Filed on behalf of the Applicants
Shane Michael Crooks
6 June 2024
"SC4"

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

FOURTH 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 "**SC4**", to which I refer in this statement. References to SC4 are in the form [**SC4/tab/page number**]. I shall also refer to my second witness statement dated 9 May 2024 (**Crooks (2)**) and my third witness statement dated 4 June 2024 (**Crooks (3)**).

3 I am duly authorised to make this witness statement on behalf of the Joint Administrators. Since our appointment, I have assumed primary responsibility for the day-to-day conduct of WealthTek's special administration. Save where otherwise indicated, the contents of this statement are derived from facts and matters which are within my own knowledge and belief. These facts and matters have been learned either as a result of the work undertaken by me as Joint Administrator, or provided to me by my colleagues at BDO in connection with the appointments in respect of WealthTek, or by certain employees of WealthTek, or by the Joint Administrators' legal advisers, Norton Rose Fulbright LLP (**NRF**).

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

5 As in Crooks (3), where I refer in this statement to "**Client Assets**" I am referring to securities (including stocks, shares and other investments) held by WealthTek for and on behalf of clients and when I refer to "**Client Money**" I am referring to money that WealthTek received, held and/or treated as Client Money in accordance with Chapter 7 and 7A of the FCA's Client Assets Sourcebook (known as "**CASS 7**" and "**CASS 7A**", respectively). Where I refer in this statement to "**Regulations**", I am referring to regulations in the Investment Bank Special Administration Regulations 2011 (the **IBSA Regulations**) and when I refer to "**Rules**", I am referring to rules in the Investment Bank Special Administration (England and Wales) