

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**

**THIRD 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 "**SC3**", to which I refer in this statement. References to SC3 are in the form [**SC3/tab/page number**]. I shall also refer to the exhibit (marked "SC2") to my second witness statement dated 9 May 2024 (**Crooks (2)**) and page references in this witness statement to that exhibit are given in the format [**SC2/tab/page number**].
- 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. 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 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.

5 As in Crooks (2), 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 (as to the use of which in this statement, see further paragraph 31 below) 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 FCA’s Client Assets Sourcebook (known as “**CASS 7**” and “**CASS 7A**”, respectively). Where I refer in this statement to “**Regulations**”, I am referring to regulations in the Investment Bank Special Administration Regulations 2011 (the **IBSA Regulations**) and when I refer to “**Rules**”, I am referring to rules in the Investment Bank Special Administration (England and Wales) Rules 2011 (the **IBSA Rules**).

6 In Crooks (2), among other matters, I set out the background to the special administration of WealthTek and the relevant background to the preparation by the Joint Administrators of the distribution plan for the return of Client Assets held by WealthTek prepared pursuant to Part 5 of the IBSA Rules (the **Distribution Plan**) and the communications between the Joint Administrators and WealthTek’s clients from the date of the Joint Administrators’ appointment on 6 April 2023 to the filing of Crooks (2) on 9 May 2024.

7 The purpose of this statement is to update the Court on matters following the filing at Court of the application by the Joint Administrators for the approval of the Distribution Plan on 9 May 2024 (the **Application**) [**SC3/1/1-4**].

8 The remainder of this statement is divided into the following sections:

(a) Section B: Joint Administrators’ communications:

(i) Client communications; and

(ii) FCA and Financial Services Compensation Scheme (**FSCS**) communications;

(b) Section C: Objections received to the Distribution Plan; and

(c) Section D: Various other updates:

(i) FCA consent;

- (ii) FSCS compensation; and
- (iii) Discussions with identified broker.

B. JOINT ADMINISTRATORS’ COMMUNICATIONS

(i) Client communications

- 9 In Appendix A to Crooks (2), I set out the extensive efforts which the Joint Administrators had made to assist, notify and consult with clients from the date of the Joint Administrators’ appointment to the filing of Crooks (2) on 9 May 2024. In paragraph 159 of Crooks (2), I stated that, following the filing of the Application, the Joint Administrators would notify clients that the Application had been made and provide them with copies of the Distribution Plan and various related documents.
- 10 This notification has been made by the Joint Administrators, as follows:
- (a) on 10 May 2024, a notice was uploaded to the Website (the **10 May Notice**) [SC3/2/5-10] confirming to clients, among other things, that:
 - (i) the Application had been filed at Court for the approval of the Distribution Plan;
 - (ii) the Distribution Plan had been approved by the clients’ and creditors’ committee (the **Committee**) on 2 May 2024 [SC3/3/11-13];
 - (iii) the Application is listed to be heard at the High Court of Justice, Business and Property Courts of England and Wales, the Rolls Building, 7 Rolls Buildings, Fetter Lane, London, EC4A 1NL on 7 June 2024; and
 - (iv) the Distribution Plan (in accordance with Rule 146(3)) and certain explanatory and supporting documents which accompany the Distribution Plan – being, an explanatory statement (the **Explanatory Statement**), the Distribution Plan Flowchart and Frequently Asked Questions dated 9 May 2024 (the **FAQs**) and Crooks (2) – were available to be viewed by following appropriate hyperlinks on the Website; and
 - (b) between 10 and 13 May 2024:
 - (i) emails were sent to all clients (other than those clients who requested hard copy documentation), notifying such clients of the Application, providing a link to the Website and attaching the FAQs [SC3/4/14-15]; and

- (ii) letters were sent to all clients who requested hard copy documentation, notifying them of the Application, providing a link to the Website and enclosing a hard copy of the FAQs [SC3/5/16-17]. The letter explained that the other documents are available on the Website but, as they are voluminous, they would only be available in hard copy upon request to the Joint Administrators by telephone or email. I am not aware of any requests for hard copy documents having been received by my colleagues at BDO to date; and
 - (c) although the Joint Administrators received the sealed copy of the application notice for the Application (the “**Application Notice**”) on 10 May 2024 (the contents of which are described in Crooks (2)), it subsequently came to the Joint Administrators’ attention that this had not been uploaded to the Website along with the documents accompanying the 10 May Notice. Accordingly, on 24 May 2024, a further notice was uploaded to the Website [SC3/2/5-10] confirming to clients that the sealed copy of the Application Notice was available to be viewed, together with a short explanation of the additional relief being sought in paragraphs (2) and (3) of the Application Notice.
- 11 In the 10 May Notice, the Joint Administrators informed clients that they are not required to attend Court for the hearing of the Application. However, we noted that the Court hearing will be held in public and anyone is able to attend, if they wish to do so. The Joint Administrators requested in the 10 May Notice that any person intending to participate in the Court hearing contact the Joint Administrators as soon as possible. In doing so, the Joint Administrators had hoped to obtain as much visibility as possible of the likely numbers of WealthTek’s clients who would be attending the hearing, so that any necessary arrangements could be made in advance, and so that my team could contact the Court office with a view to logistics and the availability of sufficient space for likely attendees, as appropriate.
- 12 A representative from one of WealthTek’s intermediaries has since confirmed to the Joint Administrators they will attend the hearing to observe.
- 13 On Friday, 31 May 2024, the clerk to the Honourable Mr Justice Rajah confirmed the details of the Court hearing. These details were confirmed to clients on the Website on the next business day, Monday, 3 June 2024 [SC3/6/18].

