Filed on behalf of the Applicants
Shane Michael Crooks
11 November 2024
"SC9"

CASE NO: CR-2023-001772

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

IN THE MATTER OF WEALTHTEK LIMITED LIABILITY PARTNERSHIP (Partnership Number OC355200)

AND IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011

NINTH WITNESS STATEMENT
OF SHANE MICHAEL CROOKS

I, SHANE MICHAEL CROOKS, a chartered accountant and licensed insolvency practitioner of BDO LLP of 55 Baker Street, London, W1U 7EU, will say as follows:

A. Introduction

1 I am an insolvency practitioner at BDO LLP (**BDO**), a professional services firm of the above address.

2 There is now shown to me a paginated bundle of copy documents, marked "**SC9**", to which I refer in this statement. References to SC9 are in the form [**SC9/tab/page number**]. I shall also refer to my second witness statement dated 9 May 2024 (**Crooks (2)**) and my eighth witness statement dated 17 July 2024 (**Crooks (8)**), as well as the other two witness statements I have made on this case (together, the **Prior DP Statements**). Each of the Prior DP Statements relate to the application made by the Joint Administrators on 9 May 2024 (the **Application**) for the approval of the distribution plan for the return of Client Assets held by WealthTek prepared pursuant to Part 5 of the Rules (the **Distribution Plan**).

3 I am duly authorised to make this witness statement on behalf of the Joint Administrators. Since our appointment, I have assumed primary responsibility for the day-to-day conduct of WealthTek's special administration. Since the date of the Application and the Court's approval of the Distribution Plan, Kirsty McMahon of BDO has been appointed as Joint Administrator together

with me and Emma Sayers, in place of Mark Shaw. Save where otherwise indicated, the contents of this statement are derived from facts and matters which are within my own knowledge and belief. These facts and matters have been learned either as a result of the work undertaken by me as Joint Administrator or provided to me by my colleagues at BDO in connection with the appointments in respect of WealthTek, or by certain employees of WealthTek, or by the Joint Administrators' legal advisers, Norton Rose Fulbright LLP (**NRF**).

4 Where I refer to the Website in this statement I am referring to the website (https://www.bdo.co.uk/en-gb/insights/advisory/business-restructuring/wealthtek-administration) set up by the Joint Administrators to manage client communications in the special administration (the **Website**). As with the Prior DP Statements, this statement will be uploaded to the Website once it has been filed with the Court.

5 As in the Prior DP Statements, where I refer in this statement to "**Client Assets**" I am referring to securities (including stocks, shares and other investments) held by WealthTek for and on behalf of clients and when I refer to "**Client Money**" I am referring to money that WealthTek received, held and/or treated as Client Money in accordance with Chapter 7 and 7A of the Financial Conduct Authority's (**FCA**'s) Client Assets Sourcebook. Where I refer in this statement to "**Regulations**", I am referring to the regulations in the Investment Bank Special Administration Regulations 2011 and when I refer to "**Rules**", I am referring to rules in the Investment Bank Special Administration (England and Wales) Rules 2011.

6 Nothing in this statement is intended to waive privilege in respect of any matter referred to and, for the avoidance of doubt, privilege is not being waived.

7 The purpose of this statement is:

(a) to provide an update to the Court in relation to the returns of Client Assets to WealthTek's clients that have been in progress on the lead-up to and following the judgment of the Honourable Mr Justice Rajah dated 4 October 2024 (the **Judgment**) and the payment to or for the account of clients' compensation made available by the Financial Services Compensation Scheme (**FSCS**).

(b) to address certain matters believed by the Joint Administrators to follow from and/or require consideration in light of conclusions reached by the Court in the Judgment:

(i) to explain certain issues relating to the costs which have been incurred by the Joint Administrators to date, including in investigating the affairs of WealthTek, on which the Joint Administrators seek the Court's guidance as to whether those costs can be included in the calculation of clients' Cost Contributions (section C);

(ii) to clarify whether the Court wishes the Joint Administrators to present proposals in relation to future investigations and the bringing of potential claims for the benefit of WealthTek's clients or the FSCS (as the case may be), and the treatment of associated costs (section D); and

(iii) to clarify the steps the Joint Administrators should take if the Court does not wish for us to present such proposals (section E),

ahead of the consequential hearing which has been listed on 14 November 2024 (the **Consequential Hearing**).

8 On 8 November 2024 a notice was posted on the Website confirming that:

(a) the Consequential Hearing is listed to be heard at 10:30am on Thursday 14 November 2024 in person before Mr Justice Rajah in the High Court of Justice, Business and Property Courts of England and Wales, 7 Rolls Building, Fetter Lane, London EC4A 1NL;

(b) the court room number for the Consequential Hearing will be available on the online cause list the afternoon before the Hearing and also displayed in the lobby of the Rolls Building on the day of the Consequential Hearing;

(c) clients are not required to attend Court for the Consequential Hearing but that the Consequential Hearing will be held in public and anyone is able to attend, if they wish to do so; and

(d) copies of the Joint Administrators' submissions to Court will be made available on the Website.

B. Update on Client Asset returns and payment of FSCS compensation

(i) Returns of Client Assets

9 Since the Distribution Plan was approved, the Joint Administrators have been continuing to progress the return of Client Assets in accordance with the Distribution Plan. Within the past four weeks, the Joint Administrators' team at BDO have issued transfer instruction date notices for the return of Client Assets to 407 clients (of a total of approximately 1,287 clients, although only

918 clients have asset balances greater than £1,000[1]), in accordance with the Distribution Plan.

