Filed on behalf of the Applicants
Shane Michael Crooks
9 May 2024
"SC2"

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

SECOND 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 "**SC2**", to which I refer in this statement. References to SC2 are in the form [**SC2/tab/page number**].

3 On 3 April 2023, the Financial Conduct Authority (the **FCA**) applied to the Court without notice for WealthTek Limited Liability Partnership (**WealthTek**) to be placed into investment bank special administration pursuant to the Investment Bank Special Administration Regulations 2011 (the **IBSA Regulations**). The first hearing took place on 4 April 2023 before the Honourable Mr Justice Roth and was adjourned to 6 April 2023. At the first hearing, Mark James Shaw, Emma Sayers and I, all of BDO, were appointed as joint interim managers of WealthTek (the **Interim Managers**) [**SC2/1/1-10**].

4 On 6 April 2023, the Honourable Mr Justice Zacaroli made an investment bank special administration order in respect of WealthTek and the Interim Managers were appointed as joint

administrators of WealthTek (the **Joint Administrators**), pursuant to Regulation 7(1)(a) of the IBSA Regulations, effective at 12:45 GMT [**SC2/2/11-12**].

5 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**).

6 Where numbers, percentages and values are provided in this statement, they have been provided to me by my colleagues at BDO and are provided on an approximate basis.

7 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 Interim Managers (now the Joint Administrators) following their appointment on 4 April 2023 to manage client communications (the **Website**). This statement will be uploaded to the Website once it has been filed with the Court.

8 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 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**).

9 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.

10 I make this statement in support of the application (the **Application**), made by the Joint Administrators in the terms of the draft order companying this Application (the **Draft Order**):

(a) pursuant to Rule 146(2), for the Court's approval of a distribution plan for the return of Client Assets held by WealthTek prepared pursuant to Part 5 of the IBSA Rules (the **Distribution Plan**);

(b) for the payment of any unclaimed Client Money and/or (proceeds of) unclaimed Client Assets held by WealthTek into the Insolvency Services Account (see paragraphs 81(b) and 158(c) below);

(c) for the payment of the fees of the Insolvency Service charged for receiving the amounts described in paragraph 10(b) above as expenses properly incurred by the Joint Administrators in pursuit of Objective 1 of the special administration, payable out of the Client Assets held by WealthTek;

(d) pursuant to Rule 134(3), for a variation of the order of priority within Rule 134(1) on the grounds that there is a shortfall of Client Assets and Client Money (see paragraphs 141 to 146 below); and

(e) for the costs of and incidental to the Application to be paid as expenses properly incurred by the Joint Administrators in pursuit of Objective 1 of the special administration, payable out of the Client Assets held by WealthTek and in accordance with the provisions of the Distribution Plan.

11 The remainder of this statement is divided into the following:

(a) Section B: WealthTek

(i) Background

(ii) Prior regulatory concerns

(b) Section C: WealthTek's special administration

(i) Applicable statutory framework

(ii) Discrepancies in WealthTek's books and records

(A) Scenario 1: unrecorded payments

(B) Scenario 2: transfers of certificated shares

(C) Scenario 3: consolidating accounts

(D) Scenario 4: Client Assets sold without client's knowledge

(E) Scenario 5: purchase of replacement Client Asset

(F) Scenario 6: non-processed sale instruction

(iii) The Distribution Plan

(iv) The FCA, FSCS and the Committee

(A) FCA

(B) FSCS

(C) The Committee

(c) Section D: Key terms of the Distribution Plan

(i) Key terms of the Distribution Plan

(ii) Compliance with statutory requirements

(iii) Transfer

(iv) Physical share certificates

(d) Section E: Costs

(i) Costs allocation under the Distribution Plan

(ii) Calculation of Estimated Costs Reserve

(e) Section F: Rule 144(2)(b)

(f) Section G: Rule 134(3)

(g) Section H: Client Consultation

(h) Section I: Notice of Distribution Plan and the Hearing

(i) Section J: Conclusion

(j) Appendix A: Client communication summary

B. WealthTek

(i) Background

12 WealthTek operated as an independent wealth management firm offering discretionary management, advisory and execution-only services to both retail clients and intermediaries. It is an investment bank within the meaning of section 232 of the Banking Act 2009 and is therefore an "investment bank" for the purposes of the IBSA Regulations.

13 WealthTek was incorporated on 24 May 2010 with partnership number OC355200 under the name Vertus Asset Management Limited Liability Partnership. On 14 January 2021 it changed its name to WealthTek Limited Liability Partnership.

14 Until the appointment of the Joint Administrators, WealthTek's registered office was Cobalt 8, 14 Silver Fox Way, Cobalt Business Park, Newcastle Upon Tyne, United Kingdom, NE27 0QJ. Following their appointment, the Joint Administrators changed the registered office to BDO LLP, 5 Temple Square, Temple Street, Liverpool L2 5RH.

15 Prior to its entry into special administration, WealthTek traded as "WealthTek", "Vertem Asset Management" and "Malloch Melville".

16 WealthTek has two Designated Members, (i) Mr John Dance and (ii) WealthTek Capital Limited (**WCL**). Companies House filings show that Mr Dance holds some 72% of the shares in WCL and is a director of that company [**SC2/3/13-15**] and [**SC2/4/16-17**]. WCL is not under the control of the Joint Administrators.

17 From 14 July 2017 to 28 January 2020, WealthTek was an appointed representative of an authorised third-party firm, Sapia Partners LLP. From 28 January 2020, WealthTek was authorised by the FCA (number 832264) to carry on the following regulated activities:

(a) advising on investments (except on Pension Transfers and Pension Opt Outs);

(b) arranging (bringing about) deals in investments;

(c) dealing in investments as agent;

(d) making arrangements with a view to transactions in investments;

(e) managing investments; and

(f) other activities: agreeing to carry on regulated activity.

18 WealthTek's most recent financial statements (unaudited) were filed on 15 September 2022 for the year ending 30 September 2021 [**SC2/5/18-24**]. Due to the late filing of these financial statements, WealthTek had been the subject of a notice for compulsory strike-off published in the London Gazette on 30 August 2022 [**SC2/6/25**].

19 Prior to its entry into special administration, WealthTek employed approximately 25 employees at its Newcastle office. Three employees continue to be retained to assist the Joint Administrators in achieving Objective 1 of the special administration under the IBSA Regulations (as to which. see further paragraph 28(a) below).

20 WealthTek's books and records indicated that WealthTek should have held Client Assets and Client Money with a valuation of approximately £229 million, made up of £216 million in Client Assets and £12.5 million in Client Money.[1] It appears, however, that there are substantial shortfalls in both.

21 As at the date of this statement, the Joint Administrators have identified Client Assets (worth, in aggregate, approximately £148 million) held by:

(a) CACEIS: CACEIS Bank (**CACEIS**) is holding Client Assets valued at approximately £96.2 million, pursuant to a custodian arrangement with WealthTek;

(b) other custodian: a small proportion of Client Assets (worth approximately £520,000) are held with other custodians;

(c) WealthTek Nominees Limited: 90 unit trust funds (worth approximately £41.2 million) are held in the name of WealthTek Nominees Limited, as WealthTek's nominee;

(d) WealthTek itself: WealthTek holds approximately 491,310 shares in physical certificated form (worth approximately £429,000) in respect of securities registered in the names of clients[2]; and

(e) WealthTek's clients and others: certain Client Assets (worth approximately £9.6 million) are not under the Joint Administrators' control and are instead held by clients (in the case of certain share certificates) or recorded on WealthTek's system but not actually held by

[1] Converted using the relevant rates as at 6 April 2023.

[2] The Joint Administrators understand that WealthTek (for the most part) came to hold such physical certificates for clients who transferred them into its custody with the intention that it would transfer the securities into CREST to be held in dematerialised form.

WealthTek (in the case of a particular debt instrument (as to which, see paragraph 97(j)(i)(A) below)).

22 As at the date of this statement, the Joint Administrators have identified Client Money totalling approximately £2.7 million held in accounts with CACEIS and Barclays Bank plc.[3]

23 As to the composition of WealthTek's approximately 1,400 client accounts (held for approximately 1,320 clients):

(a) the majority of WealthTek's clients (approximately 1,290, i.e. 98% of all clients) are individuals, classified as retail clients and whose claims are to (in aggregate) approximately £143 million of Client Assets and approximately £10.4 million of Client Money. The average age of WealthTek's natural person clients is 68 and 67% of them are over 65 years old. Such retail clients hold individual portfolios of Client Assets and/or Client Money averaging approximately £119,000 in value.

(b) the remaining 2% (i.e. approximately 30) of WealthTek's clients are corporates. Their claims are to (in aggregate) approximately £73 million of Client Assets and £2.1 million of Client Money.

(ii) Prior regulatory concerns

24 Prior to 3 April 2023 (i.e. the date the FCA first applied to the Court for WealthTek to be placed into special administration), I understand, primarily from the evidence in support of the application (and since confirmed in the press release referred to in paragraph 25 below) that WealthTek had been subject to various regulatory procedures, stemming from FCA concerns that: Client Assets were at risk and/or had been, or were being, misused, misleading information had been provided to clients and there had been a failure to disclose information to the FCA. I further understand that the FCA was concerned that WealthTek was operating outside of its regulatory permissions.

25 By 3 April 2023, in summary, the FCA had formed the view that it was necessary for insolvency practitioners to be appointed to WealthTek: (i) in order to protect Client Assets and Client Money from being dissipated and to protect customers; and (ii) due to concerns that the firm and Mr Dance may have been involved in financial crime. The FCA's press release dated 5 April 2023 (as updated on 14 September 2023 and 31 May 2023) to this effect is at [**SC2/7/26-30**].

26 In addition to the appointment of the Joint Administrators:

[3] For illustrative purposes converted using the prevalent rates as at 6 April 2023 but actually held in a number of currencies and subject to fluctuation.

(a) on 4 April 2023, the FCA issued a First Supervisory Notice under section 55L of the Financial Services and Markets Act 2000 (**FSMA**) to WealthTek for it to immediately cease carrying out all regulated activities [**SC2/8/31-40**];

(b) on the same date, Mr Dance was arrested by Northumbria Police and the FCA applied *ex parte* for, and obtained, a worldwide freezing order over the assets of Mr Dance (the **WFO**) up to £40 million. The WFO was subsequently continued by orders on 6 April 2023 [**SC2/9/41-54**] and 28 April 2023 [**SC2/10/55-71**]. I provided an affidavit dated 17 April 2023, at the request of the FCA, in support of the FCA's application for the continuation of the WFO [**SC2/11/72-76**];

(c) on 31 May 2023, the FCA confirmed in a public announcement that it was conducting a regulatory and criminal investigation into both WealthTek and Mr Dance, which included potential regulatory breaches relating to Client Assets and criminal offences of fraud and money laundering [**SC2/7/26-30**];

(d) the FCA issued a claim against WealthTek and Mr Dance, seeking orders under sections 380 and 382 of FSMA (the **FCA Civil Proceedings**). The FCA Civil Proceedings are stayed as against WealthTek pursuant to the Order of Mrs Nicola Rushton KC dated 28 April 2023 [**SC2/12/77-80**]; and

(e) the FCA obtained a criminal restraint order against Mr Dance, made by His Honour Judge Baumgartner on 8 November 2023, under Part 2 of the Proceeds of Crime Act 2002 (the **Restraint Order**).

27 Pursuant to a further order of HHJ Baumgartner dated 4 March 2024 **[SC2/13/81-84]**, the FCA Civil Proceedings were stayed as against Mr Dance so that the FCA could focus on its criminal investigation in respect of WealthTek and Mr Dance. By the same order, the WFO was varied such that previously-applicable prohibitions concerning client money ceased to apply. However, the Restraint Order remains in place. In his earlier judgment of 1 March 2024, the Judge had stated that: *"The ambit of the [Restraint Order] against Mr Dance is very wide: it applies to all of his assets, whether or not specifically described in the order, whether or not they are in his name, and whether or not they are solely or jointly owned by him or beneficially held by anyone else. As such, the [Restraint Order] applies to any remaining client money held by him originating from WealthTek"* (*The Financial Conduct Authority v WealthTek LLP and Jonathan Edward Dance* [2024] EWHC 424 (Ch), at 53 **[SC2/14/85-107]**).

C. WEALTHTEK'S SPECIAL ADMINISTRATION

(i) Applicable statutory framework

28 Pursuant to Regulation 10(1), the Joint Administrators are required to pursue three objectives:

(a) Objective 1 is to ensure the return of Client Assets as soon as is reasonably practicable. By Regulation 10(5), the "return of Client Assets" means, in summary, that WealthTek relinquishes full control over the assets for the benefit of the client to the extent of the client's entitlement to those assets;

(b) Objective 2 is to ensure timely engagement with market infrastructure bodies and the Bank of England, Treasury, FCA and Prudential Regulation Authority; and

(c) Objective 3 is to either (i) rescue WealthTek as a going concern, or (ii) wind it up in the interests of the creditors.

29 The starting position is that there is no preordained hierarchy as between the above-described objectives, and the appointed administrators may prioritise the objectives as they think fit, subject to the power of the FCA to direct the Joint Administrators to prioritise one or more of the objectives (Regulations 10(3) and 16(1)).

30 The present Application is primarily concerned with the Joint Administrators' pursuit of Objective 1 (as to which, see further paragraph 28(a) above). In relation to Objective 1, in summary:

(a) the Joint Administrators are entitled to deal with and return Client Assets in whatever order they think best achieves this objective: Regulation 10(2);

(b) if the Joint Administrators think it is necessary in order to expedite the return of Client Assets, Regulation 11(1) entitles them to set a bar date for the submission of: (i) claims to the beneficial ownership, or other form of ownership, of Client Assets; or (ii) claims of persons in relation to a security interest asserted over, or other entitlement to, those assets. This is known as the "**Soft Bar Date**";

(c) once the Joint Administrators have set a Soft Bar Date, they are required, by Regulation 11(4), to return Client Assets according to "the prescribed procedure". This means that no Client Assets may be returned after the Soft Bar Date has been set unless the court has given its approval on an application made in accordance with the distribution plan procedure (i.e. as prescribed by the IBSA Rules);

(d) accordingly, when the Joint Administrators propose to return Client Assets following the setting of a Soft Bar Date, they are required to draw up a distribution plan under Rule 144(1). The content of the distribution plan is prescribed by Rules 144(2) to 144(5); and

(e) once the Joint Administrators have drawn up a distribution plan under Rule 144, they are required: (i) to seek the approval of the creditors' committee (the **Committee**) under Rule 145; and (ii) to apply to the court for approval of the distribution plan under Rule 146.

