is as consensual as possible so as to enable it to be run on as time and cost efficient a basis for all parties, and the Court, as possible.

Statement of Truth

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

Signed:  .....

Mark James Shaw

Dated: 20 November 2015

No. 6914 of 2013

IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF

ARM ASSET BACKED SECURITIES S.A.

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986

WITNESS STATEMENT OF MARK JAMES SHAW

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