10 There remain complexities in returning Client Assets, including in relation to satisfaction of conditions precedent under the Distribution Plan. In addition, individual clients' response times and levels of knowledge and sophistication can vary, which necessarily impacts on the ease with which matters concerning what might be termed "critical path" items for effecting returns of Client Assets can be dealt with. The Joint Administrators are seeking to address and resolve such matters in as efficient and complete manner as possible, working and liaising with clients as appropriate. The FSCS is also still determining the eligibility of a number of "non-individual" clients (for example, estates of deceased clients). FSCS has indicated it does not expect there to be significant issues in this regard, but clients need to provide and FSCS needs to consider evidence to determine the basis of eligibility. The Joint Administrators anticipate that we will be in a position to instruct further returns of Client Assets in the coming weeks, on a "rolling-tranche" basis once the applicable conditions precedent to such returns for relevant clients under the Distribution Plan have been satisfied.

11 Based on information presently available, the Joint Administrators expect to be able to issue transfer instruction date notices to over 600 clients by early December 2024 and will be able to transfer Client Assets to the majority of WealthTek's clients by March 2025. As mentioned, however, the precise timing is not wholly within the control of the Joint Administrators and depends also on actions of third parties (including clients and transferee brokers).

(ii) Payment of FSCS compensation

12 In parallel with the process of returning Client Assets in accordance with the Distribution Plan, the Joint Administrators are continuing to progress the payment of compensation on behalf of the FSCS directly to eligible clients who are entitled to receive, and have opted in to receive, such compensation.

13 To that end, on 26 September 2024, the FSCS paid to the Joint Administrators a sum of approximately £26 million, pursuant to a drawdown request dated 17 September 2024 under the funding arrangements that have been put in place between the FSCS, WealthTek and the Joint Administrators. In broad terms, these arrangements both (i) operate as a funding line to the Joint Administrators, so that the Joint Administrators can draw down amounts periodically to cover the expenses of the special administration and (ii) enable the Joint Administrators to make onward

[1] Note, however, that a significant number of the clients with balances under £1,000 have only negligible holdings of Client Assets, and so the Joint Administrators typically use the total of 918 clients for the purposes of key calculations (including for the purposes of this witness statement) in order to help ensure meaningful data is presented.

payment to or for the account of clients of amounts of compensation received from the FSCS in respect of shortfalls of Client Assets and Client Money.

14 For these purposes, the maximum "headroom" for funding the costs of the special administration under the FSCS funding arrangements is the aggregate of all clients' Costs Contributions (as defined in the Distribution Plan) being an aggregate amount of £17.68 million[2]. If and to the extent that the costs and expenses incurred are lower than this amount, the Joint Administrators will have no reason to draw down such amounts, with the corollary that the required Costs Contribution can be reduced in accordance with the terms of the Distribution Plan (as reflected in clause 14.5 of the Distribution Plan). The effect would be to reduce the FSCS's overall funding commitment or, for those clients who will not be compensated in full, to increase the shortfall compensation available.

15 The amount of approximately £26 million so far drawn down under the FSCS funding arrangements comprises:

(a) approximately £16 million which is referable to compensation for the relevant clients (865 clients[3], as at the date of this statement) in respect of their Client Assets and Client Money shortfall claims (this is currently up to £62,000 per client, depending on the size of their shortfall); and

(b) the remaining approximately £9.9 million which covers part of the Costs Contributions of clients who had been determined by the FSCS to be eligible for compensation on or around 17 September 2024.

16 As the request to the FSCS for funding was made after the hearing on 23 July 2024, and before the Judgment was handed down, the Joint Administrators only drew down an amount for each client's Costs Contribution which did not include any amount in respect of anticipated future investigatory work. In other words, the Joint Administrators have not drawn down any part of the Costs Contribution reserve that relates to the investigation-type costs incurred (excluding approximately £600K of costs already approved by the clients' and creditors' committee (the **Committee**)) or any future investigation or litigation costs.

[2] The equivalent figure cited for the sum total of clients' Costs Contributions was £18.4 million at the time of making the Application. This figure had been calculated by the Joint Administrators' team as at November 2023, based on the number of accounts maintained by WealthTek. Subsequent work in conducting Client Asset and Client Money reconciliations has led the Joint Administrators to conclude that a headcount-based computation of £17.68 million is the more accurate amount.

[3] Since the date of the drawdown, we have been informed three clients are now deceased and eligibility needs to be reassessed by the FSCS.

17 Where we are already in funds in respect of FSCS compensation for a particular client, the Joint Administrators intend to pay such compensation to the relevant client at the same time as the transfer or distribution date for Client Assets (and Client Money), where such date has already been advised to the client.

18 Where clients have not already been advised of transfer or distribution dates, the Joint Administrators intend to pay compensation to or for the account of the relevant clients directly. Such compensation will be paid to eligible clients unless they have opted not to receive it before the return of their Client Assets and Client Money, and, in the case of clients with self-invested personal pension scheme accounts, where they have "opted in" to receive it (in light of potential personal tax consequences that might follow, depending on their individual circumstances). The Joint Administrators are proceeding in this way to help alleviate, as far as possible, continuing difficulties or financial hardship caused by WealthTek's failure. The Joint Administrators posted a notice to the Website on 7 November 2024 alerting relevant clients to their rights to "opt in" to receive, or "opt out" of receiving, compensation before the return of their Client Assets and Client Money.