31 Regulation 11(8) expressly excludes Client Money from Regulation 11. Accordingly, a distribution plan under Rule 146 relates to Client Assets other than Client Money. For that reason, where I refer in this statement to the term "Client Assets", I refer to Client Assets other than Client Money.

32 The IBSA Regulations do not prescribe the manner in which Client Assets are to be returned to clients. However, Regulation 10B makes specific provision for Client Assets to be returned by transferring them to another financial institution (a **Transfer**) where the administrator deems that appropriate. A Transfer under Regulation 10B is subject to certain restrictions on partial property transfers (i.e. Transfers of some but not all of the property, rights and liabilities of the investment bank), which are set out in Regulations 10C to 10G.

(ii) Discrepancies in WealthTek's books and records

33 On the basis of the Joint Administrators' analysis to date, there is a significant shortfall in the Client Assets and Client Money held by WealthTek. In particular, at present:

(a) after undertaking a Client Assets reconciliation, the Joint Administrators have identified a Client Assets shortfall on an indicative value basis of approximately £70.6 million in relation to 536 stock lines in respect of which approximately 889 clients have claims (a **Reconciliation Shortfall**); and

(b) the Joint Administrators have identified a Client Money shortfall of approximately £10 million. Pursuant to Regulation 10H(3), the Joint Administrators are obliged, once the required post-administration reconciliation of Client Money is complete, to transfer an amount equal to any such shortfall from WealthTek's own bank account to WealthTek's Client Money accounts. However, as WealthTek does not have any material funds, the Joint Administrators have included in the terms of the Draft Order an order pursuant to Rule 134(3) varying the order of priority within Rule 134(1) (see paragraphs 141 to 146 below).

34 The existence of the shortfalls in the Client Assets and Client Money held by WealthTek has, in turn, highlighted a number of issues in relation to the books and records of WealthTek, on which

the Joint Administrators would normally expect to rely for the purpose of returning Client Assets. If Client Assets or Client Money were distributed to clients solely in reliance on the books and records, serious problems and unfairness could arise. Clients might not get what they were entitled to or competing claims (not reflected in WealthTek's records) might be made by clients or other counterparties after Client Assets had been returned, potentially requiring distributions to be reversed.

35 Whilst the Joint Administrators have considered the position of each client of WealthTek individually for the purposes of calculating their entitlements and preparing to implement the Distribution Plan, the Joint Administrators have been able to identify different fact-patterns that apply in the same or similar ways to multiple clients, so far as inaccuracies in WealthTek's books and records are concerned. Based on these fact-patterns, in the interests of time and efficiency, the Joint Administrators formulated certain typical factual scenarios that were representative of the positions of different groups of clients and sought legal advice on the appropriate approach to take in order to determine clients' entitlements (i.e. as between a single client, other affected clients and/or WealthTek itself) to particular Client Assets and Client Money where there have been authorised and unauthorised transactions by WealthTek on behalf of its clients.

36 This process allowed the Joint Administrators to:

(a) determine entitlements of relevant parties in circumstances matching the descriptions of the scenarios on which legal advice has been sought; and

(b) ascertain what Client Assets and Client Money is held by WealthTek and can safely be distributed to clients by the Joint Administrators.

37 This process has involved the Joint Administrators spending a considerable amount of time working through the different factual scenarios in order to formulate solutions that they consider to be the fairest attainable outcomes in the circumstances of WealthTek's case. Careful thought has been applied by the Joint Administrators, based on our experience in past insolvency cases and in financial services matters generally, in order for judgements to be made as to the appropriate courses to take in the particular circumstances identified in WealthTek's case. Each determination has been supported by detailed and considered legal advice on matters that frequently involved complex technical issues. I note that all such legal advice remains confidential and subject to legal professional privilege (as to which, see paragraph 9 above).

38 In deciding the appropriate approach to take in each scenario, the Joint Administrators, following legal advice, have sought to strike an appropriate balance between protecting the interests of individual clients and achieving fairness for the clients of WealthTek as a whole.

39 The main factual scenarios identified by the Joint Administrators and the determinations made by the Joint Administrators as to the most appropriate approach to take in each case as a matter of fact and law are summarised at paragraphs 40 to 68 below.

(A) Scenario 1: unrecorded payments

40 In the first scenario, the position is as follows:

(a) WealthTek made a gratuitous payment to a client from its Client Money account[4] (**CMA**);

(b) while such a payment should have reduced the client's Client Money Entitlement[5] (**CME**), the payment is not shown in WealthTek's books and records; and

(c) as a result, the client's CME is overstated and the credit balance of the CMA has been reduced.

41 The approach taken by the Joint Administrators in these cases is that the CME of the client should be reduced to reflect payments of which the Joint Administrators have actual knowledge, i.e. WealthTek's books and records should be updated to reflect the client's position where it is known to differ from the position currently stated. Otherwise, the clients concerned will benefit from an artificially-inflated CME in circumstances where the Joint Administrators know that this does not reflect payments the clients have in fact received.

42 To date, the Joint Administrators have identified two gratuitous payments, totalling £35,000. The Joint Administrators have discovered such gratuitous payments in the course of the general investigations they have undertaken. In those cases, it was apparent that the CME for a particular client overstated that client's CME in light of payments in fact made to the client which were not reflected in a corresponding reduction in the value of the CME.

43 The Joint Administrators have considered the extent to which they need to, or should, undertake further investigations and a full reconciliation of payments and receipts to discover additional gratuitous payments to clients of the type described above. The Joint Administrators have concluded – given the volume of transactions being approximately 51,000 across the WealthTek bank accounts and approximately 785,000 across the client account ledgers and the fact that the Joint Administrators have, to date, identified only two gratuitous payments – that it is not justifiable or proportionate to undertake a comprehensive review and reconciliation of all historic payments

[4] WealthTek's Client Money account is an account of WealthTek that is a "client bank account" within the meaning given to that term in CASS 7.

[5] The Client Money Entitlement means a client's entitlement to Client Money, calculated in accordance with CASS 7A.

made by WealthTek for which they have records in order to ascertain whether each and every such payment was reflected by a corresponding ledger adjustment to the recipient client's CME.

44 In the Joint Administrators' view, it would be wholly disproportionate to carry out such an exercise, which would involve very considerable time and resource and might ultimately be inconclusive or lead to an incomplete picture of what in fact transpired (for example, if there are further deficiencies in WealthTek's book-keeping). The costs of such an exercise would ultimately be borne by the clients of WealthTek and the lengthy process the exercise would involve would further delay the Joint Administrators being able to transfer or distribute Client Assets to the clients. Any benefits to individual clients from such a reconciliation exercise are likely to be outweighed by the costs of doing so.

45 For these reasons, the Joint Administrators' view is that they should only make adjustments in respect of unrecorded gratuitous payments made to clients where they have actual knowledge of such payments as a result of the investigations they have undertaken. The Joint Administrators have formed the view that conducting a full reconciliation between the WealthTek bank accounts and the client account ledgers of all historic payments would not be in the best interests of clients generally.

(B) Scenario 2: transfers of certificated shares

46 The second scenario involves certain transfers and purported transfers by clients of shares held in certificated form to WealthTek prior to its entry into special administration. In particular, WealthTek had intended that shares represented by physical share certificates in the name of a client would be dematerialised and sold by WealthTek on the client's behalf. The Joint Administrators understand that this process was in fact completed in certain instances. In certain other cases, however, whilst steps were taken by particular clients to transfer shares to WealthTek, the Joint Administrators understand that WealthTek had not then taken the necessary steps at the time of its entry into special administration to proceed with dematerialising the shares. (The Joint Administrators understand, from enquiries made of legacy WealthTek personnel, that this process had been complicated by departures from business-as-usual practices arising from measures implemented during COVID-19 lockdowns, although this is not something that the Joint Administrators have been able independently to verify.) In a final category of cases – referred to below as "invalid transfers" – insufficient steps had been taken by a client and/or WealthTek to transfer either legal or beneficial title to certificated shares to WealthTek.

47 In certain of the cases where share certificates had been transferred to WealthTek but the shares had not been dematerialised at the time of WealthTek's entry into special administration,

WealthTek had nonetheless prior to that point increased the relevant clients' CME by an amount equal to the value of the shares, as if WealthTek had in fact completed such dematerialisation.

48 The situation in these cases is as follows:

(a) the client had provided both the share certificates sought to be dematerialised and a CREST transfer form in respect of the shares to WealthTek, executed in favour of WealthTek and the client's Client Asset holding was increased;

(b) the client's CME in WealthTek's books and records was increased by an amount equal to the value of the shares and the client's Client Asset holding in WealthTek's books and records was reduced by an equivalent amount; and

(c) one of the following occurred:

(i) in example 1, the client withdrew Client Money from the CMA based on the client's increased CME;

(ii) in example 2, the client did nothing (i.e. they simply retained their increased CME) or securities were purchased by WealthTek for the client, using Client Money from the CMA, based on the client's increased CME; and

(iii) in example 3, WealthTek actually sold dematerialised shares of the same type (e.g. issued by the same company) as the certificated shares, and the proceeds of sale were added to the CMA and the client's CME was correspondingly increased in the same amount. This example is different to examples 1 and 2 because, in contrast, the increase in the client's CME was funded by real-world proceeds of sale of dematerialised shares. The client then withdrew Client Money (or purchased a replacement asset, as applicable) in reliance on its increased CME. Following WealthTek's entry into special administration, the Joint Administrators have discovered that there is now a shortfall in the type of shares sold to fund the increase in CME.

49 The Joint Administrators have taken the following approach to determining entitlements in this scenario:

(a) there is a threshold question as to whether or not the share transfer was valid. The transactions would be capable of resulting in:

(i) a legal transfer of title;

(ii) a beneficial transfer of title; or

(iii) neither a legal nor beneficial transfer of title (i.e. an invalid transfer);

(b) taking these outcomes in turn, the Joint Administrators have taken the view that:

(i) for a legal transfer to have occurred, WealthTek must have been registered as the new owner of the shares in the issuer's or, in the case of CREST, operator's register of members, entry into such register, being the time at which legal title passes to a transferee. As none of the transfer forms sent to WealthTek were delivered to the relevant issuer of the shares in the first place, registration could not have occurred, so the Joint Administrators' view is that no legal transfers have taken place;

(ii) a beneficial transfer – which involves the transfer of the beneficial rather than the legal title to the shares – will have occurred where properly executed transfer forms and accompanying certificates have been delivered to WealthTek and value for such transfer was received by the relevant client. Where imperfect transfer forms and/or no certificates have been delivered to WealthTek, whether or not a beneficial transfer can be said to have occurred has been considered by the Joint Administrators on a case-by-case basis; and

(iii) if any transactions fail to satisfy the requirements of a beneficial transfer, they are considered by the Joint Administrators to be invalid transfers and any remaining rights or claims available to WealthTek have been considered by the Joint Administrators on a case-by-case basis;

(c) the effect of the Joint Administrators' analysis of individual cases is that the relevant transfers are either: (i) effective as beneficial transfers, or (ii) are wholly invalid;

(d) if there has been a beneficial transfer, the relevant clients will hold any rights they have to the shares on trust for WealthTek. The Joint Administrators are therefore now entitled to request that such clients take the necessary steps to perfect the transfer of the relevant shares to WealthTek, such that WealthTek obtains both legal and beneficial title to the shares. The practical effects for each of the examples are discussed below:

(i) In example 1, where there has been a beneficial transfer:

(A) the client is entitled to retain the Client Money withdrawn (and has no right to the certificated shares); and

(B) since the proceeds of the certificated shares represented by the client's increased CME were effectively generated from the CMA, claimants on the Client Money Pool[6] (**CMP**) are now entitled to such proceeds (which, in practical terms, means that the Joint Administrators should sell the shares and add their proceeds to the CMP;

(ii) in example 2, where there has been a beneficial transfer:

(A) if the client simply has an increased CME, the client has the right to retain that CME (notwithstanding the fact that there had been no corresponding receipt of "real-world" cash into the CMA);

(B) if new shares were purchased by reference to the client's increased CME, the client is entitled to trace into those new shares (and has no right to the certificated shares); and

(C) since the proceeds of the certificated shares represented by the client's increased CME were effectively generated from the CMA, claimants on the CMP are now entitled to such proceeds (which, in practical terms, means that the Joint Administrators should sell the shares and add their proceeds to the CMP); and

(iii) in example 3, where there has been a beneficial transfer:

(A) the client is entitled to retain the Client Money they have withdrawn (and has no right to the certificated shares); and

(B) since the proceeds of the dematerialised shares were withdrawn by the client as Client Money, the clients for whom the dematerialised shares of that type were held are entitled to the certificated shares (which, in practical terms, means that the Joint Administrators can now treat the shares as being held for the clients who had suffered a shortfall on that type of securities (dematerialising them, if appropriate), thereby reducing those clients' shortfall claims); and

(e) if there has been an invalid transfer, the relevant clients will have retained their legal and beneficial title to such shares (in certificated form) and would have no entitlement to:

[6] The Client Money Pool is the Client Money pool constituted on the Primary Pooling Event in accordance with CASS 7A.

(A) the Client Money withdrawn in reliance on their increased CME, such that that Client Money would need to be repaid (or recovered by the Joint Administrators) (in examples 1 and 3); or

(B) the increase in their CME or shares purportedly acquired for them in reliance on their increased CME, such that distributions to the client would need to be reflected by the Joint Administrators accordingly (in example 2).

50 As noted in paragraph 46 above, the Joint Administrators are aware of several instances of partial or fully invalid transfers of certificated shares to WealthTek having occurred. Further details of such cases are provided in paragraph 110 below.

(C) Scenario 3: consolidating accounts

51 In the third scenario, the position is as follows:

(a) the Joint Administrators have discovered that, in some cases, there are significant discrepancies between WealthTek's holdings of Client Assets for a client as recorded in: (i) accounts within WealthTek's books and records (effectively, ledger accounts), and (ii) WealthTek's accounts held with a third-party custodian. Moreover, while there is substantial overlap in the account designations[7] used in the internal and third-party records, there are some differences, in the account designations used and they therefore do not map over fully;

(b) some of the discrepancies include (but are not limited to) the following scenarios:

(i) a situation where there is no variance in the overall units held by WealthTek on behalf of clients at the third-party custodian and recorded in WealthTek's books and records (i.e. the total number of securities matches), but there is a variance (or multiple variances) between the designations of the accounts for the holdings of those assets. For example, see the below table where there is no overall variance to the number of units held, but there is a variance between account designations as between the records of the custodian and in WealthTek's books and records (i.e. the "ISA" and "Net" accounts):

[7] Where "designations" refers to the account names or labels applied to particular accounts (e.g. "ISA" in the "Account" column in the table appearing at paragraph 51(b)(i)), both internally, in WealthTek's books and records (i.e. the "WealthTek (Units)" column in the table), and externally, in the custodian's account records (i.e. the "Third-party custodian (Units)" column in the table).