(ii) FCA and FSCS communications

- 14 As I explained in Crooks (2), the Joint Administrators have liaised closely with, and remained in regular consultation with, the FCA and FSCS since their appointment. Early drafts of both the Distribution Plan and Explanatory Statement were shared with the FCA and FSCS for their review

and comment in the course of the documents being prepared and finalised. Both provided comments, which were reflected as necessary in the final forms of the Distribution Plan and Explanatory Statement by NRF. FSCS, in its capacity as a member of the Committee, approved the form of the Distribution Plan at the Committee meeting on 2 May 2024 [SC3/3/11-13].

15 Following the filing of the Application, the Joint Administrators notified both the FCA and FSCS that the Application had been made as follows:

(a) on 9 May 2024, emails were sent to both the FCA and FSCS, confirming that the Application had been filed, the Application is listed to be heard on 7 June 2024 and providing copies of the Distribution Plan (in accordance with Rule 146(3)) and the certain explanatory documents which accompany the Distribution Plan, being, the Explanatory Statement, the FAQs and Crooks (2) [SC3/7/19-20]; and

(b) on 24 May 2024, emails were sent to both the FCA and FSCS, providing a copy of the Application Notice and a short explanation of the relief being sought in paragraphs (2) and (3) of the Application notice [SC3/8/21-24].

16 As I set out in relation to clients in paragraph 12 above, on 3 June 2024 the Joint Administrators notified the FCA and FSCS of the further details of the Court hearing by way of email [SC3/9/25-30].

17 The FCA has confirmed to the Joint Administrators that the FCA will not be formally represented at the hearing or attending in an official capacity. The FSCS has also confirmed to the Joint Administrators that it will attend.

C. OBJECTION RECEIVED TO THE DISTRIBUTION PLAN

18 To date, I am aware of only one objection to the Distribution Plan having been made by a client of WealthTek.

19 On 16 May 2024, a client named Mr Pluck emailed the Joint Administrators informing them that, following his review of the Distribution Plan, he considered it to be “unfair”. No further explanation was provided in support of Mr Pluck’s statement. Mr Pluck also requested a copy of the legal advice which led the Joint Administrators to conclude an “earmarking strategy” was the correct way forward – which my team and I have understood to be a reference to the books and records advice summarised at paragraphs 37 to 69 of Crooks (2) [SC3/10/31].

20 On 23 May 2024, a member of my team at BDO responded to Mr Pluck, confirming that copies of the underlying legal advice received cannot be provided as it is subject to legal professional

privilege. We nonetheless explained that Crooks (2), specifically paragraphs 59 to 61, sets out why, in the Joint Administrators’ view, the earmarking approach is considered to be the most appropriate solution based on the circumstances of WealthTek’s case [SC3/11/32-33].

21 On 23 May 2024, Mr Pluck sent a further email attaching a letter dated 22 May 2024 (i.e. the prior day), which stated that:

- (a) the Distribution Plan is not fair or reasonable and is “*opaque, inconsistent and disproportionate*”;
- (b) it is neither fair nor reasonable that WealthTek’s retail clients have been “*denied access*” to the legal advice “*despite having to pay for it*” (in reference to clients’ costs contributions required under the Distribution Plan); and
- (c) the losses suffered by WealthTek’s clients “*fall most heavily on the most invested*” clients [SC3/12/34-35].

22 Mr Pluck had also included in the heading of his letter a reference to a “*Section 230(1) request to Court*”, without further explanation.

23 On 31 May 2024, I wrote to Mr Pluck, responding to each of his points, as follows (in summary) [SC3/13/36-40]:

- (a) the Joint Administrators consider that the Distribution Plan is the most appropriate means of achieving Objective 1 of the special administration, and is both fair and reasonable in the circumstances;
- (b) contrary to the suggestion that the Distribution Plan is “*opaque*”, the Joint Administrators consider that the Distribution Plan and accompanying documents (including the Explanatory Statement) are clear and have been presented in an open and transparent way. I also noted that the bases for Mr Pluck’s statements about the alleged “*inconsistent*” and “*disproportionate*” nature of the Distribution Plan were not clear, but that the Joint Administrators would be happy to consider any particular concerns that remain;
- (c) the Distribution Plan – and the required costs contribution – applies to clients indiscriminately, irrespective of their personal characteristics or categorisation as retail or professional clients; and, further, that the Joint Administrators’ approach to the allocation of costs is likely to lead to a larger proportion of the overall costs being compensated by the FSCS;