19 The way in which payment of compensation operates under the FSCS funding arrangements naturally lends itself to an incremental approach, and for the Joint Administrators only to draw down such amounts as are required to pay clients' compensation and to fund the costs of the special administration from time to time (being both incurred costs and estimated costs for the coming six months at the time of any drawdown request). If and to the extent it is necessary to reduce the level of Costs Contribution to be paid by WealthTek's clients, there is an in-built mechanism for this under clause 13 of the Distribution Plan.

C. Costs issues

20 In light of certain complexities in relation to the costs incurred by the Joint Administrators to date (as explained below), the Court's guidance is sought on two main issues:

(1) whether the Joint Administrators can include in the Costs Contribution incurred costs in relation to investigations-type work carried out to date; and

(2) whether the Joint Administrators can include in the Costs Contribution certain foreseeable future costs in providing required assistance to the FCA from time to time in the context of its ongoing investigations, with the ultimate objective of achieving recoveries for clients.

21 Before explaining these issues, I will set out in some detail certain background matters in relation to the costs estimates originally provided and the fluidity of the nature of the work undertaken in

the special administration to date, which has made it difficult to categorise it strictly according to different workstreams. I will then conclude this section with an update on the Joint Administrators' costs incurred to date in making returns of Client Assets to WealthTek's clients.

(i) Background matters

Original estimates

22 The Joint Administrators had originally anticipated that the expenses of the special administration incurred in returning Client Assets would involve not only (i) the costs of administering and returning Client Assets currently held by WealthTek, but also (ii) the costs of investigating and potentially bringing future actions by the Joint Administrators and/or WealthTek against third parties to recover Client Assets and/or their proceeds that were wrongfully dissipated pre-administration, in the interests of WealthTek's clients.

23 Supported by the estimates and budgets prepared by the Joint Administrators in around November 2023, the Joint Administrators set a prudent estimated costs reserve when making the Application in respect of costs which had been incurred or were anticipated to be incurred in the pursuit of Objective 1 of the special administration of £18.4 million[4] (which, as explained in see paragraph 14 above, is now better understood to be an amount of £17.68 million).

24 The Joint Administrators had proceeded on the basis when preparing such estimates and budgets that approximately 40% of the overall costs in the special administration would likely be incurred in investigations and pursuing any future recoveries (as to the first two of which, see paragraphs 86(a) and 129 of Crooks (2)). As explained above, this assumption was premised on the basis that time costs would be capable of being discretely allocated to particular tasks or workstreams, yet certain work in fact undertaken has not been neatly divisible in this way (as to which, see paragraphs 26, *et. seq* below). The investigations and future recoveries-related work contemplated was:

(a) investigations and any resulting litigation on behalf of WealthTek and/or, more pertinently, its clients (including when subrogated to those clients' rights, the FSCS) to recover Client Assets and Client Money (or their proceeds, in either case) that have been wrongfully misappropriated;

(b) investigations and any resulting litigation by the Joint Administrators and/or WealthTek (including non-proprietary claims) against third parties which would ultimately be for the

[4] This does not include the costs of returning Client Money under Chapter 7A of the Client Assets Sourcebook in the FCA Handbook.

benefit of WealthTek's clients (or the FSCS, as the case may be), on the basis that the relevant losses were suffered by clients; and

(c) rendering support and assistance to any third parties – such as the FCA and any other regulators and/or bodies with investigatory and/or enforcement powers – who might succeed in making or prosecuting recovery actions for the ultimate benefit of WealthTek's clients (as contemplated in clause 21 of the Distribution Plan and as explained in paragraph 97(l) of Crooks (2)).

25 This intended allocation was explained in Crooks (2) to provide further context to the calculation of the costs reserve figure and constituent workstreams relating to future costs. However, the estimates the Joint Administrators were able to make as to future costs were necessarily rudimentary and limited in nature, having been calculated on a conservative basis (as noted at paragraph 128 of Crooks (2)), based on the Joint Administrators' knowledge at the time. The splitting of costs was intended by the Joint Administrators to be indicative; it was included for explanatory purposes and in the interests of transparency, in light of both the level of costs contemplated per client and the profile of WealthTek's client-base. The allocation was, by its nature, an approximation to which strict adherence on the Joint Administrators' part would have been practically impossible, since the Joint Administrators' required work and functions are necessarily dependent on developments which unfold as the case progresses. Nonetheless, checks and balances remain in place throughout, notably in the form of the Joint Administrators' statutory reporting requirements and the oversight and scrutiny provided by the Committee.

Practicalities of workstreams

26 It is with this context in mind that it is worth explaining that the costs incurred to date in the special administration have, in reality, rarely been capable of being attributed solely or neatly to discrete or particular workstreams or purposes. That is, any one exercise or task carried out by the Joint Administrators or our advisors has the ability to overlap with other exercises or tasks. Accordingly, different categories of costs are not always separate and distinct but, rather, tend to overlap with and/or "bleed into" each other.