Account	Third-party custodian (Units)	WealthTek (Units)	Variance (Units)
BULK	-	-	-
GROSS	-	-	-
ISA	-	32	(32)
JERSEY SIGNIA		-	-
NET	32	-	32
OWN NAME		-	-
SIGNIA ONS		-	-
UNDEFINED		-	-
TOTAL	**32**	**32**	**-**

(ii) a scenario where there is an overall shortfall in units held by WealhTek on behalf of clients but variances between account designations to which the underlying securities are recorded (e.g. a shortfall in one account and a surplus in another). For example, see the below table where there is an overall shortfall as well as variances between account designations:

Account	Third-party custodian (Units)	WealthTek (Units)	Variance (Units)
BULK	-	-	-
GROSS	-	254	(254)
ISA	392	196	196
JERSEY SIGNIA		-	-
NET	-	-	-
OWN NAME		-	-
SIGNIA ONS		-	-
UNDEFINED		-	-
TOTAL	**392**	**450**	**(58)**

(iii) a position where the relevant account has a designation which is only used in one or other of WealthTek's books and records or on the third-party custodian's system. For example, see the below table where the "bulk" designation is not used by WealthTek but is used by the third-party custodian:

Account	Third-party custodian (Units)	WealthTek (Units)	Variance (Units)
BULK	107	-	107
GROSS	4,324	1,184	3,140
ISA	16,564	27,664	(11,100)
JERSEY SIGNIA	-	-	-
NET	20,000	21,974	(1,974)
OWN NAME	-	6,595	(6,595)
SIGNIA ONS	-	-	-
UNDEFINED	-	-	-
TOTAL	**40,995**	**57,417**	**(16,422)**

52 These discrepancies (which, to the best of my knowledge, have arisen from inconsistent entries having been made in WealthTek's books and records and the third-party custodian's systems, and not (for example) from any decision made by the relevant client) have caused the Joint Administrators considerable difficulty in deciding how best to compute clients' entitlements, recognising the potential for different outcomes for clients (and, indeed, WealthTek) depending on whether the Joint Administrators place reliance on WealthTek's books and records or, alternatively, the custodian's accounts.

53 Overall, the Joint Administrators have determined that the appropriate approach in the circumstances is that they should take a consolidated view of the total shortfall in an asset across the multiple accounts at the third-party custodian – effectively notionally pooling WealthTek's holdings of each asset type – for the purposes of distributing those assets according to clients' entitlements.

54 Whilst the Joint Administrators recognise that there may be individuals (for example, creditors in relation to the WealthTek house estate and clients for whom assets are recorded as being held) who might have an interest in arguing that an account-by-account approach should be taken, as opposed to a consolidated view, the Joint Administrators consider that the consolidated approach is the fairest and most justifiable course to take in the circumstances of WealthTek's case. In particular, the Joint Administrators' view is that the consolidated approach generally represents a better outcome for clients than for WealthTek, given that a "per account" approach would create artificial surpluses of individual stock lines within particular accounts – ostensibly in WealthTek's favour – where there might be an overall shortfall in those stock lines, which would otherwise be to the detriment of clients. For instance, in the example at paragraph 51(b)(ii) above, taking a

"per account" approach would result in a surplus of 196 units in the "ISA" account, which would accrue to the benefit of WealthTek's general estate, despite the fact that there was a deficit of 254 units in the "Gross" account and overall a deficit of 58 units. Moreover, the Joint Administrators' understanding is that the discrepancies result from inconsistent entries being made by WealthTek personnel and not from any decision made by individual clients. Accordingly, the Joint Administrators' view is that the consolidated approach avoids the perverse outcome of clients suffering arbitrary shortfalls that placing reliance on account designations alone would engender.

(D) Scenario 4: Client Assets sold without client's knowledge

55 In the fourth scenario, the position can be described as follows:

(a) WealthTek held Client Asset "X" for a client in an omnibus account;

(b) WealthTek sold X on the open market, without the relevant client's knowledge, and the actual proceeds of the sale of X were paid into the CMA;

(c) WealthTek's books and records continued to show X as being held for the client and WealthTek continued to pay "manufactured" dividends (and other derived income)[8] on X to the client (i.e. leading the client to think WealthTek still held X for it); and

(d) on the commencement of the special administration of WealthTek, there was a shortfall of X-description assets in the omnibus account in which X had previously been held.

56 The Joint Administrators have taken the following approach to determining entitlements in this scenario:

(a) the proceeds of sale of X – having been paid into the CMA – would become part of the CMP to the extent they remain in the CMA as at the "Primary Pooling Event"[9];

(b) the client has a claim to a proportionate share of X-description assets in accordance with Regulation 12 and an unsecured claim for any balance;

[8] "Manufactured" derived income refers to WealthTek crediting a client's ledger account with derived income that would have been received on underlying securities if they had still been held by WealthTek but which were in fact no longer received; therefore, WealthTek replicated the effect of the securities continuing to be held by it by "manufacturing" receipts of derived income that were not actually received by it for clients (that is, increasing the amounts of Client Money owed to clients according to their ledger accounts without any "real-world" receipt of cash).

[9] The Primary Pooling Event refers to the "primary pooling event" as that term is used in CASS 7A, being, in WealthTek's case, its entry into special administration.

(c) the client is entitled to its CME in respect of any remaining manufactured dividends (and other derived income); and

(d) since, for discretionary fund manager clients (**DFM Clients**)[10], the Joint Administrators are entitled to proceed on the basis that the sale of X was not authorised in circumstances in which the sale was not effected honestly in the client's interests, there is no relevant distinction to be drawn between DFM Clients and "execution-only" clients[11] for these purposes.

(E) Scenario 5: purchase of replacement Client Asset

57 In the fifth scenario identified by the Joint Administrators, Client Asset "X" was sold by WealthTek as described in Scenario 4 above, and then the following events occurred:

(a) the client instructed WealthTek to sell X on the open market (noting that, as described in Scenario 4, X had already been sold by WealthTek, without the client's knowledge) and to purchase a new Client Asset, "Y", on the open market; and

(b) WealthTek then bought Y for the client from the open market using Client Money from the CMA.

58 The Joint Administrators have taken the following approach to determining entitlements in this scenario:

(a) the client is now entitled to trace into the proceeds of X, being the substitute for X, and therefore into the CMA; and

(b) the Joint Administrators are entitled to regard the client as being entitled to Y (notwithstanding that the proceeds of X had been mixed with other Client Money when paid into the CMA).

59 In reaching the conclusion described in paragraph 58, the Joint Administrators have applied an "earmarking" approach. In other words, the purchase of Y (the new Client Asset) is attributed to the relevant client's Client Money (and not to the Client Money of any other client). The Joint

[10] DFM Clients are clients who contracted with WealthTek on a discretionary fund-managed basis (i.e. WealthTek, as a discretionary fund manager, was authorised to transact for the client on a discretionary basis, within the scope of the client's authority conferred for that purpose).

[11] Execution-only clients are those clients who contracted with WealthTek on the basis that WealthTek was only authorised to execute trades and otherwise take actions on behalf of clients with respect to Client Assets on the express instructions of those clients.

Administrators have taken this approach on the basis that it reflects the intention of WealthTek at the time and the way in which the transaction was recorded in WealthTek's books and records, as visible to the relevant client.

60 In the Joint Administrators' view, the earmarking approach also represents a practical and pragmatic solution on the facts. An alternative approach would require the Joint Administrators to conduct detailed investigations as to the manner in which the books and records should be departed from when conducting the reconciliation exercise. In particular, they would likely then need to unwind every single transaction that had taken place over a number of years prior to WealthTek's special administration across each of the relevant accounts in order to ascertain the true transaction history and individual clients' actual entitlements – essentially, recreating the books and records in their entirety. In light of the other respects in which the books and records are deficient, the Joint Administrators have serious reservations as to whether such an exercise would even be possible or, ultimately, conclusive, in the circumstances of WealthTek's case.

61 In adopting an earmarking approach, the Joint Administrators are mindful that: (i) the relevant case law indicates that a range of approaches can be adopted to deal with the evidential uncertainty created by a mixed fund, and (ii) the courts have emphasised the need to arrive at a solution in such cases which is practicable and just in the particular circumstances of a case. The Joint Administrators are cognisant that the earmarking approach is one of a number of potential approaches to resolving the evidential uncertainty as to whose money had been debited from the CMA and whose remains. Notwithstanding what is noted in paragraph 60 above, it is undoubtedly the case that different approaches to the difficulties faced would affect individual clients in different ways, with the result that some clients would have an interest in arguing for other solutions. Nevertheless, in the Joint Administrators' view, the earmarking approach is practicable and just in the circumstances of WealthTek's case, and is to be preferred to other potential approaches.

(F) Scenario 6: non-processed sale instruction

62 In the sixth scenario, the position is as follows:

(a) a client instructed WealthTek to sell Client Asset "X" on the open market but WealthTek failed to do so;

(b) the client was credited with "manufactured" proceeds i.e. an increased CME; and

(c) WealthTek might then have bought Y on behalf of that client with the authority of the client, by reference to the increased CME, using Client Money from the CMA.

63 The manufactured proceeds referred to in paragraph 62(b) above replicated the effect of X having been sold. This was achieved by WealthTek increasing the client's CME on their ledger account, but there was no receipt of real-world cash into the CMA (or otherwise) since X had not in fact been sold by WealthTek. However, any monies used to purchase Y would have been actual Client Money from the CMA.

64 The Joint Administrators have taken the following approach to determining entitlements in this scenario:

(a) the Joint Administrators consider that WealthTek's retention of X amounts to a breach of trust and, therefore, the client retains their right to X;

(b) in an ordinary case, the starting-position would be that the client (and indeed each and every client to whom this scenario applies) could now elect to have X or to claim an interest in the CMP (by reason of their interest in the manufactured proceeds, as part of their CME):

(i) in circumstances in which the client were to elect in favour of having X:

(A) there would need to be an appropriate deduction from the client's CME of an amount equal to the value of X (on the basis that the client cannot make a "double-recovery", in the sense that they maintain their entitlement to X and also have a CME to the extent of the value of the sale proceeds of X); and

(B) the consequence would be that the client would have no entitlement to Y, which would then be considered to belong beneficially to Client Money claimants on the CMP, rateably, in accordance with each client's CME. (From a practical perspective, this would mean that Y would be liquidated by the Joint Administrators and the proceeds added to the CMP); and

(ii) if the client were instead to elect to claim an interest in the CMP:

(A) in a scenario where Y had not been bought, the client would now simply be entitled to a distribution from the CMP; and

(B) where Y had been bought, and at a time when the CMA was in deficit:

(1) it would be justifiable to apply an earmarking approach (as to which, see paragraph 59), such that the client's Client Money would be treated as having been used to buy Y. The result is that the client would be treated as owning Y (with other clients with CMEs claiming on the CMP,

which would be subject to a shortfall in view of the deficit on the CMA); and

(2) in consequence, X would then be considered to be held for Client Money claimants on the CMP, rateably in accordance with their respective CMEs (such that, practically, the Joint Administrators would be required to liquidate X and add the proceeds to the CMP).

65 Having considered the position carefully, the Joint Administrators have formed the view that a client cannot be regarded as having already made an election, in the ways described above, in particular, because in the Joint Administrators' view, they lack sufficient knowledge of the relevant circumstances which gave rise to such a right. The Joint Administrators have also concluded that it would not now be workable from a practical perspective to give clients the ability themselves to make elections, in the context of WealthTek's special administration. Doing so would inevitably cause delay and some clients may not respond to a request to make an election. In addition, in the Joint Administrators' opinion it seems likely that many clients (given the demographics of WealthTek's clients (as to which, see paragraph 23 above)) might have difficulty in comprehending the significance of the different consequences that could flow from their decision.

66 In addition, each election made by clients in a piecemeal and uncoordinated way would produce knock-on effects which would create a "moveable feast" so far as other clients' potential elections and the likely economic consequences of different options are concerned. In other words, if one client makes an election, this will affect the position of other clients generally and any election that other clients would have. In practical terms, it would be extremely difficult for the Joint Administrators to manage this process in a way that was fair and ensured that clients were able to make informed decisions.

67 Overall, in the Joint Administrators' views, proceeding in a way which would leave open to clients the ability to make their own elections would be fraught with complexity and would involve a disproportionate amount of time, effort and cost (ultimately at the expense of the Client Asset and Client Money estates) to recompute different clients' entitlements to Client Assets and Client Money each time a new election is made by a different client.

68 In light of these difficulties, and in the interests of avoiding the complexities that can be foreseen in going down this route, the Joint Administrators have reached the conclusion that they should treat clients generally to whom the above-described scenario pertains as having elected to retain Y, where Y had been credited to the relevant client's account in WealthTek's books and records.

69 This approach means that the entitlement of clients reflects the books and records of WealthTek and the respective clients are in the position which they intended to be in and which the books and records of WealthTek indicate they are in. The Joint Administrators appreciate that certain clients might have an interest in arguing for an alternative solution. However, the "moveable feast" nature of allowing individual clients the opportunity to make their own elections on a piecemeal basis (as described above) would mean that any election by a single client that results in a positive outcome for that client could well have a negative knock-on effect from the perspective of another client. This would also potentially result in a fluid situation in which it is very difficult for any particular client to know which election was actually in their interests at a particular point in time; and indeed, for the Joint Administrators to be able to identify which clients would lose out or benefit from the making of particular elections. The Joint Administrators' considered view is that their proposed approach is the fairest one available in the circumstances and that it is reflective of the best interests of the affected clients as a whole.

(iii) The Distribution Plan

70 On 12 February 2024, the Joint Administrators set a Client Assets and Client Money Soft Bar Date of 20 March 2024. In accordance with Regulations 11, 12A and 12E and Rule 138:

(a) on 12 February 2024, notice of the Soft Bar Date was given to (i) all clients whose claims to Client Assets and Client Money the Joint Administrators were aware of, (ii) the FCA and (iii) the Financial Services Compensation Scheme (**FSCS**);

(b) pursuant to Regulation 12E(1)(b), the Joint Administrators were also required to give notice of the Soft Bar Date to all persons that the Joint Administrators believed had a right to assert a security interest or other entitlement over the Client Assets but the Joint Administrators were at that stage and continue to be unaware of any such person;

(c) notice of the Soft Bar Date was advertised in the London Gazette, posted on each individual client's online portal (made available by the Joint Administrators to clients for the purposes of communicating with each of them in relation to their specific claims) (the **Portal**), uploaded to the WealthTek-dedicated webpage of the BDO LLP website and advertised on 15 February 2024 in two local newspapers in areas with relatively high concentrations of clients of WealthTek, being The Chronicle (Newcastle) and the Hull Daily Mail (Regulation 12E(3) and Rule 138(4)); and

(d) the Joint Administrators' extensive efforts to communicate with clients are summarised in Appendix A to this witness statement. In light of those efforts, the Joint Administrators believe that the notice came to the attention of as many persons who are eligible to submit

a claim for the return of Client Assets as was practicable (Regulation 12E(4) and Rule 138(5)).