- (d) confirming that the purpose of the legal advice obtained by the Joint Administrators on the approach to take in light of difficulties faced with WealthTek’s books and records was to assist the JSAs in determining clients’ entitlements to client assets and client money in a way that is fair and equitable to all clients when taken as a whole and also the constitution and extent of the client assets and client money held by WealthTek, so that both client assets and client money can be distributed safely. I also reiterated that the legal advice is both confidential subject to legal professional privilege and, therefore, it is not appropriate to share it with clients;
- (e) explaining that the allocation of losses suffered by clients arising from shortfalls in client assets and client money held by WealthTek are mandated in large part by the Regulations and CASS 7/CASS 7A, respectively (i.e. and not the Distribution Plan); and
- (f) again confirming to Mr Pluck the then-known details of the Court hearing, in case he wished to attend.

24 In relation to Mr Pluck’s reference to a “*Section 230(1) request to Court*”, I responded as follows:

We understand this to be a reference to paragraph (1) of rule 230 (*Further information and disclosure*) of the Investment Bank Special Administration (England and Wales) Rules 2011 (which provides that any party to the special administration may apply to Court for an order for further information or disclosure). We further understand that the additional information you now seek is limited to the legal advice referred to at point 4 below (to which we have responded).

We note that your letter does not of itself amount to an application to Court for the purposes of rule 230(1). We will nevertheless make available to the Court ahead of next Friday’s hearing your letter, this response and our prior exchanges on the subject. If you are in any doubt about the making of your own application to Court, we suggest that you seek your own legal advice well in advance of the hearing.

25 Neither I nor my team have received any further communication from Mr Pluck as at the date of this statement. However, the Joint Administrators can update the Court as necessary at the hearing on any further developments vis-à-vis Mr Pluck.

26 On or around 23 May 2024, Matthew Stone, one of my colleagues at BDO, was separately notified by Tom Malloch (formerly an investment manager for Malloch Meville (a previous trading name for WealthTek)) that he had been informed by Gary Stockdale (formerly an investment research analyst of WealthTek, albeit employed by Collingwood Wealth LLP) that a further client

intended to submit a witness statement to Court ahead of the hearing. Neither I nor my team have received any further communication in relation to this client or whether they intend to support or object to the Distribution Plan, as at the date of this statement.

D. VARIOUS OTHER UPDATES

(i) FCA consents

27 As I explained in paragraph 81 of Crooks (2), the Joint Administrators have been, and continue to be, in discussions with the FCA with a view to the provision of consent by the FCA, prior to the hearing of the Application to:

- (a) WealthTek conducting such regulated activities as are necessary to give effect to returns of Client Assets held by WealthTek under the Distribution Plan and the distribution by the Joint Administrators of Client Money under CASS 7A, notwithstanding the requirements stipulated in the First Supervisory Notice dated 4 April 2023 (the “**FSN Consent**”); and
- (b) modification of the requirements of CASS 7A.2.4R and CASS 7A.2.7-AR, pursuant to section 138A of FSMA, such that any unclaimed Client Money held by WealthTek by the Long-Stop Date may be paid by WealthTek into the Insolvency Services Account (as defined in the Distribution Plan; being a bank account maintained by the Insolvency Service, the ordinary purpose of which is for the deposit by insolvency office-holders in insolvency proceedings generally of unclaimed dividends) (the “**CASS Waiver**”).

28 Based on recent correspondence, the Joint Administrators’ expectation is that both the FSN Consent and the CASS Waiver will be finalised and be capable of becoming effective within the next week or two. If this is in fact the case, the Joint Administrators consider that the likely timing for the return of Client Assets under the Distribution Plan will not be affected and will be able to proceed in accordance with the processes set out therein.

(ii) FSCS compensation

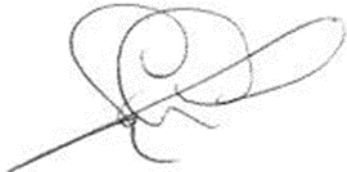
29 As I explained in paragraph 88 of Crooks (2), the Joint Administrators have worked closely with FSCS to finalise the terms of the FSCS Compensation Deed, which governs the process whereby FSCS compensation will be paid to the Joint Administrators to compensate the FSCS Protected Claimants. On 3 June 2024, WealthTek, the Joint Administrators and FSCS entered into the FSCS Compensation Deed.

(iii) Discussions with identified broker

- 30 As I explained in paragraphs 105 to 107 of Crooks (2), an FCA-regulated broker has (subject to ongoing discussions) been identified that represents the most suitable candidate for WealthTek’s clients.
- 31 The Joint Administrators are still in advanced discussions with the broker and are continuing to negotiate the terms of the asset transfer agreement to be entered into between WealthTek and the broker.
- 32 The FCA conducted a site visit at the broker’s premises on 28 and 29 May 2024.

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: 4 June 2024

Filed on behalf of the Applicants

Shane Michael Crooks

4 June 2024

“SC3”

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THIRD WITNESS STATEMENT
OF SHANE MICHAEL CROOKS

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