27 At a relatively early stage in the special administration, my team carried out an initial "funds flow" analysis, based on the information then available. In BDO's internal time recording system, the work involved was allocated by the relevant team members to an "investigations" cost sub-code. Whilst, on the face of it, such work might most naturally be considered as relating to investigations, the findings and conclusions reached in carrying out the funds flow analysis were critical to facilitating the return of Client Assets. For instance, the funds flow analysis was a necessary part of my team's work on conducting the required reconciliations of Client Assets and

Client Money and for us to understand and to begin to compute individual clients' entitlements to Client Assets and Client Money, and ascertain the nature and extent of the shortfalls that exist. It was also integral to the partial tracing exercise conducted for the purposes of the Application in order to help demonstrate the scale of the issues faced with respect to the various problems encountered with respect to WealthTek's books and records, for which a solution was ultimately found and approved in the Judgment.

28 Since the Joint Administrators would not have been able to return Client Assets without the underlying funds flow analysis having been undertaken, we have concluded that the costs involved can be properly characterised as Objective 1 costs.

29 This funds flow analysis is one example demonstrating how various workstreams overlap and that, in some cases, it is not easy to categorise the costs involved in carrying out particular tasks or work. The Joint Administrators' projection at the outset that approximately 40% of the overall costs in the special administration would likely be incurred in investigations and pursuing any future recoveries should therefore be viewed with caution.

(ii) Incurred investigations-type costs to date

30 As noted above, the Joint Administrators have to date incurred certain costs in investigating the affairs of WealthTek and transactions entered into prior to its entry into special administration. For the most part, those costs have already been approved by the Committee, and the Joint Administrators included such costs in our computations of incurred costs when making the Application. Nonetheless, in light of certain aspects of the Judgment so far as this category of work is concerned, the Joint Administrators consider it prudent now to seek the Court's specific guidance on our entitlement to recover such costs. It is for this reason that the costs involved in undertaking the funds flow analysis described in paragraphs 26 and 27 are included in the "incurred investigations costs" column in the summary table in section (v) below.

31 Since our appointment, the Joint Administrators had taken the view that a fundamental objective of the incurrence of these costs would be the return of Client Assets to clients of WealthTek and/or achieving recoveries in lieu of Client Assets that have been lost, for the benefit of affected clients. Accordingly, all such costs were characterised and regarded by the Joint Administrators at that time, for budgeting purposes, as being Objective 1 costs.

32 The Joint Administrators also understood that, as insolvency office-holders, we are duty-bound to investigate the causes of failure of WealthTek and to investigate the conduct of its officers which might have contributed to the failure. In this regard, Regulation 15 makes available to the Joint Administrators the investigatory and examination powers available to administrators or

liquidators in ordinary insolvency proceedings (in particular, sections 234, 235 and 236 of the Insolvency Act 1986).

33 From a very early stage of the special administration, it also appeared to be the expectation of the members of the Committee and those whom they represent – the clients and creditors of WealthTek at large – not only that the Joint Administrators should investigate the circumstances leading to WealthTek's failure and draw firm conclusions from those investigations, wherever possible; but also, in many cases, that the Joint Administrators should seek to bring claims (where appropriate) against, and hold to account, those responsible, with a view to making good losses suffered and to alleviate the extreme hardship that has been caused to many clients of WealthTek.

34 I explain below the categories of investigation costs which the Joint Administrators have incurred since our appointment (and on which the Court's guidance is sought).

The FCA's investigations; Joint Administrators' assistance

35 I addressed in Crooks (2) the background to WealthTek's failure. This forms the background to what follows but I do not repeat it here in the interests of brevity.

36 Since WealthTek entered into special administration, the FCA has been conducting its own regulatory and criminal investigations, including the commencing of the now-stayed FCA civil proceedings against WealthTek and Mr Dance seeking orders under sections 380 and 382 of the Financial Services and Markets Act 2000. I respectfully refer the Court to paragraphs 24 to 27 of Crooks (2) for the chronology of those investigations.

37 The FCA's investigations have been conducted by the FCA in parallel with, and separately from, the Joint Administrators' own investigatory work. The Joint Administrators have been working closely with the FCA on matters relating to the special administration throughout, as well as providing whatever assistance we can to the FCA when called upon to do so. However, as is usual in criminal investigations such as this, the FCA has been unable to share information with the Joint Administrators concerning its own investigations into WealthTek and its former management.

38 The FCA has stated publicly that the Restraint Order (as described in Crooks (2)) it has obtained is designed to preserve assets and make them available for a future confiscation order, which can only be made following a criminal conviction. The Joint Administrators have been of the view that any assistance that we have been providing to the FCA throughout is ultimately for the benefit of WealthTek's clients. This is consistent with indications made by the FCA that any recoveries from a confiscation order will ultimately be made available for WealthTek's clients. It is also what

the Joint Administrators had contemplated in incorporating clause 21 of the Distribution Plan, which provides a means by which (subject to any contrary court order) the Joint Administrators can channel future recoveries (such as from the FCA) for the benefit of clients to those clients, under the Distribution Plan.

Section 236 applications

39 The Joint Administrators have been mindful of avoiding "doubling-up" on the FCA's investigations. However, they have nonetheless identified and investigated certain areas of our own volition where it was considered that the FCA would be unable to provide this information, including to verify and probe apparently unusual activity discernible from WealthTek's books and records (the discrepancies in which has been dealt with at length in the Prior DP Statements (notably, Crooks (2) and Crooks (8))). As part of these further investigations, prior to the adjourned hearing of the Application, applications under section 236 of the Insolvency Act 1986 (as applied by Regulation 15 of the Regulations) were made in June 2024 against certain banks (the **s236 Applications**) for the provision of bank statements covering the period from 1 January 2020 to 1 July 2024, and further supplemental information, in relation to three bank accounts of third parties (the **s236 Bank Accounts**). Each of the s236 Bank Accounts was identified from WealthTek's bank statements as receiving funds from WealthTek's accounts.