71 The Joint Administrators concluded that the setting of a Soft Bar Date, and the use of the distribution plan procedure, were necessary in order to expedite the return of Client Assets. One of the critical aspects of the procedure contained in Regulation 11 is that, by Regulation 11(5), where Client Assets are distributed in accordance with an approved distribution plan, a late claimant is not entitled to disrupt returns which have already been made and the person to whom the assets have been returned acquires good title to them as against any late claimant (subject to Regulation 11(6) (which makes contrary provision for bad faith and false claims)).

72 The Joint Administrators considered, shortly following their appointment, that it was expedient to utilise this procedure in circumstances where, in summary:

(a) the Joint Administrators had concerns about the accuracy and reliability of WealthTek's books and records (as to which, further detail is provided in relation to the approach taken by the Joint Administrators in paragraphs 33 to 68). Our concerns arose in part as a result of the FCA's concerns and the actions the FCA had taken vis-à-vis Mr Dance, as referred to at paragraphs 24 to 26 above;

(b) as at the Joint Administrators' appointment, WealthTek actually held approximately £138 million of Client Assets in approximately 1,400 client accounts for approximately 1,320 clients. Because approximately 98% of those clients are retail clients the Joint Administrators have proceeded on the basis that it is possible that many such clients are not sophisticated investors; and

(c) accordingly, it was considered beneficial to WealthTek's clients (specifically, for the expedient return of their assets) to have a clear and orderly procedure for making claims to, and distributing, Client Assets.

73 As explained below, if the Distribution Plan is approved by the Court, the Joint Administrators expect that the majority of Client Assets (as well as Client Money) will be transferred to one nominated broker in accordance with Regulation 10B.

74 The Joint Administrators' current intention is that this transfer will be effected as soon as reasonably practicable after 20 June 2024 (possibly in a number of tranches, each of which will, in that event, constitute a separate Transfer), with any assets which will not be subject to a Transfer to be distributed separately to clients under the Distribution Plan as soon as reasonably practicable after 20 June 2024.

75 Pursuant to Rule 144(3), 20 June 2024 is the earliest date on which any returns of Client Assets under the Distribution Plan can take place, being the first business day falling 3 months after the setting of the Soft Bar Date.

76 However, the Application is being made at the present time because, in order to ensure that the Transfer and remaining distributions can be effected on or as soon as reasonably practicable after 20 June 2024, the Joint Administrators require the intervening 6-week period to prepare for the first return of Client Assets. In particular:

(a) during this period, the Joint Administrators will be required to carry out the following substantial tasks: (i) analysing and accepting or rejecting claims submitted by clients in whole or in part; (ii) responding to client queries about the Distribution Plan, the Explanatory Statement (as defined in paragraph 96 below) and related communications; (iii) determining, where possible, any disputes in respect of clients' claims; (iv) finalising the terms of, and entering into, the Transfer agreement with the nominated broker; (v) finalising the terms of, and entering into, the compensation deed with FSCS (the **FSCS Compensation Deed**) (as to which, see paragraph 88 below); and (vi) completing the necessary practical and administrative steps in order to effect a Transfer or Distribution (as defined in the Distribution Plan), such as preparing statements in accordance with the Distribution Plan that reflect agreements with each client of their accepted claims in respect of client assets (referred to in the Distribution Plan as "**Client Assets Confirmation Statements**"). Whilst the Joint Administrators have to some extent been progressing those matters already, it is only once the Distribution Plan comes into effect that its formal dispute resolution provisions will become operative;

(b) the return of Client Assets – whether by way of Transfer or Distribution (as defined) – is subject to certain actions first having been undertaken by each relevant client, including as to compliance with customer due diligence requirements of any new broker, which will take some time to carry out; and

(c) furthermore, as described in greater detail below, the Joint Administrators are in advanced discussions with a broker to whom the proposed Transfer of most Client Assets (and Client Money) is expected to take place as soon as reasonably practicable after 20 June 2024.

77 In addition, by seeking the Court's approval of the Distribution Plan now, the Joint Administrators hope to provide greater and earlier certainty to clients as to how and when they are likely to have their Client Assets returned.

(iv) The FCA, FSCS and the Committee

(A) FCA

78 The Joint Administrators are subject to an ongoing duty under Regulation 10(1)(b) (Objective 2) (as to which, see paragraph 28(b) above) to ensure timely engagement with, amongst others, the FCA.

79 Since 3 April 2023, the Joint Administrators have been in regular communication with the FCA, including periodic – initially weekly, and now fortnightly – update conference calls. This has included updating the FCA on material queries raised by clients over that period, the progress made in negotiations with prospective nominated brokers, the drafting of the Distribution Plan, Client Asset and Client Money reconciliations and the conduct of the special administration and the investigations of the Joint Administrators more generally.

80 The FCA has also reviewed many of the client communications and documents sent to clients.

81 The Joint Administrators are also in discussions with the FCA and are liaising 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; 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[12] 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).

(B) FSCS

82 FSCS is, pursuant to FSMA, the statutory fund of last resort for customers of failed authorised financial services firms which are unable to pay customer claims. On its website, the FSCS

[12] Under the Distribution Plan, the Long-Stop Date will occur following the giving by the Joint Administrators of a Long-Stop Date Notice, when the Joint Administrators have determined that they have achieved Objective 1 (see paragraph 28(a)) to the extent reasonably practicable. The Long-Stop Date is the date on which the Joint Administrators will be automatically released from any return obligations in relation to Client Assets.

specifies who is entitled to receive compensation, the firms that fall under FSCS protection, the activities and financial products that trigger FSCS protection and how much compensation can be paid. FSCS summarises these rules on its website, a copy of which summary is at [**SC2/15/108-112**].

83 Since WealthTek was a financial services firm authorised by the FCA, certain of WealthTek's clients have been determined by FSCS to be eligible to receive compensation from FSCS in respect of any outstanding claims against it. However, FSCS has required that, eligible clients will receive compensation from FSCS only in circumstances in which they have expressly indicated on their Client Assets Claim Forms as returned to the Joint Administrators for the purposes of agreeing their Client Assets Statements that they would like to receive such compensation (such clients being termed "**FSCS Protected Claimants**" in the Distribution Plan). FSCS's determination in this regard by way of instrument made pursuant to COMP Rule 7.3 of the Compensation Sourcebook (**FCA Handbook**) and dated 2 November 2023 appears at [**SC2/16/113-115]**.

84 The Joint Administrators are subject to specific duties, under Regulation 10A(1), to work with FSCS. In particular, the Joint Administrators are required by Regulation 10A(1) to provide any assistance identified by FSCS as being necessary for the purpose of enabling it to administer the compensation scheme in relation to WealthTek's clients.

85 There are two categories of claims for which eligible clients are entitled to receive such FSCS compensation:

(a) Costs: the first constitutes the payment of certain of the expenses of WealthTek's special administration. Pursuant to Rules 135 to 137, expenses properly incurred by the Joint Administrators in pursuit of Objective 1 (as to which, see paragraph 28(a) above) are required to be paid out of the Client Assets held by WealthTek (which means they will be borne by the clients). Such costs must be addressed in any distribution plan. The clients will have to bear these costs subject to their right to have FSCS meet them on their behalf; and

(b) Reconciliation Shortfalls: the second arises out of shortfalls which exist in the securities held by WealthTek. As noted in the preceding paragraphs, the Joint Administrators are required to ensure that any such shortfall is borne pro rata by all clients for whom WealthTek holds securities within the relevant account in proportion to their beneficial interest in such securities. FSCS Protected Claimants are entitled to have their shortfall claims met by FSCS.

86 Accordingly, the level of compensation which FSCS Protected Claimants are entitled to receive (given the statutory limit of £85,000 per client) will turn, in part, on the amount of costs which each client is required to bear. As to this:

(a) as explained in more detail at paragraphs 124 to 131 below, the Joint Administrators have set a prudent estimated costs reserve in respect of costs which have been incurred or are anticipated to be incurred in the pursuit of Objective 1 (as to which, see paragraph 28(a) above) of £18.4 million (which does not include the costs of returning Client Money), with the potential costs associated with investigations and bringing potential claims in order to make recoveries of property on behalf of WealthTek's clients accounting for approximately 40% of such costs reserve (as to which, see paragraphs 117 and 129 below); and

(b) on the basis of that estimated costs reserve, as further explained at paragraph 114 below, the Joint Administrators have proposed in the Distribution Plan that such costs are to be borne at a flat rate by each client with an Accepted Client Assets Claim paying £23,000 per client (the **Claimant's Costs Contribution**), subject to a cap by reference to the value of the client's claim in respect of Client Assets held by WealthTek (and any reductions and rebates that may later apply in accordance with the terms of the Distribution Plan). The Joint Administrators understand that a similar "per client" approach with respect to costs has been adopted in other distribution plans approved previously by the Court. Since the anticipated costs of the Joint Administrators in dealing with a single client are the same irrespective of the number or value of the assets held for that client, the Joint Administrators consider a per client basis for charging the Claimant's Costs Contribution to be the fairest solution in the circumstances of WealthTek's case.

87 As matters stand, the Joint Administrators anticipate that a substantial majority of WealthTek's individual clients will be eligible to receive FSCS compensation up to the statutory limit of £85,000 per client.

88 In light of this, and in accordance with their duties under Regulation 10A, the Joint Administrators have worked closely with FSCS to develop the Distribution Plan and finalise the terms of the FSCS Compensation Deed, the latter of which governs the process whereby FSCS compensation will be paid to the Joint Administrators to compensate the FSCS Protected Claimants. In particular, the FSCS Compensation Deed will set out the process by which each FSCS Protected Claimant's compensation in respect of their Claimants' Costs Contribution and compensation for sums due in respect of Reconciliation Shortfalls can be paid directly to the Joint Administrators (i.e. without requiring a claim to be submitted to FSCS by the client). This is highly beneficial for clients, because it means that the Joint Administrators will not be required to deduct the Claimant's Costs Contribution from the Client Assets to be returned to FSCS Protected

Claimants. Essentially, the FSCS Compensation Deed will create a funding line for the purposes of the conduct of the special administration, pursuant to which the Joint Administrators can request periodic drawdowns in amounts calculated by reference to anticipated costs they actually expect to incur during the upcoming period in question.

89 The Joint Administrators have made significant efforts to invite clients to submit their claims to Client Assets by completing a Client Assets Claim Form via the Portal, and, in doing so, to provide express agreement (where eligible) to their receiving FSCS compensation automatically. The current position (as set out in further detail in paragraph 154) is that claims in respect of a total of 75 client accounts with a positive balance have not yet been submitted. Where clients requested hard copy documentation, the Joint Administrators have corresponded with them by post, including sending out Client Assets Claim Forms and accompanying Client Assets Statements, and receiving completed Client Assets Claim Forms by post.

90 To enable responsive clients' Claimant's Costs Contribution to be paid in relatively short order following the approval of the Distribution Plan (and to avoid them from being excluded from the proposed Transfer if they fail to do so), FSCS has agreed in principle the following process with the Joint Administrators:[13]

(a) FSCS will automatically pay each FSCS Protected Claimant's compensation (only if the client has effectively "opted in" to receive compensation (as to which, see paragraph 83 above)) into a single bank account opened by WealthTek;

(b) this bank account is to be held by WealthTek on trust for the benefit of FSCS Protected Claimants, on terms which permit the Joint Administrators to access the funds paid into it by FSCS; and

(c) FSCS will, in turn, automatically be subrogated to the FSCS Protected Claimants' claims against WealthTek and any third parties in accordance with COMP Rule 7.3 (albeit that such subrogation does not affect or reduce the relevant client's entitlement to Client Assets, Client Money or FSCS compensation itself). FSCS may be able to pay over recoveries it receives under those rights to the relevant FSCS Protected Claimant pursuant to COMP 7.6 (e.g. in the present circumstances, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims

[13] This process has been agreed in order to reflect as closely as possible COMP Rule 11.2.3.A(2) of the Compensation Sourcebook (FCA Handbook), which requires FSCS to pay compensation directly to the claimant.

had not been subrogated or to the extent that retaining such recoveries in an amount above the FSCS compensation limit would result in an over-recovery by FSCS).

91 To avoid any clients who have either not completed, or not opted in to receive FSCS compensation, on their Client Assets Claim Form, or who have indicated that they do not wish to receive FSCS compensation, being required personally to pay their Claimant's Costs Contribution (and, if they fail to do so, from being excluded from the proposed Transfer to be made in relatively short order following the approval of the Distribution Plan), the Joint Administrators have undertaken and will undertake the following steps:

(a) on or around the week commencing 12 February 2024, the Joint Administrators provided clients with a Frequently Asked Questions document (an updated version of which appears at [**SC2/17/116-144**]) which, amongst other things, set out the consequences for them of having to pay their own Claimant's Costs Contributions as opposed to FSCS paying such amounts on their behalf, and of facing largely uncovered shortfalls in Client Assets and Client Money if they did not avail themselves of the FSCS compensation to which they are entitled;

(b) when liaising with clients on the submission of their claims to Client Assets, the Joint Administrators contacted each relevant client via email or post who appeared not to intend to accept FSCS compensation to which they are entitled to provide them with the opportunity to elect to receive FSCS compensation on their Client Assets Claim Form;

(c) following the passing of the Soft Bar Date and the receipt of Client Assets Claim Forms, the Joint Administrators have been engaging with each relevant client to set out the impact of their declining to receive FSCS compensation and have been subsequently contacting each relevant client via telephone, email or post again to provide them with the opportunity to elect to receive FSCS compensation; and

(d) at the time of making the Payment Options Form available to each relevant client, the Joint Administrators will give those clients a further opportunity to elect to receive FSCS compensation.

(C) The Committee

92 On 14 June 2023, the Joint Administrators held an initial meeting of clients and creditors, at which (amongst other things) the Committee was appointed.

93 The members of the Committee were nominated and selected at the initial meeting. The Committee comprises four client members (being Antony William Ingham, Christopher John Pegram, Dominic Charles Knights and Jonathan Mark Gain) and FSCS.