40 The purpose of the s236 Applications was to enable the Joint Administrators to follow payments of Client Money and the proceeds of Client Assets.

41 The s236 Applications were heard in private at a hearing before ICC Judge Greenwood on 1 July 2024 and orders were made on 1 July 2024 (the **s236 Orders**). Given the confidential nature of the s236 Orders, they are not exhibited to this statement but can be produced to the court at the Consequential Hearing, if required.

42 Pursuant to paragraph 8 of the s236 Orders, the costs of the s236 Applications were ordered to be paid as an expense of the special administration of WealthTek.

43 Pursuant to the s236 Orders, the bank account statements were received in relation to each of the s236 Bank Accounts on 5 July 2024, 11 July 2024 and 17 July 2024, respectively. Such information will assist the Joint Administrators to develop the funds flow analysis described in paragraphs 26 and 27 above in order to identify potential claims and further lines of enquiry.

44 Since there is a in-built timetable for the taking of prescribed steps within the s236 Orders, it was necessary – at least prior to the Judgment – for the Joint Administrators and our legal team to continue to carry out the required actions at the appropriate stages, in order to ensure adherence to the terms of the s236 Orders.

Total incurred investigation-type costs to date

45 The impact of the total incurred investigation-type costs to date forming part of clients’ Costs Contributions is set out in the summary table in section (v) below. These costs break down into Joint Administrators’ time costs of £857,114 (exclusive of VAT) and £497,436 (exclusive of VAT) of legal costs:

(a) pre-6 April 2024: the Joint Administrators had incurred investigation costs of £970,984, broken down as £596,776 (exclusive of VAT) of our own time costs and £212,377 (exclusive of VAT) of legal costs. These costs were included in the “actual costs incurred” element of the Costs Contribution, as described at paragraph 126(a) of Crooks (2); and

(b) post-6 April 2024 (up to 5 October 2024): the Joint Administrators have incurred £654,476, broken down as £260,337 (exclusive of VAT) of our own time costs and £285,059 (exclusive of VAT) of legal costs. These costs were included as “future” costs in the Application and therefore formed part of what had previously been termed the “Potential Litigation Reserve” (a term which, with hindsight, does not accurately describe the work in fact contemplated). As matters stand, the Joint Administrators have not sought approval of our costs incurred generally (including in relation to investigations) after 5 April 2024.[5]

46 In relation to the post-6 April 2024 costs, a relatively small amount of work has been undertaken since the adjourned hearing of the Application on 23 July 2024, including in light of the Court’s request for written submissions on the issue of this category of work falling within the Costs Contribution. This translates into approximately £125,000 (exclusive of VAT) of the Joint Administrators’ costs and £165,000 (exclusive of VAT) of legal costs in relation to investigations (subject, again, to what is said at paragraphs 26, *et. seq* above) (including £56,743 (exclusive of VAT) of legal costs incurred in assistance provided to the FCA, as set out in paragraph 37 above). Following the Judgment, no meaningful work has been carried out on progressing investigations within the special administration as such (and as distinct from ongoing assistance provided to the FCA), pending obtaining further clarity from the Court on the extent to which the Joint Administrators ought properly to be conducting such work and our entitlement to claim the costs incurred in doing so.

47 At the time that these costs were incurred the Joint Administrators considered we were required to investigate the causes of shortfalls in Client Assets and Client Money for a dual purpose: (i) to undertake required reconciliations with a view to effecting returns of Client Assets in accordance

[5] In my experience, it is common for insolvency office-holders to seek committee approval of their remuneration following the occurrence of particular milestones in insolvency proceedings on a periodic basis.

with the Distribution Plan; and (ii) with a view to considering whether litigation would potentially assist to make good at least part of the shortfalls. At all times the Committee supported the work the Joint Administrators were undertaking in investigating transactions affecting both the constitution of the client estate and asset pools within it, and also clients' entitlements thereto.

48 For reasons of confidentiality and in the interests of avoiding prejudicing any actions against third parties, the Joint Administrators have considered that it is not in the best interests of clients and creditors to provide any details of the nature of the enquiries and investigations they have conducted. If it would assist the Court the Joint Administrators can provide additional and more specific information relating to these enquiries and investigations on a private and confidential basis (including, so far as the FCA's investigations and the Joint Administrators' related interactions are concerned, with the consent of the FCA).

(iii) Joint Administrators' future costs

49 The Joint Administrators intend to continue to provide assistance to the FCA and incur certain necessary future investigations-related costs. Given the nature and objective of the FCA's investigation, the Joint Administrators are of the view that it is appropriate in all the circumstances of the case for the assistance we have provided to the FCA to date to continue, including on the basis that the parties which stand ultimately to benefit from recoveries made by the FCA against third parties are WealthTek's clients.

50 At this stage, it is unclear the level of assistance the FCA will require from the Joint Administrators as this will depend on both the nature and length of the FCA's current investigation as well as the nature and extent of any future enquiries it may have and/or support and assistance it may require of the Joint Administrators. Accordingly, we wish to ask the Court whether – regardless of whether we make further proposals in relation to the costs of future litigation that might be brought by the Joint Administrators – the costs involved in undertaking this necessary work ought properly to form part of the Costs Contribution.

51 The impact of such future costs being payable from Costs Contributions, in addition to the incurred investigation costs to date (as set out in section (ii) above), is set out in the summary table in section (v) below.

52 As noted above, the Joint Administrators' remuneration is at all times subject to approval by the Committee. In addition, the Joint Administrators are required to comply with usual statutory reporting requirements, including our six-monthly progress reports pursuant to Chapter 9 of the Rules and which are made available to clients, which contain a full breakdown of the costs incurred for the purposes of the special administration. The Joint Administrators and our team at

BDO are mindful of the need to ensure that work conducted is required and essential to achieving the objectives of the special administration.

(iv) Update on Client Assets return costs

53 As matters stand (as at 5 October 2024), the Joint Administrators' actual costs of returning Client Assets (excluding any investigation-type costs) held by WealthTek as at the time of its entry into special administration are £8,912,177, as set out in the summary table in section (v) below.

54 Based on the level and rate of incurred costs (with an assumption that the main operational aspects of the Client Asset return process will have completed by the end of March 2025), the Joint Administrators now expect the total cost of returning Client Assets to be approximately £11,577,799, as set out in the summary table in section (v) below (in addition to the necessary prior costs involved in carrying out the funds flow analysis described in paragraph 27 above).

55 The actual level of Client Assets return costs that have been incurred across a number of workstreams is higher than the Joint Administrators' original estimate for a number of reasons, including the following:

(a) the process of selecting a suitable nominated broker was more complicated and protracted than originally anticipated. In addition, given the issues encountered with WealthTek's books and records, the nominated broker has chosen not to rely on Regulation 10B(6) to automatically vary the terms of the client contracts without obtaining the consent of such clients. This has necessitated increased engagement by the Joint Administrators with the nominated broker to ensure the successful onboarding of clients by the nominated broker on an individual basis;

(b) given the complex background to this case and prolonged timetable for the return of Client Assets and Client Money, this has resulted in more comprehensive engagement with individual clients being required than had been originally anticipated, and a need on the part of the Joint Administrators' team to expend greater resources than had been expected;

(c) a number of unforeseen issues have arisen in relation to tax matters, including in relation to the Individual Savings Account and Self-Invested Personal Pension tax wrappers, which has necessitated interaction with, independent financial intermediaries representing clients, parties previously connected with WealthTek and the obtaining by the Joint Administrators of associated legal advice;

(d) in light of the complexity of WealthTek’s case, the circumstances surrounding its failure and the resolution of difficulties that arose as a result, the process for obtaining the approval of the Court of the Distribution Plan has unavoidably been more protracted and complicated than the Joint Administrators and our advisors had originally envisaged;

(e) relatedly, it was necessary for the Joint Administrators to instruct independent leading counsel (Matthew Weaver KC) on behalf of the Court to advise on certain matters relating to the fairness of the approach (including from the perspective of WealthTek’s clients) proposed to be taken by the Joint Administrators to the resolution of client entitlements to Client Assets and Client Money arising from difficulties that had emerged in connection with inaccuracies and discrepancies in WealthTek’s books and records;

(f) inevitably, whilst the legal complexities have been in the process of being resolved, clients’ *ad hoc* queries directed to the Joint Administrators’ team have continued, and this has necessitated the ongoing commitment of adequate resources within our team for a longer period than originally thought necessary, in order to ensure that clients’ queries can be appropriately addressed;

(g) more clients have instructed the Joint Administrators to liquidate their Client Assets or transfer their Client Assets to an alternative broker to the nominated broker than the Joint Administrators had anticipated. This has necessarily made the process for returning Client Assets more complicated and cost-intensive; and

(h) inevitably, as the time it has taken to commence the process of returning Client Assets and Client Money to clients has been more protracted than originally envisaged, on-going operational costs (e.g. staff, IT and other overheads) have been incurred for a longer period than initially envisaged and it has been necessary to keep the facility entered into the by Joint Administrators with HUK 126 Limited for the purposes of funding the expenses of the special administration in place for a longer period than initially envisaged, with attendant additional costs consequences.

56 In the Judgment, the Court approved the Distribution Plan on the basis that it would not be fair and reasonable on the information provided for the Distribution Plan to include a Costs Contribution extending to the costs of potential future litigation. Putting to one side any way in which that issue might be addressed in future (as to which, see section D below), the Joint Administrators consider it appropriate to have brought to the Court’s attention with the above explanations the fact that the costs of returning Client Assets are higher than originally anticipated, for the reasons stated. Nonetheless, the Joint Administrators remain of the view that the costs overruns to date will not necessitate an increase in the overall anticipated costs, as

reflected in the Costs Contribution, with all remaining costs apportioned as appropriate between constituent workstreams.

(v) Costs summary

57 The table below summarises the total incurred costs and the estimated future costs, and the resulting Cost Contribution per client, for each of the categories of work and workstreams explained in sections (ii) to (iv) above, all of which are considered by the Joint Administrators to be Objective 1 costs.[6][7]

	Client Asset Return Costs		**Investigations-type Costs**		
Description	**Incurred 05/10/24**	**Future**	**Incurred 05/10/24**[8]	**Future FCA Assistance**	**Total**
Sub Total	8,912,177.49	2,665,621.51	1,625,460.08	900,000.00	14,103,259.08
Cumulative Total	8,912,177.49	11,577,799.00	13,203,259.08	14,103,259.08	
Approx. cost per client	*10,800*	*14,300*	*16,500*	*17,700*	

58 This table does not include any estimated future costs associated with investigations and the bringing of potential claims on the part of the Joint Administrators (as to which, see section D below). Nevertheless, the Joint Administrators expect that, even if such further costs were capable of inclusion following the formulation of any proposals dealing with such investigations and potential claims, the effect would not to be to increase the overall Cost Contribution per client above our original estimate of a maximum of £23,000.