94 Between 14 June 2023 and 2 May 2024, the Joint Administrators regularly consulted the Committee as to the general principles of the Distribution Plan. This included four formal Committee meetings, at which questions relating to the return of Client Assets were raised and discussed.

95 The Committee met on 2 May 2024 to consider the Distribution Plan. At that meeting, all members of the Committee approved the Distribution Plan, such that as at 2 May 2024 and in accordance with Rule 145, the Committee has unanimously approved the Distribution Plan.

D. KEY TERMS OF THE DISTRIBUTION PLAN

96 A copy of the Distribution Plan is at [**SC2/18/145-207**]. In addition, I exhibit copies of certain explanatory documents which accompany the Distribution Plan, being: an explanatory statement (the **Explanatory Statement**) [**SC2/19/208-257**] and the Distribution Plan Flowchart and Frequently Asked Questions dated on or around the date of this statement [**SC2/17/116-144**].

(i) Key terms of the Distribution Plan

97 The essential scheme of the Distribution Plan is, in summary, as follows (adopting clause-numbering from the Distribution Plan):

(a) the Distribution Plan contains a procedure by which all Client Assets held by WealthTek as at 6 April 2023 (the commencement of the special administration) will be returned to clients;

(b) the returns are to be made in respect of all claims which are "Accepted Client Assets Claims". This means that (Clause 1):

(i) a claim has been made by a client to Client Assets within the meaning of Regulation 11(1); and

(ii) that claim has been accepted by the Joint Administrators following their review of WealthTek's books and records and any other relevant information available to them;

(c) a key document to be used in this process is the "Client Assets Confirmation Statement" (Schedule 1). This is a personalised claim statement setting out the information relevant

to each client's accepted claim, to be provided to all clients shortly after the Distribution Plan becomes effective to the extent the relevant client has indicated in their Client Assets Claim Form that they agree with the Client Assets Statement issued to them by the Joint Administrators on 12 February 2024 (or their claim to Client Assets has subsequently otherwise been agreed);

(d) there are two principal means by which Client Assets will be returned, being:

(i) a Transfer under Clause 5 to a "nominated broker" selected by the Joint Administrators (in accordance with Regulation 10B). Clause 5 makes provision for the precise process which will be implemented if the Joint Administrators execute one or more Transfers to a nominated broker; or

(ii) any other "Distribution" which is not a Transfer (Clause 16.1), being (each, a "Distribution Option"):

(A) a transfer of some or all of a client's assets to a custodian to be held on behalf of that client (i.e. at the client's election) rather than to the broker identified by the Joint Administrators;

(B) the liquidation of some or all of the client's assets (as specified by the client, if it so wishes) and the payment of the proceeds to the client; or

(C) the return of Physically-Held Securities[14] directly to the client;

(e) further key documents to be used in the distribution process are:

(i) the "Client Assets Return Method Form" (Schedule 2). This a form to be provided to all clients with an Accepted Client Assets Claim via the Portal, which will allow each client to opt out of a Transfer, if such client's preferred method for the return of their Client Assets is Distribution, allowing the client instead to select a Distribution Option; and

(ii) the "Payment Options Form" (Schedule 4). This is to be provided to each client with an Accepted Client Assets Claim other than FSCS Protected Claimants (except where there is a security interest over their assets, in which case, they will need to

[14] Physically-Held Securities are physical certificates held by WealthTek in respect of securities (e.g. shares) which are registered in a client's name.

complete a Payment Options Form)[15] at least 20 business days prior to any Transfer or Distribution. The principal purposes of the Payment Options Form are to enable:

(A) all clients who are not FSCS Protected Claimants (including clients who are not eligible for FSCS compensation, even if they have opted in to receive such compensation in their Client Assets Claim Forms) to select a means by which their Claimant's Costs Contribution will be discharged (Clause 17); and

(B) clients who have liabilities secured against their Client Assets (if any) to select a means by which those liabilities will be discharged (Clause 7);

(f) claims to Client Assets are categorised according to whether they are: (i) Unencumbered Client Assets; (ii) Encumbered Client Assets; or (iii) Non-Admitted Assets (Clause 3.3);

(g) in the case of:

(i) Unencumbered Client Assets:

The Distribution Plan makes provision for an "Unencumbered Distribution" of such Client Assets based on the information contained in a client's Client Assets Confirmation Statement, in accordance with Rule 144(2)(b) (Clause 6);

(ii) Encumbered Client Assets:

An Encumbered Client Asset is an asset over which a third party exerts a security interest (Rule 144(6)). The Distribution Plan makes provision for:

(A) an "Encumbered Distribution" of such assets based on the information contained in a client's Client Assets Confirmation Statement, in accordance with Rule 144(2)(c) (Clause 7.1);

(B) how the amount of Encumbered Client Assets to be returned to a particular client, known as the "Net Assets Claim", is to be calculated and paid, in accordance with the provisions of Rules 144(2)(c) and 144(2)(d) (Clauses 7.3 and 7.4); and

(C) a mechanism by which liabilities (if any) which the client is obliged to pay to enable the relevant security interest to be discharged, can be paid at the

[15] FSCS Protected Claimants will not need to complete a Payment Options Form (except where there is a security interest over their assets) because FSCS is paying their costs contribution.

client's election directly by it or recouped from the proceeds of liquidating some or all of its Client Assets (Clauses 17.1 to 17.4). The options available to a client to discharge liabilities secured on their Encumbered Client Assets (if any) (Clauses 17.1(d) to 17.1(f)) are the same as those available to all client's (other than FSCS Protected Claimants) to pay their costs contributions (see paragraph 115 below for details of these options); and

(iii) Non-Admitted Assets:

Insofar as a claim to Client Assets is not accepted by the Joint Administrators, no distribution will be made to that client. The Distribution Plan contains detailed provision for the resolution of disputed claims to assets, known as Non-Admitted Assets (Clause 9). In particular, a client has a period of 21 days following receipt of the Joint Administrators' Non-Admitted Claim Statement (Schedule 3) in which to apply to the Court for the decision to be reversed or varied (Clause 9.4).[16]

(h) if there are "Potential Claimants" who have not submitted a claim to Client Assets where the Joint Administrators have evidence that they are, in fact, eligible to make a claim under Regulation 11(1), the return (where possible) or disposal of such assets will be effected pursuant to the mechanisms set out in Clauses 8.1 to 8.3 (in accordance with Rule 143). In summary, pursuant to Clause 8, Potential Claimants will be treated in the same manner as clients that have submitted claims, except that the Joint Administrators will determine a Potential Claimant's entitlements by reference to the information available to them;

(i) since it is not possible to return fractions of individual Client Assets, Client Assets to be returned by way of Transfer or Distribution will first be rounded down to the nearest whole number. The Joint Administrators will, provided that it is reasonably and economically practicable to do so, realise the number of the Client Assets which have been subject to the rounding down (if any) in aggregate and will pay the realisation proceeds of the fractional entitlement to such Client Assets to the relevant client (Clauses 5.5, 6.2 and 7.2);

(j) there are three additional categories of Client Assets (which may to some extent overlap with the categories of assets set out above):

(i) Non-Returnable Client Assets:

[16] The Joint Administrators have adopted a 21-day period in order to mirror the approach taken in Rule 157 (in relation to unsecured claims). The Joint Administrators also consider that requiring a client with a disputed claim to apply to the Court, rather than utilising an alternative dispute resolution procedure, is the most appropriate process having regard, principally, to the fact that such claims are likely to involve disputes of fact as to the entitlement to Client Assets.

These are Client Assets not under the Joint Administrators' control, or which the Joint Administrators determine cannot be subject to a Transfer or Distribution for a particular legal or practical reason. The manner in which such Client Assets are to be dealt with is provided for in Clause 10 which, in summary, requires Non-Returnable Client Assets to be held back from any returns until they cease to be classified as such.

As at the date of this statement, the vast majority of Client Assets are under the Joint Administrators' control and are therefore available to be returned to clients under the Distribution Plan. However, there are certain Client Assets which qualify as Non-Returnable Client Assets under the Distribution Plan, as follows:

(A) the following Client Assets are not under the Joint Administrators' control:

(1) a debt instrument recorded on WealthTek's system but not actually held by WealthTek; and

(2) physical share certificates recorded on WealthTek's system but actually in the clients' possession,

(under the Distribution Plan, these are termed "Not-Held Client Assets"); and

(B) there is an account held by WealthTek with CACEIS in which a security issued by a Russian entity, Evraz Plc is custodied. The listing of the entity on the London Stock Exchange has been suspended and the entity has been directly sanctioned by the UK Government. The Joint Administrators are therefore unable to access this Client Asset at the present time; the Joint Administrators have therefore concluded that this Client Asset is not available for Transfer or Distribution for a "legal reason".

Whilst the above instances are relatively limited in terms of number and value of overall Client Assets, the Joint Administrators nevertheless considered it prudent to make full provision in the Distribution Plan for Non-Returnable Client Assets, in case additional Client Assets become subject in future to restrictions which affects the Joint Administrators' ability to access or exercise control over them, or there are Client Assets in future which cannot otherwise be the subject of a Transfer or Distribution for a legal or practical reason;

(ii) Tainted Client Assets:

These are Client Assets which are the subject of a restraint order prohibiting their disposal or which the Joint Administrators conclude may be tainted due to association with any actual or alleged criminal conduct. The manner in which they are to be dealt with is provided for by Clause 11 which, in summary, provides that Tainted Client Assets will not be returned until they cease to be classified as such. The Joint Administrators considered it prudent to include provision in the Distribution Plan for Tainted Client Assets in case it becomes apparent in the course of the special administration, including as a result of the Joint Administrators' investigations, that Client Assets falling within this category exist;

(iii) Corporate Actions Assets:

These are assets which are subject to any corporate action after 6 April 2023 (e.g. dividends, share conversions, schemes of arrangement and exercised rights in respect of warrants, rights issues or open offers). Clause 12 provides that any Client Money or securities which are received by WealthTek as a result of the corporate action, or any change in the nature of such Client Assets, will be subject to a Transfer or Distribution under the Distribution Plan;

(k) if any client submits a claim under Regulation 11(1) after any Transfer or Distribution has taken place, that client is categorised as a "Late Claimant" under Regulation 11(5) and Rule 147. The basis on which a Late Claimant will be entitled to a return of its Client Assets, to the extent possible, is dealt with under Clause 20. In summary, pursuant to that clause: (i) there will be no disruption of Client Assets that have already been returned in accordance with Regulation 11(5), (ii) if the Late Claimant's claim is accepted and the Client Assets they claim are still available (in full or part) to be returned then those Client Assets shall be returned (in full or part) to the Late Claimant subject to any costs contribution and security interests being discharged and (iii) if the Late Claimant's claim is submitted after the "Distribution Selection Date" or "Transfer Cut-off Date", being 3 business days prior to any distribution or transfer, then it will be deemed to be submitted after the distribution or transfer to which the Distribution Selection Date or Transfer Cut-off Date relates (Clause 20.3) and will be returned in accordance with the next distribution or transfer, as applicable;[17] and

(l) it is foreseeable that, after approval by the Court of the Distribution Plan, as sought by this Application, the Joint Administrators and/or WealthTek receive monies which represent

[17] This cut-off date has been included in the Distribution Plan because, as a practical matter, the Joint Administrators will need to isolate the Client Assets to be distributed or transferred and put into place the relevant procedural steps to facilitate the distribution or transfer e.g. send updated client statements to clients and provide custodians with the relevant instructions.

recoveries of Client Assets or Client Money or compensation obtained for the benefit of clients (for example, as a result of the actions taken by the FCA against Mr Dance as described at paragraph 26 above) (**Recoveries Proceeds**). If such Recoveries Proceeds are received, the Joint Administrators and/or WealthTek (as applicable) will hold any such monies on trust for the benefit of the relevant client(s) or FSCS (where FSCS is automatically subrogated to a client's claim) for the specific purpose of the payment to the relevant client(s) or FSCS (as the case may be) in order to reduce or extinguish the relevant client's remaining shortfall claims or FSCS's subrogated claim (Clause 21).

98 Clause 22 of the Distribution Plan contains a release of the Joint Administrators and their professional advisers in respect of any claims arising from actions taken in connection with the return of WealthTek's Client Assets (other than for acts or omissions in implementing the Distribution Plan). Whilst the effect of this release should flow as a matter of law from the statutory distribution regime, the Joint Administrators consider it is prudent to include such provision in the Distribution Plan and understand this approach has been adopted in other distribution plans approved by the Court. This is primarily as a safeguard against any time and costs which may be wasted in being forced to defend claims that Client Assets should be returned in a manner inconsistent with the Distribution Plan.

(ii) Compliance with statutory requirements

99 The Distribution Plan has been drafted so as to comply with the statutory requirements under the IBSA Regulations and IBSA Rules governing the return of Client Assets.

100 In this regard, I should draw the Court's attention specifically to Rule 144(2)(a). This provision requires the Joint Administrators to set out a schedule of dates on which Client Assets are to be returned. In accordance with Rule 144(3), the earliest date on which Client Assets may be returned is 20 June 2024. In the circumstances of WealthTek's case, the Joint Administrators consider that it is not practically possible to include a schedule of dates as is contemplated by Rule 144(2)(a) (as to which, see paragraph 102 below).

101 So far as the first returns of assets are concerned, if the Distribution Plan is approved by the Court, the Joint Administrators intend that the majority of Client Assets will be transferred to a single nominated broker in accordance with Regulation 10B as soon as reasonably practicable after 20 June 2024. The Joint Administrators believe that this will provide the best outcome for clients, in the circumstances of WealthTek's case.

102 As to remaining assets not eligible or suitable for Transfer, however, the Joint Administrators are unable to predict with any meaningful certainty the date of return. That is because, if they are not

eligible or suitable to be transferred, it is likely that they will give rise to various issues which will need to be resolved. Accordingly, Clauses 6.1(d) and 7.1(d) of the Distribution Plan provide for distributions to be made *"as soon as reasonably practicable"* (after 20 June 2024). The Joint Administrators consider that this complies as far as possible with Rule 144(2)(a).