[6] It is important to note that, aside from the total incurred costs, the costs set out in the table above are based on estimates and budgets prepared by the Joint Administrators' team at the date of this statement, according to information available at the present time. These are indicative estimates, for reasons similar to those explained in paragraphs 24 and 25, and will be subject to review and revision as the special administration progresses.

[7] The allocation of costs set out in the table have been calculated in good faith following the Judgment based on analysis of the time entries of the Joint Administrators' team and their legal team, according to the nature of the work undertaken.

[8] Note that this includes the costs of all funds flow analysis (as described in paragraphs 26 and 27 above), the s236 Applications (as described in paragraphs 39 to 43 above) and assistance provided to the FCA (as described in paragraphs 35 to 38 above), up to 5 October 2024. The vast majority of these costs have related to the funds flow analysis and the s236 Applications (noting that information produced in response to the s236 Orders has helped develop such analysis).

D. Proposals for the Court

(i) New proposals

59 The paramount concern for the Joint Administrators is to achieve certainty in terms of what should (and should not) be done in the interests of, and for the benefit of, the stakeholders in the special administration – notably, the clients and creditors of WealthTek, the FSCS and also the FCA. This is particularly so in light of the views expressed by the FSCS. That point was made in NRF's letter to the Court dated 30 October 2024 [**SC9/1/1-5]** (the **NRF Letter**).

60 The Joint Administrators are keen to understand whether the Court would welcome any updated or revised proposals prepared by the Joint Administrators in relation to the application of funds to be made available by the FSCS and/or the five clients self-funding the Costs Contribution, for the purpose of discharging any future costs associated with investigations and bringing potential claims in order to make recoveries of property for WealthTek's clients.

61 As a result of the investigations undertaken to date, it is apparent that further investigation will be required in order to determine what recovery actions might be available, and against whom, to recover Client Assets or their proceeds for the benefit of WealthTek's clients or the FSCS (as the case may be) (or indeed recoveries in lieu of Client Assets). As it is desirable to avoid duplication of effort and resources with respect to the recovery of assets, the recovery actions taken by the Joint Administrators and/or WealthTek will also depend on the actions proposed or taken by the FCA (as discussed at paragraphs 35 to 38 below).

62 The Joint Administrators recognise that we have not provided – and are not yet in a position to provide – any revised or updated proposals at the Consequential Hearing. That is intentional because we wish first to understand whether the effect of the Judgment is that we should not take any steps to that end. This confirmation is especially important because the process of preparing any revised or updated proposals will inevitably entail the incurring of additional costs on the part of the Joint Administrators. The Joint Administrators are mindful to avoid incurring such costs in light of the conclusions in the Judgment without first confirming the Court's views. There is also a timing issue because, even once the Joint Administrators have prepared our proposals in provisional form, setting out a roadmap for delivering optimal results for WealthTek's stakeholders (being, principally, WealthTek's clients and the FSCS (as to which, see section (ii) below)), it will then be necessary for the Joint Administrators to engage in an iterative process as between themselves, the FSCS, the Committee and the FCA, before the proposals can be refined and finalised for presentation to the Court.

(ii) Relevant stakeholders

63 As at the date of this statement, 89.4% of WealthTek's clients (821[9] in number) have been confirmed as being eligible to receive compensation from the FSCS for their shortfall and Costs Contributions. There remain 97[10] clients whose eligibility is yet to be confirmed but who the FSCS expects to be eligible (the **Remaining Clients**). In addition, there are 369 clients who have combined Client Asset and Client Money claims of less than £1,000, who have either not engaged in the process or who will receive a small amount of shortfall compensation and Costs Contribution.

64 Assuming the Remaining Clients are determined by the FSCS to be eligible to receive compensation, approximately 77%[11] of WealthTek's clients (710 in number) will be fully compensated for their shortfall and costs contributions (the **Lower Claim Clients**), even if the Costs Contribution is set at £23,000 to include a reserve for potential costs in investigating and bringing claims.[12]

65 Following the receipt of compensation by the Joint Administrators for the Lower Claim Clients, I understand that the clients' rights against WealthTek and third parties are assigned and automatically subrogated to the FSCS in accordance with COMP 7.2 and 7.3 and the FSCS determination dated 2 November 2023 (**FSCS Determination**) [**SC9/2/6-8]**).

66 The Joint Administrators have had preliminary discussions with the FSCS to understand what the FSCS's views are following the Judgment and whether it would still wish to fund a costs reserve in order for the Joint Administrators to explore making recoveries in respect of compensation it has paid out to clients.

67 The initial views of the FSCS are confirmed in its letter to the Joint Administrators dated 11 November 2024, in which the FSCS confirms its support of the approach taken by the Joint Administrators to date [**SC9/3/9-17]**.

68 Approximately 22%[13] of WealthTek's clients (being approximately 200 in number) will not be compensated in full for their shortfall and costs contribution, including if the Costs Contribution

[9] With balances over £1,000. A further 41 clients with balances less than £1,000 have been confirmed as eligible.