103 As explained at paragraph 30(d) above, the content of the Distribution Plan is prescribed by Rules 144(2) to 144(5). The following table sets out how the Joint Administrators have complied as far as possible with Rules 144(2) to 144(5) (adopting the clause-numbering from the Distribution Plan):

Rule	**Requirement**	**Compliance with Rule**
Rule 144(2)(a)	Distribution plan should include a schedule of dates on which the client assets are to be returned.	See paragraphs 100 to 102 of this witness statement
Rule 144(2)(b)	Distribution plan should set out the unencumbered assets to be returned and to whom.	Clause 6 (*Distribution of Unencumbered Client Assets*) of the Distribution Plan. See also paragraphs 135 to 140 of this witness statement
Rule 144(2)(c)	Distribution plan should, in respect of encumbered client assets, set out how the amount of client assets to be returned is to be calculated ("the net asset claim"), taking into account any liabilities and any shortfall claims.	Clause 7 (*Distribution of Encumbered Client Assets*) of the Distribution Plan See also paragraph 135 of this witness statement
Rule 144(2)(d)	Distribution plan should set out, in respect of a client's net assets claim, whether the administrator intends to pay the client money or money's worth in lieu of returning the assets to the client (but a client cannot be paid money or money's worth out of	Clause 17 (*Payment of Costs and discharge of Security Interests*) of the Distribution Plan

Rule	Requirement	Compliance with Rule
	the investment bank's estate in lieu of assets unless the estate is able to retain assets the value of which is equivalent to that paid out)	
Rule 144(2)(e)	Distribution plan should set out the amount and identity of client assets that are to be retained by the administrator to pay the expenses of the special administration and how the retention of these assets will affect the amount of client assets to be returned to clients.	Clause 13 (*Costs Allocation*) and Clause 1.1 of the Distribution Plan (definition of "Costs Contribution")
Rule 144(3)	In setting out the schedule of dates for the return of client assets, no date shall be sooner than the date which is 3 months after the bar date.	See paragraphs 75 and 100 *et. seq* of this witness statement
Rule 144(4)	In setting out the schedule for the return of encumbered client assets: (a) where a person ("P") notified under rule 143(2) has failed to respond to that notice, the administrator shall make provision in the distribution plan - (i) for client assets to be returned to P according to the information available to the administrator in respect of the amount of client	Clause 8 (*Potential Claimants*) of the Distribution Plan

Rule	Requirement	Compliance with Rule
	assets held for P by the investment bank; or (ii) to take into account any security interest that according to the information available to the administrator, P is entitled to assert over certain client assets held by the investment bank, as the case may be; (b) the administrator shall make provision in respect of any security interest asserted over those assets by another person and (c) the administrator shall set out the extent to which a proportion of securities are to be held back from the initial distributions and the reasons why.	
Rule 144(5)(a)	Distribution plan will set out, where any liabilities under paragraph (2)(c) are contingent, how the administrator intends to value the liability for the purpose of calculating the client's net asset claim so that the claim can be paid out (or partly paid out) or assets returned (or returned in part) before the contingency occurs or the dispute is resolved, and the arrangements by which the administrator may	Clauses 7.11 and 7.12 (*Calculation of Liabilities*) of the Distribution Plan

Rule	Requirement	Compliance with Rule
	revise such valuations or assumptions when further information becomes known.	
Rule 144(5)(b)	Distribution plan will set out, where any liabilities are disputed, whether the administrator intends to make an assumption as to the outcome of the dispute for the purpose of calculating the client's net asset claim so that the claim can be paid out (or partly paid out) or assets returned (or returned in part) before the contingency occurs or the dispute is resolved, and the arrangements by which the administrator may revise such valuations or assumptions when further information becomes known.	Clause 9.8 (*Non-Admitted Assets*) of the Distribution Plan

(iii) Transfer

104 The Joint Administrators have taken extensive steps to identify one or more nominated brokers to which the majority of Client Assets (and Client Money) may in due course be transferred. A large number of potential brokers were approached, and, eventually, the Joint Administrators identified three incumbent market brokers as being potentially suitable candidates to be the nominated broker for WealthTek's clients. Discussions progressed with these three parties in the course of November 2023 through to February 2024. The Joint Administrators have liaised closely with the FCA throughout this process, including in relation to the suitability of potential brokers by reference to the client base of WealthTek, the financial and non-financial resources of the identified candidates and the different potential brokers' past previous experience of dealing with mass transfers or migrations of clients, including onboarding of a large number of new clients in relatively short order.

105 Following that process, a broker has (subject to ongoing discussions) been identified on the basis that it possesses adequate financial and non-financial resources and represents the most suitable candidate for WealthTek's clients (the **Identified Nominated Broker**). The Joint Administrators' aim throughout has been to select a new broker that is capable of providing appropriate services and access to assets for the benefit of the clients of WealthTek at a level of cost that is proportionate and within accepted parameters for retail customers in the particular market segment and, overall, levies charges on a basis that is broadly commensurate with those previously charged by WealthTek prior to its entry into special administration.

106 The Joint Administrators are now in advanced discussions with the Identified Nominated Broker, to whom it is envisaged that a Transfer of most Client Assets (and Client Money) will take place at the earliest opportunity, provided that the Distribution Plan is approved by the court on the Application.

107 The agreement proposed to be entered into between WealthTek and the Identified Nominated Broker remains subject to contract (and the identity of the Identified Nominated Broker remains commercially sensitive at this stage). However, the Joint Administrators currently intend that the agreement will be executed prior to the hearing of the Application and will include the following terms:

(a) the Identified Nominated Broker will accept all of the Client Assets belonging to WealthTek's existing clients;

(b) all rights under client contracts transferred will be treated as if they were made between clients and the Identified Nominated Broker (in accordance with Regulation 10B(5));

(c) the Identified Nominated Broker will be able to vary the terms of client contracts without client consent if needed to give effect to the Transfer (as permitted by Regulation 10B(6)). In this regard, the Joint Administrators' investigations have revealed that WealthTek's practices in documenting client relationships were wholly deficient. In most instances, it appears that there is little evidence of written contractual terms in place between WealthTek and its clients. In addition, the Joint Administrators have discovered no fewer than sixty-five different charging or pricing structures in place between WealthTek and individual clients, with apparently little or no discernible basis for the differences, in terms of (for example) the identity and risk-profile of the clients, the date on which particular clients were on-boarded by WealthTek, the investments held for them or the services provided to them by WealthTek. For these reasons, and in the interests of clarity and ensuring equal treatment of all clients whose Client Assets are subject to the Transfer, it is currently proposed by the Joint Administrators that all clients will be on-boarded onto the

Identified Nominated Broker's standard terms of business for retail customers (copies of which will be made available to all relevant clients before any such Transfer is made to the Identified Nominated Broker) from the effective date of the relevant Transfer. The Identified Nominated Broker has confirmed its support for this approach and the Joint Administrators have made the FCA aware of what is proposed in this regard;

(d) clients will be permitted to request free of charge that their Client Assets are transferred back to WealthTek (as required by Regulation 10C(3), and there termed a "reverse transfer") within three months of the date on which the relevant Transfer was instructed, such that the relevant client(s) would effectively be reinstated as WealthTek's clients from the point the reverse transfer is formalised (noting that it is envisaged that WealthTek will continue to remain subject to the First Supervisory Notice described at paragraph 26(a) above notwithstanding the reverse transfer having occurred); and

(e) in addition, clients may, within six months of having had their Client Assets transferred to the Identified Nominated Broker, elect to have those assets transferred to a different third-party broker of their choosing without being required to bear any charge for doing so.

108 At least 20 Business Days prior to the date any Transfer is intended to be instructed by the Joint Administrators (as specified in the Client Assets Confirmation Statement), the Joint Administrators will update the Client Assets Confirmation Statement of each client which has an Accepted Client Assets Claim notifying them of, among other items, the identity of the Nominated Broker (see Clause 5.3 of the Distribution Plan).

109 The Joint Administrators will permit any client not wishing to transfer their assets to the Identified Nominated Broker to elect for their Client Assets to be distributed to an alternative broker (of their selection and at no additional charge) by submitting a Client Assets Return Method Form no later than 10 business days prior to the date the Transfer is intended to be instructed by the Joint Administrators (as specified in the Client Assets Confirmation Statement) (see Clause 5.7 of the Distribution Plan). The Joint Administrators have, however, recommended to clients that they agree to the Transfer in the first instance, because it is likely to provide them with quicker access to their assets.

(iv) Physical share certificates

110 As explained in paragraph 46 *et. seq* above, there are certain instances of attempts by clients to transfer certificated shares to WealthTek – the Joint Administrators understand (for the most part), for the purposes of dematerialising and selling those shares – where insufficient steps were taken by the parties to effect a legal and/or beneficial transfer of the shares from the client in

question to WealthTek. These transfers are accordingly referred to by the Joint Administrators and our team as invalid transfers. As a consequence, we have taken the view that such certificated shares remain physically held by WealthTek for the clients in question: legal title to such shares rests with the underlying client, with the asset held by WealthTek comprising merely the physical certificate evidencing the client's ownership of the underlying security. The Joint Administrators are proceeding on the precautionary basis that these certificated shares qualify as Client Assets. However, I am advised that there is scope for doubt as to whether these are in fact properly characterised as "*Client Assets*" under the IBSA Regulations, given that the securities themselves remain registered with (and therefore held by) the relevant clients.

111 The following are anonymised examples of cases in which the Joint Administrators have concluded there has been an invalid transfer, either partially or in whole:

(a) Client ABC delivered share certificates for 165 shares issued by a publicly-listed UK pharmaceuticals company to WealthTek, together with a signed stock transfer form that was otherwise blank; that is, it did not specify any stock or transferor details. WealthTek increased the client's CME in WealthTek's books and records by an amount equal to the value of 80 such shares. WealthTek continued to hold the certificates in respect of all 165 shares at the time of its entry into special administration. The Joint Administrators have concluded that there has been a transfer of beneficial title to WealthTek of 80 of the shares, such that it will be necessary now for the client to take steps to complete the transfer documentation in respect of such shares. As to the remaining 85 shares, for which no benefit was received by the client at the time of the purported transfer, the Joint Administrators have concluded that the transfer to WealthTek was invalid, such that the corresponding share certificates should now be returned to the client; and

(b) Client XYZ delivered share certificates for 1,784 shares issued by a publicly-listed UK energy company to WealthTek, together with a completed and signed stock transfer form specifying the correct number of shares. WealthTek did not credit the client's account in its books and records with an increased CME or otherwise make payment or confer any benefit on the client. On this basis, the Joint Administrators have concluded that the client has retained legal and beneficial title to the certificated shares, such that WealthTek continues to hold the shares on behalf of the client and is obliged to return the share certificates to the client.

112 The terms of the Distribution Plan provide for physically-held share certificates to be returned to relevant clients without any further charge in addition to a client's costs contribution (at clause 17.7).

E. COSTS

(i) Costs allocation under the Distribution Plan

113 As explained above, Rules 135 to 137 require expenses properly incurred in the special administration in pursuit of Objective 1 (as to which, see paragraph 28(a) above) to be paid out of the Client Assets held by WealthTek and for the costs allocation as between clients to be set out in the distribution plan.

114 There are two principal elements to the provisions governing costs allocation under the Distribution Plan:

(a) first, such costs are to be allocated by the sum of £23,000 (which has been calculated to include the costs of returning Client Assets, across WealthTek's client base) being charged as the costs contribution of each client with an Accepted Client Assets Claim (Clause 13.1). This is subject to a cap where the value of the Client Assets that make up a client's Client Assets Claim is less than £23,000. In such circumstances the costs are capped at an amount equal to the value of those assets; and

(b) secondly, detailed provision is made requiring the Joint Administrators to determine, at quarterly or other selected recalculation dates, whether each client's costs contribution should be reduced, if (amongst other reasons) the previous estimated costs reserve has proved to be greater than the amount of costs then determined and estimated (Clause 14.2). In such a case, further provision is made for the notification, calculation and payment of "Costs Reserve Rebates" to clients (or FSCS) in reduction of their costs share (Clauses 14.3, 14.4 and 14.5).

115 As to the mechanisms by which each Claimant's costs contribution is to be paid:

(a) as explained above, in respect of FSCS Protected Claimants, FSCS and the Joint Administrators have agreed that FSCS will pay each client's costs directly to WealthTek, such that those clients are not required to take any action in relation to their costs (to the extent that the statutory limit is not exceeded). This is reflected in Clause 17.1(c) of the Distribution Plan;

(b) for all other clients, the Distribution Plan requires them to select one of three options in their Payment Options Form: (i) the "Cash Option"; (ii) the "Client Money Option"; and (iii) the "Liquidation Option". These options are described in detail at Clauses 17.1(d) to 17.1(f) of the Distribution Plan. In short, they are aimed at enabling a client, insofar as possible, to have their Client Assets transferred under Clause 5 or otherwise distributed *in specie*,

by discharging their costs share by other means (i.e. thereby avoiding the need to liquidate their asset positions solely to defray their costs contribution). The two means of doing this are (i) by payment of cash or (ii) by deducting the amount from any distribution of a client's Client Money entitlement (if any). Alternatively, a client can elect for some or all of its Client Assets to be liquidated, the proceeds of which can be used to recoup that client's costs contribution; and

(c) provision is made for the amount of costs borne by each client to rank as an unsecured claim in the special administration (under Rule 152) (Clause 18). However, as WealthTek has very few assets of its own, it is not currently expected that any, or any material, dividends will be paid in respect of unsecured claims.

116 The Joint Administrators have spent significant time working with their legal advisors and FSCS to develop the cost allocation methodology, as well as consulting with the Committee. The Joint Administrators consider that, as a matter of principle, it is fair to allocate the costs of pursuing Objective 1 (as to which, see paragraph 28(a) above) in the manner provided for (i.e. equally, without any discrimination between clients). That is because:

(a) the costs are to a large extent driven by the number of clients, not the value of the respective positions of each client. Accordingly, it was not considered fair to allocate costs in proportion to the value of assets held by each client or indeed the number of accounts held by each client with WealthTek;

(b) to adopt a valuation-based methodology for sharing costs would lead to delay and further costs being incurred (especially due to the likelihood of valuation disputes); and

(c) the Joint Administrators understand that a similar "per client" approach with respect to costs has been adopted in other distribution plans approved previously by the Court and FSCS has confirmed that it is supportive of this approach. The favoured approach is also likely to lead to a larger proportion of the overall costs of returning Client Assets being compensated by FSCS than an alternative costs allocation methodology such as one where costs are allocated rateably to the value of clients' securities.

117 As part of the process of deciding on an appropriate basis for allocating costs, the Joint Administrators gave detailed consideration to a series of proposals under which the allocation of costs would be between the initial costs associated with returning Client Assets and the costs associated with investigations and bringing potential claims in order to make recoveries of property on behalf of WealthTek's clients (as discussed in further detail at paragraph 129 below). Under these proposals, the Joint Administrators would have applied a weighting such that clients

who suffered larger shortfalls than others (who, therefore, might be said to have a greater economic interest in the investigations being undertaken by the Joint Administrators and any successful claims that might result) would contribute a greater amount towards investigation costs. Conversely, under these proposals, clients who suffered smaller shortfalls or no shortfalls might be said to have less of a stake in the Joint Administrators pursuing recovery actions would contribute a higher share of the costs of returning assets that are already under the control of the Joint Administrators.

118 To this end, the Joint Administrators contemplated various potential approaches and methodologies for sharing costs, including:

(a) allocating initial Client Assets return costs and investigation costs to clients in proportion to the Client Asset and Client Money shortfalls they have suffered (i.e. clients with a greater shortfall would be accorded a higher weighting for return costs relative to investigation costs, and vice versa);

(b) allocating to each client a fixed amount of initial return costs and then allocating the amount of investigation costs to clients in proportion to their Client Asset and Client Money shortfalls; and

(c) allocating initial return costs and investigation costs based on a formal banding system, with clients categorised into particular bands and their contributions to each of the return costs and investigations costs varying according to a formula depending on the extent of the shortfall suffered.

119 Having evaluated the relative merits of each of these approaches and the likely consequences for individual clients, the Joint Administrators, following discussions with the Joint Administrators' legal advisors, ultimately concluded that splitting the costs between clients according to the approaches described had the potential to produce results that might be considered to be of an arbitrary nature as between different clients. In the Joint Administrators' view, it would not have been straightforward or fair – or, indeed, readily understandable, from the perspective of clients – to proceed on the basis of any approach to clients' costs contributions that might potentially yield anomalies or a disproportionately high burden on particular clients in the circumstances of WealthTek's case, where all clients have suffered a common misfortune (for example, if clients who suffered the largest shortfalls were to be required to pay the highest costs).

120 Furthermore, the Joint Administrators consider that any such approach would be significantly more complicated to implement than a simple equal costs contribution approach (including in respect of the computation and processing of any rebates), likely leading to delays and further

costs being incurred. For these reasons, the Joint Administrators have reached the view that it is neither fair to clients nor necessary in the circumstances of WealthTek's case to attempt to allocate costs between clients based on differing levels of return costs and investigation costs.

121 Accordingly, the process of considering potential alternative approaches has affirmed and reinforced the Joint Administrators' view that the approach to costs contributions described in paragraph 114(a) is the fairest and most appropriate approach for WealthTek's clients. The Committee has been briefed on the Joint Administrators' favoured approach and has confirmed its support for the Joint Administrators' approach.

122 Given the incidence of shortfalls suffered amongst clients and the value of individual clients' exposures (that is, the proportion whose overall losses, when factoring in both costs contributions and shortfall claims, are less than the FSCS compensation limit of £85,000), as explained above, the Joint Administrators anticipate that a substantial majority of WealthTek's clients will be FSCS Protected Claimants and compensated in full in respect of their costs contributions and the shortfalls.

123 The Joint Administrators recognise that a minority of clients will be required personally to bear some or all of the losses suffered (including their costs contribution). Those clients comprise:

(a) first, an anticipated small minority of clients who are not eligible to be paid FSCS compensation;

(b) secondly, those FSCS-eligible clients who have opted not to receive FSCS compensation in their Client Assets Claim Form; and

(c) thirdly, those FSCS compensation-eligible clients whose costs contributions under the Distribution Plan, together with their Client Money costs and/or any reconciliation shortfalls, exceed the compensation statutory limit of £85,000. The Joint Administrators' expectation is that this should not exceed approximately 20% of clients (see Clause 17.2 of the Distribution Plan).

(ii) Calculation of Estimated Costs Reserve

124 The Joint Administrators consider that the estimated costs reserve of £18.4 million is a prudent estimate of the total expenses to be incurred in pursuit of Objective 1 (as to which, see further paragraph 28(a) above).

125 It has been calculated to cover: (i) the actual costs of pursuing Objective 1 incurred to date; and (ii) the estimated future costs of pursuing Objective 1.

126 The £18.4 million costs reserve noted in paragraph 124 comprises:

(a) actual costs incurred in the sum of £6.5 million (inclusive of VAT at 20% where applicable) as at 5 April 2024. This comprises: (i) the Joint Administrators' and their team at BDO's incurred expenses and remuneration, (ii) legal fees; (iii) operational costs; and (iv) costs associated with a funding loan secured by the Joint Administrators to maintain WealthTek's critical operations; and

(b) estimated future costs of up to £11.9 million (inclusive of VAT at 20% where applicable) as further explained in paragraphs 128 and 129.

127 On 2 May 2024, the Committee was briefed on the Joint Administrators' determinations with respect to the costs reserve and confirmed its support for the Joint Administrators' favoured approach, as explained above.

128 The estimated future costs have been calculated on a conservative basis. This estimate primarily covers the estimated expenses and remuneration of the Joint Administrators and their team at BDO, as well as the costs of continuing to engage legal advisers and other third-party service providers. It also covers the on-going operational costs for the purpose of returning Client Assets and Client Money (e.g. staff, IT and other overheads).

129 Further, the calculation of the estimated future costs includes a prudent amount allocated to claims which may be brought by the Joint Administrators and/or WealthTek in order to make recoveries for WealthTek's clients which are for the benefit of the client asset estate. The potential costs of pursuing such claims account for approximately 40% of the costs reserve allocated to the return of client assets. It has not yet been decided, however, whether any such claims will in fact be commenced. If such claims are not commenced, it may be the case that only limited associated costs will be incurred in reaching this position.

130 As explained above, the Distribution Plan requires the Joint Administrators to consider and revise, where appropriate, the estimated costs reserve on at least a quarterly basis, leading to rebates being paid, as appropriate.

131 Conversely, the Joint Administrators have had to ensure that the costs reserve is sufficient to satisfy the future expenses of WealthTek's special administration in relation to meeting Objective 1, such that there is no real prospect of the costs ultimately exceeding the reserve. If the reserve were, in due course, to be insufficient, the Joint Administrators would be at risk of suffering a shortfall, given that, by the time the inadequacy of the reserve became apparent, it is possible that all Client Assets would have been returned. It is also possible, if the reserve were to be insufficient, that there might be insufficient funds available to cover the costs of (i) returning any

remaining Client Assets, placing such clients at risk of paying costs which are greater than the costs charged to clients to whom Client Assets were returned at an earlier stage in the special administration and (ii) any future claims to be brought by the Joint Administrators and/or WealthTek in order to make recoveries for WealthTek's clients for the benefit of the Client Asset estate.

132 The expenses and remuneration incurred by the Joint Administrators since 6 April 2023 cover the very considerable work undertaken to date. Significantly, this work has been carried out subsequent to the Joint Administrators' relatively sudden appointment on the FCA's application to court for an investment bank special administration order. The Joint Administrators, their team and their legal advisors have been required to assimilate large amounts of information and in circumstances in which they have been unable to rely on full cooperation from the former management and owners of WealthTek. Many of the issues faced have been complex. The existence of significant shortfalls in Client Assets and Client Money and the shortcomings in WealthTek's books and records (from which the shortfalls faced had not been apparent) have been among the factors which have exacerbated the difficulties faced. To summarise the work undertaken by the Joint Administrators and their team:

(a) upon appointment, the Joint Administrators had to obtain control of Client Assets and Client Money. This necessitated engaging with custodians and depositories to gain access to and control of the accounts of WealthTek, in which Client Assets and Client Money were held;

(b) the Joint Administrators immediately took steps to analyse and reconcile WealthTek's books and records. These include the approximately 1,400 client accounts comprising approximately 1,200 stock lines, as well as Client Money balances in relation to approximately 1,100 client accounts;

(c) this reconciliation process was complicated by the existence of the substantial shortfalls in the Client Assets and Client Money held and also the issues encountered in relation to the books and records of WealthTek (as to which, see further paragraphs 33 to 68 above);

(d) the Joint Administrators also identified and negotiated with other critical third-party suppliers, whose services were essential to ascertaining and safeguarding Client Assets and Client Money. Loan funding of up to £2 million was secured to ensure that all critical operations could be maintained to reconcile, administer and return Client Assets and Client Money. Funding totalling £950,000 has been drawn down on the loan facility to date;

(e) steps were taken to reduce WealthTek's operating costs, by closing and vacating its office premises in Newcastle and making redundant most of the workforce (with only three employees being retained by the Joint Administrators to assist in the special administration);

(f) the Joint Administrators have been engaged in a significant programme to contact holders of WealthTek's approximately 1,400 client accounts and to answer their queries and invite them to submit their claims. This is summarised in Appendix A to this witness statement. In particular, as explained below, the Joint Administrators have been engaged in reviewing disputed claims submitted in respect of approximately 35 client accounts, of which only 8 claims remain disputed, in response to the Soft Bar Date and, where applicable, updating reconciliations by reference to those claims;

(g) the Joint Administrators, together with NRF, are undertaking specific enquiries and investigations in relation to WealthTek and the shortfalls that have occurred in Client Assets and Client Money. Due to reasons of confidentiality and to avoid prejudicing any actions that the Joint Administrators may identify against any third parties, I am unable to provide any further information in relation to those enquiries and investigations at this time;

(h) most recently, the Joint Administrators have been heavily engaged in the preparation of the Distribution Plan, and the identification of the most suitable and expedient approach to returning Client Assets pursuant to it. As noted in this statement, this has required, amongst other things, close liaison with the FCA, FSCS and the Committee; and

(i) in that connection, the Joint Administrators have undertaken considerable work in identifying a nominated broker to whom Transfers may be effected, as explained at paragraphs 104 to 108 above (with reference to the Identified Nominated Broker).

133 I should make clear that the £18.4 million costs estimate does not relate to the costs of returning Client Money, which will be deduced as a percentage share of each client's CME (which the Joint Administrators expect to be less than 2% of each client's CME). Client money is required to be distributed in accordance with CASS 7A (pursuant to Regulation 12A(3), after the setting of the Soft Bar Date), and therefore falls outside the ambit of the Distribution Plan.[18] Therefore, the costs of distribution of Client Money are not relevant to the calculation of the £23,000 individual

[18] There is one exception to this. Clause 12 of the Distribution Plan makes provision in respect of Client Money received by WealthTek after 6 April 2023 as a result of a Corporate Action, which is referable to and/or derives from existing Client Assets (for e.g., dividends). However, such Client Money will still be distributed in accordance with CASS 7A.

costs levy under the Distribution Plan; they are dealt with separately under CASS 7A (and CASS 7).

134 To date, the Joint Administrators have not drawn any remuneration from the estate and NRF have not sought payment of their legal costs.

F. RULE 144(2)(b)

135 The Joint Administrators intend to upload to the Website on or around the date of this statement an addendum to the Distribution Plan, setting out the (unencumbered) assets to be returned under the Distribution Plan and to whom, in accordance with Rule 144(2)(b) (the addendum if printed would run to many hundreds of pages, so a sample only is exhibited to this statement at **[SC2/20/258]**). As matters stand, the Joint Administrators are not aware of there being any encumbered assets. Accordingly, it has not been necessary to include details of the return of any such assets in the addendum (*cf*. Rule 144(2)(c)).

136 The addendum sets out, for each client, which stock lines the books and records indicate that WealthTek had undertaken to hold and in what quantity. This information was contained in the individual Client Assets Statements that were sent to all clients in February 2024 when the Soft Bar Date was set and advertised and incorporates a number of adjustments to the positions set out in the Client Assets Statements following the adjudication of client claims made by certain clients. Clients have accordingly seen this information before (to the extent that it relates to their own Client Asset claims).

137 In addition, the addendum states which stock lines are, on the basis of the work undertaken by the Joint Administrators to date, currently believed to be subject to Reconciliation Shortfalls.

138 The purpose of the addendum is to ensure compliance with the technical requirements of Rule 144(2) and, in particular, the requirement that the Joint Administrators draw up a distribution plan setting out the unencumbered assets to be returned and to whom.

139 For security and data protection reasons, the names of clients have been replaced in the addendum with anonymised unique identifiers. The notice under cover of which the addendum will be published indicates that any client wishing to know its unique identifier for the purposes of inspecting and reviewing the addendum should contact the Joint Administrators, whereupon such information will be made available.

140 It is worth noting, however, that in some cases the information contained in the individual Client Assets Statements no longer reflects the up-to-date position of certain Client Asset claims. For this and all of the above reasons, the more authoritative and up-to-date source of information for

clients, regarding the Client Assets that will in due course be returned to them, are their Client Assets Confirmation Statements referred to above. Based on the Joint Administrators' current projections, Client Assets Confirmation Statements are expected to be provided to clients (pursuant to the Distribution Plan, if approved) shortly after approval of the Distribution Plan for those clients who have agreed their claims (including by submitting their Client Assets Claim Forms) either by the bar date or in the interim period before the expiry of the three-month period after the bar date prescribed by Rule 144(3), at which time returns of Client Assets can be made under the Rules. The Joint Administrators intend to update the addendum and upload the updated version to the Website on or around the date that Client Assets Confirmation Statements are provided to clients.

G. RULE 134(3)

141 As described at paragraph 33 above, the Joint Administrators have identified a Client Asset shortfall on an indicative value basis of approximately £70.6 million and a Client Money shortfall of approximately £10 million. Pursuant to Regulation 10H(3), the Joint Administrators are obliged, once the required post-administration reconciliation of Client Money is complete, to transfer an amount equal to any such shortfall from WealthTek's own bank account to WealthTek's Client Money accounts.

142 Rule 134(1) prescribes the order of priority in which the expenses of the administration are to be paid out of WealthTek's bank account.

143 I understand that the obligation in Regulation 10H(3) would be considered a *"necessary disbursement"* under Rule 134(1)(h).

144 In the ordinary course, the effect of the "top up" obligation under Regulation 10H(3) would be that the resulting liability will rank higher than the Joint Administrators' remuneration (which falls within Rule 134(1)(i)).

145 Rule 134(3) provides that, in the event that the firm's assets are insufficient to satisfy its liabilities, the court may make an order as to the payment out of the assets of the expenses incurred in the special administration in such order of priority as the court thinks just.

146 WealthTek does not have sufficient funds to be able to make a transfer pursuant to Regulation 10H(3), in view of the limited funds available in WealthTek's general estate (which stand at approximately £150,000) and the substantial Client Money shortfall (of approximately £10 million) that exists. Therefore, the effect of the liability imposed by Regulation 10H(3) would be to leave

no sums available to pay the Joint Administrators' expenses of complying with Objectives 2 and 3.

147 Accordingly, the Joint Administrators respectfully ask the Court to make an order under rule 134(3) varying the order of priority within Rule 134(1), such that the liability imposed on the Joint Administrators by regulation 10H(3) of IBSA Regulations (i.e. under Rule 134(1)(h)) ranks after the expenses listed in rule 134(1)(k) of the IBSA Rules. The consequence of such a direction will be that (for example), expenses properly incurred by the Joint Administrators and any necessary disbursements by the Joint Administrators in the course of the special administration, as well as the remuneration of the Joint Administrators, will rank above the liability under Regulation 10H(3). If no such order is made the Joint Administrators will have no funds to meet their properly-approved remuneration and expenses in engaging with the FCA and winding up WealthTek in the best interests of its creditors, i.e. in complying with their statutory obligation to pursue Objectives 2 and 3.