[10] With balances over £1,000.

[11] Based on the 918 clients with balances over £1,000, noting that all clients with balances less than £1,000, if they were to opt-in for compensation would be compensated in full, this figure would be 83.8%.

[12] These figures reflect the position as at the date of this statement; they differ from the equivalent figures contained in the Joint Administrators' written submissions to the Court dated 30 July 2024 which should now be regarded as historic and overtaken by subsequent developments.

[13] This is based on the 918 clients with balances over £1,000, if the smaller balances were included this figure would be 15.5%.

were not to include a reserve for potential costs in investigating and bringing claims (the **Higher Claim Clients**).

69 In addition, approximately 1% of WealthTek's clients (being approximately 8 in number) will be compensated in full for their shortfall and costs contribution if no additional FSCS compensation is reserved for the potential costs associated with investigations and bringing potential claims i.e. if the Costs Contribution was reduced to £17,700. (the **Intermediate Claim Clients**).

70 In relation to the Higher Claim Clients and the Intermediate Claim Clients, the Joint Administrators' understanding is the entirety of those clients' claims will be assigned and subrogated to the FSCS following the payment of compensation by the FSCS in the same manner as for the Lower Claim Clients. In other words, the Joint Administrators understand that it is the FSCS which is entitled to bring (and is indeed duty-bound to consider bringing, subject to questions of effectiveness and efficiency) claims to recover loss. The FSCS would therefore also be a relevant stakeholder in relation to any claims brought on behalf of the Higher Claim Clients and the Intermediate Claim Clients.

71 Nonetheless, given the difference in position between the Lower Claim Clients on the one hand and the Higher Claim Clients and the Intermediate Claim Clients on the other hand (and any residual economic interest of the latter two categories), the Joint Administrators would welcome clarity from the Court as to whether any revised proposals should extend to the Higher Claim Clients and the Intermediate Claim Clients; and whether the views of such clients (or some sub-set thereof) should be obtained, and by what means.

72 Any final form of updated or revised proposals will, of course, require the support of both the FSCS and the Committee. As noted previously in the NRF letter, the Joint Administrators will be required to provide the FCA with reasonable notice of our updated or revised proposals and to elicit any views or preferences that it may have in relation to the same.

(iii) Confidentiality

73 When presenting any new proposals to the Court, the Joint Administrators would, if this would be of assistance to the Court, provide the Court with details of the kinds of claims against third parties that the Joint Administrators consider might be realistically be brought (identifying such parties in doing so), with a view to making recoveries for the benefit of the Client Assets and Client Money estates. The Joint Administrators would be grateful for any indication as to whether this would assist.

74 As mentioned in paragraph 45 above, given the confidential and sensitive nature of such matters, and particularly in view of the FCA's ongoing investigations into suspected criminal offences in

respect of WealthTek and Mr Dance, the Joint Administrators do not consider it would be appropriate for the Joint Administrators to provide any such detail in a public witness statement or in open Court. However, if the Court would like to hear evidence in relation to such matters, the Joint Administrators would give further consideration to the appropriate manner in which such evidence could be put before the Court when presenting any proposal.

E. Position if there are to be no further proposals

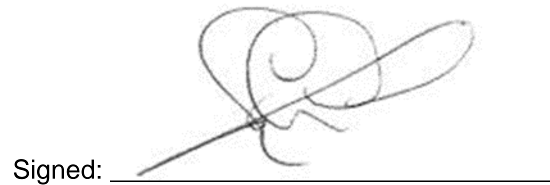
75 If the Court confirms that the Joint Administrators should not take any steps to produce updated or revised proposals in respect of potential future litigation, the outcome is likely to be that the Joint Administrators will not then have readily-accessible resources to continue our investigations or bring claims to make recoveries of property for the benefit of WealthTek's clients and/or the FSCS (as the case may be), where it might otherwise have been appropriate for us to do so. If, as a consequence, it is less likely that the recoveries of property will be made – which, as matters stand, it is not possible to predict with certainty – it cannot be discounted that the Joint Administrators will face questions from clients and potentially other parties as to why we have not acted, and been seen publicly to act, in the egregious circumstances of WealthTek's case.

76 In that event, it seems likely that the Joint Administrators would wish to seek confirmation from the Court that, in effect, we are not under any obligation to take any further action in relation to any potential litigation, given we would lack the resources to do so.

77 In those circumstances, it would assist, in particular for the Joint Administrators in our dealings with clients, the FSCS and/or other interested third parties, to have confirmation that we are not required to take (i) any further steps to vest title to any causes of action in WealthTek's clients or the FSCS (as the case may be), in light of the Judgment; and (ii) further steps to investigate any potential litigation.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Signed: ______________________________

SHANE MICHAEL CROOKS

Date: 11 November 2024

Filed on behalf of the Applicants
Shane Michael Crooks
11 November 2024
"SC9"

CR-2023-001772

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY & COMPANIES LIST (CH.D.)

IN THE MATTER OF WEALTHTEK LIMITED LIABILITY PARTNERSHIP

IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011

NINTH WITNESS STATEMENT
OF SHANE MICHAEL CROOKS

Norton Rose Fulbright LLP (Ref: 1001250014)

3 More London Riverside

London SE1 2AQ

Tel: +44 20 7444 3803

Solicitors for the applicants