H. CLIENT CONSULTATION

148 In addition to the detailed consultation with the FCA, FSCS and the Committee explained above, the Joint Administrators have communicated frequently with WealthTek's client base – both generally and in response to specific queries received from individual clients – since 6 April 2023 to provide information and guidance in relation to the special administration process, and to invite WealthTek's clients to submit their claims to Client Assets and Client Money.

149 The extensive efforts which the Joint Administrators have made to assist, notify and consult with clients and invite their claims are summarised in Appendix A to this witness statement.

150 This client communication exercise has allowed the Joint Administrators to respond to concerns expressed directly to them by certain clients. These concerns have been varied: primarily, enquiries, concerns and requests for further information about the process being adopted, enquiries as to the status and return of Client Assets, and, in a small number of cases, challenges to the manner in which the Joint Administrators are conducting the special administration and/or delays that have been experienced before Client Assets are returned. The Joint Administrators have addressed and responded to all such correspondence in a timely manner.

151 In particular, the client communication exercise has included the process by which clients have been notified of the Soft Bar Date and invited to submit claims in the special administration to Client Assets (and Client Money). The Joint Administrators' efforts to invite claims and consult with clients are as summarised in Appendix A to this statement.

152 The principal means by which clients have been invited to submit claims to Client Assets has been electronically, following receipt of their Client Assets Statements via the Portal.

153 At the time of making this Application:

(a) the Joint Administrators have received claims over a total of 1,093 client accounts, constituting approximately 94% (by number) of anticipated Client Asset claims (when excluding accounts with nil balances, where no claims are anticipated) and in excess of 99% (in value) of the total Client Assets undertaken to be held by WealthTek;

(b) in respect of those claims:

(i) 1085 claims over client accounts as stated on individual Client Assets Statements, representing approximately 76% (in value) of the total Client Assets undertaken to be held by WealthTek, have now been agreed; and

(ii) 8 claims over client accounts as stated on individual Client Assets Statements, representing approximately 23% (in value) (namely 1 client account, representing approximately 22% (in value)) of the total Client Assets undertaken to be held by WealthTek, have not been agreed. It is, however, worth noting that the amount at issue in the largest disputed claim totals only approximately 0.14% (in value) of the total Client Assets undertaken to be held by WealthTek. The Joint Administrators are in the process of liaising with those relevant clients with a view to resolving, where possible, the positions.

154 The current position is that claims over a total of 75 client accounts, constituting approximately 6% (by number) of anticipated Client Asset claims (when excluding accounts with nil balances, where no claims are anticipated) and approximately 0.07% (in value) of the total Client Assets undertaken to be held by WealthTek, have not yet been submitted. A total of 236 accounts have nil value and so no Client Asset claims were anticipated in respect of such accounts.

155 As at the date of this witness statement and the making of the Application, the Soft Bar Date (20 March 2024) has passed. The Joint Administrators are now in a process, therefore, of engaging with clients who have failed to submit claims or who disagreed with their individual Client Assets Statements, with a view to ensuring the maximum-possible number of clients will be in a position to agree their claims to Client Assets and Client Money prior to the expiry of the three-month period after the Soft Bar Date before returns of Client Assets can be made (assuming that the Distribution Plan will by that date have been approved).

156 Where Claimants have not submitted their claims by the Soft Bar Date, they have been provisionally categorised as Potential Claimants under Rule 143 (to be dealt with in accordance with Clauses 8.1 to 8.3 of the Distribution Plan, as explained at paragraph 97(h) above), pending reaching any agreement with them on their claims to Client Assets before returns of Client Assets can be made.

157 So far as Potential Claimants are concerned it is currently envisaged by the Joint Administrators that:

(a) appropriate provision will be made for Client Assets identified as belonging to Potential Claimants to be subject to a Transfer to the Identified Nominated Broker, where they meet the required eligibility criteria; and

(b) the Joint Administrators will continue their substantial efforts to contact those clients.

158 Notwithstanding such steps, it is possible that the Joint Administrators will ultimately be unable to contact certain Potential Claimants. In such circumstances:

(a) where the Joint Administrators have determined, acting reasonably, that they have returned Client Assets to clients, to the extent reasonably practicable, they will give a Long-Stop Date Notice, in accordance with Clause 3.4 of the Distribution Plan;

(b) following discussions with the FCA, WealthTek is at liberty to pay the proceeds of unclaimed Client Assets in respect of Potential Claimants into the Insolvency Services Account (as more fully explained at paragraph 81(b) above). The Joint Administrators have included provision for payment of the proceeds of any unclaimed Client Assets into the Insolvency Services Account in Clause 8.3 of the Distribution Plan;

(c) the Joint Administrators understand, from discussions with the Insolvency Service, that in order to receive the unclaimed Client Money and unclaimed (proceeds of) Client Assets held for Potential Claimants (such amounts, together with unclaimed Client Money, **Unclaimed Client Estate Amounts**), and, in due course to pay them to clients who come forward, the Insolvency Service requires a Court Order providing for the payment of the Unclaimed Client Estate Amounts (which also included unclaimed Client Money distributions) to them and confirming that WealthTek will pay the applicable fees. Accordingly, the Joint Administrators ask the Court to make such an order on this Application. The terms of the Draft Order proposed have been shared with, and incorporates comments received from, the Insolvency Service;

(d) separately, regulation 12B provides for the setting of a "hard bar date" with the approval of the Court. In short, it enables the Joint Administrators to dispose of all Client Assets which WealthTek still holds after the hard bar date (i.e. to which eligible claimants have not made a claim by that date);

(e) by Regulation 12B(1), the Joint Administrators may include in a distribution plan provision for the option of setting a hard bar date. By Regulation 12B(3), once the Joint Administrators have determined that it is necessary to set a hard bar date in order to expedite the return of Client Assets, they may apply for the approval of the Court to do so; and

(f) consequently, the Joint Administrators have reserved at Clause 3.5 of the Distribution Plan the power to make an application for permission to set a hard bar date under Regulation 12B(3). As matters stand, it is unclear to the Joint Administrators whether it will become necessary for them to set a hard bar date.

I. NOTICE OF DISTRIBUTION PLAN AND THE HEARING

159 On or around the date on which the Application is made, the Joint Administrators will upload the Distribution Plan (in accordance with Rule 146(3)) and Explanatory Statement to the Website, together with a notice informing clients that the Application has been made, along with links to the Application Notice and a copy of this statement. The Application is listed to be heard on 7 June 2024.

160 Prior to this, on 21 December 2023, the Joint Administrators wrote to clients describing the process and anticipated timing for the promotion of the Distribution Plan and the making of the Application, as well as expected timing for the making available of Client Assets Statements to clients.

J. CONCLUSION

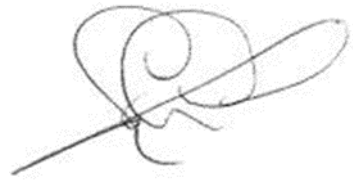
161 The Joint Administrators consider that the Distribution Plan meets the requirements set out in the IBSA Rules, will ensure the return of WealthTek's Client Assets as soon as is reasonably practicable, is fair and reasonable in its terms generally and, in particular, provides for an appropriate basis on which the costs of the Joint Administrators' pursuit of Objective 1 may be allocated amongst WealthTek's clients.

162 The Joint Administrators respectfully invite the Court to approve the Distribution Plan.

Filed on behalf of the Applicants
Shane Michael Crooks
9 May 2024
“SC2”

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: 9 May 2024

Appendix A
Client Communication Summary

1 On their appointment (on or around 6 April 2023), the Joint Administrators set up a dedicated client communications team (the **Client Team**) with a telephone helpline and Website: https://www.bdo.co.uk/en-gb/insights/advisory/business-restructuring/wealthtek-administration.

2 Following issuance of the Client Asset Claim Forms, the Client Team has assisted and responded to client queries in relation to claims by way of approximately 338 emails to approximately 260 clients and approximately 520 telephone calls with clients.

3 In addition, the Joint Administrators have communicated regularly with WealthTek's clients by correspondence. Those direct communications have been sent:

(a) where WealthTek holds email addresses for client accounts (being approximately 1200), directly by email; and

(b) where no email addresses are available, the email address was found to be invalid or the client requested postal communication (being approximately 260 in the UK and 10 internationally), directly by post.

4 In response to date, a total of 1093 claims have been submitted to the Joint Administrators amounting to in excess of 99% (in value) of the total Client Assets.

5 Where clients have failed to respond to the Joint Administrators' direct communications (or they were returned), steps have been taken to (i) send hard copy communications to all clients for whom the Joint Administrators received email delivery failure notifications; and (ii) obtain alternative postal addresses for those clients for whom the Joint Administrators have received returned postal communications. In addition, all correspondence (excluding enclosures) has been re-sent to clients for whom alternative postal addresses have been obtained, with a request for them to contact the Joint Administrators immediately.

6 In summary the communications with clients generally to date have consisted of the following:

(a) an FAQs notice was uploaded on the Website on 4 April 2023 [**SC2/21/259-261**] confirming, among other things: (i) the appointment of the Interim Managers and (ii) details of the telephone helpline established for the purposes of handling client enquiries;

(b) a press release was issued by the FCA on 5 April 2023 (as updated on 14 September 2023 and 31 May 2023) [**SC2/7/26-30**];

(c) an FAQs notice was uploaded on the Website on 6 April 2023, confirming, among other things, the appointment of the Interim Managers as the Joint Administrators [**SC2/22/262-263**];

(d) on 17 April 2023, the Joint Administrators' notice of appointment was published in the London Gazette (Rule 51(1)(a)) [**SC2/23/264**];

(e) an FAQs notice was uploaded on the Website on 5 May 2023, explaining the background to the Joint Administrators' appointment, their objective of facilitating an orderly and coordinated return of Client Money and Client Assets and the steps undertaken at that date [**SC2/24/265-268**];

(f) on 30 May 2023, the Joint Administrators' proposals (the **Proposals**), which set out the information required by Rule 59 and provided notice of the initial meeting of clients and creditors, were uploaded on the Website [**SC2/25/269-342**]. Written notice of availability of the Proposals was also provided via secure hyperlink either by post or email to all clients;

(g) on 1 June 2023, notice of the initial meeting of clients and creditors to be held at 14:00 on 14 June 2023 was published in the London Gazette (Rule 61(1)) [**SC2/26/343**];

(h) on 16 June 2023, following the initial meeting of clients and creditors held on 14 June 2023, a notice of the result of the meeting was sent to every person who received a copy of the original Proposals and the presentation was uploaded on the Website [**SC2/27/344-368**], as well as a set of questions and answers [**SC2/28/369-373**] (Rule 67);

(i) on 6 September 2023, the first Committee meeting was held;

(j) on 15 September 2023, an update to clients from FSCS was uploaded on the Website, confirming, among other things, that FSCS anticipates that, for eligible customers, it is likely to meet any losses suffered up to the statutory limit [**SC2/29/374**];

(k) a notice to clients was uploaded on the Website on 6 October 2023 informing clients that the website: www.VertemAssetManagement.com, which was previously used by WealthTek, had recently become active following the expiration of WealthTek's registration of the domain name and confirming that the website has no connection with WealthTek or the Joint Administrators;

(l) on 17 October 2023, a notice to clients was uploaded to the Website notifying clients that they will no longer be able to access their online WealthTek accounts through the Portal for a short time whilst the Joint Administrators undertook certain work on the system to enable client positions to be updated;

(m) on 3 November 2023, the Joint Administrators uploaded on the Website a copy of the Joint Administrators' progress report from 6 April 2023 to 5 October 2023;

(n) on 21 November 2023, the Joint Administrators wrote to clients seeking confirmation of the email addresses to be connected to their accounts for the purposes of providing them access to the Portal and, in due course, receiving their Client Assets Statement and Client Assets Claim Form;

(o) on 15 December 2023, the second Committee meeting was held;

(p) on 21 December 2023, the Joint Administrators wrote to clients describing the process and anticipated timing for the promotion of the Distribution Plan and the making of the Application, as well as the expected timing for the making available of Client Assets Statements to clients;

(q) on 5 February 2024, a user guide to the Portal was uploaded to the Website and issued to clients via the Portal;

(r) on 12 February 2024, notice of the Soft Bar Date of 20 March 2024 for both Client Assets and Client Money (Regulations 11(3), 12A(1) and 12E and Rule 138) [**SC2/30/375-377**] was uploaded to the Website. Such notice was also published in the London Gazette, posted on the Portal, placed on the WealthTek-dedicated webpage of the BDO LLP website and advertised in The Chronicle (Newcastle) and the Hull Daily Mail (Regulation 12E(3) and Rule 138(4)) [**SC2/31/378-379**];

(s) on or shortly following 12 February 2024, Client Assets Statements were issued to WealthTek's clients, setting out each client's Client Asset position and Client Money balance. The statements were accompanied with a Client Assets Claim Form, a copy of the Client Assets Flowchart and Frequently Asked Questions dated February 2024 and also made available via the Portal;

(t) on 27 February 2024, the third Committee meeting was held;

(u) on the week commencing 11 March 2024, non-responsive clients were sent a reminder of the approach of the Soft Bar Date;

(v) on submission by any client of a Client Assets Claim Form, the Joint Administrators wrote to the relevant client by email or letter (as requested) confirming receipt of the Client Assets Claim Form and describing the next steps for that client;

(w) following the Soft Bar Date, the Joint Administrators contacted non-responsive clients with Asset Claims of over £1,000 by telephone (where a telephone number was available for such clients from WealthTek's records) and by post or email for all clients, irrespective of the value of their claims;

(x) throughout April 2024, questionnaires were sent to clients or their representatives on behalf of the FSCS to assist in confirming eligibility for compensation under its 'look-through' provisions, where the relevant client account was held via a vehicle such as a trust, self-invested pension plan, an estate or a company;

(y) on 2 May 2024, the fourth Committee meeting was held; and

(z) on 3 May 2024, the Joint Administrators uploaded on the Website a copy of the Joint Administrators' progress report from 6 October 2023 to 5 April 2024.

Filed on behalf of the Applicants

Shane Michael Crooks

9 May 2024

"SC2"

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

SECOND WITNESS STATEMENT OF SHANE MICHAEL CROOKS

NRF LLP (Ref: 1001250014)

3 More London Riverside

London SE1 2AQ

Tel: +44 20 7444 3803

Solicitors for the applicants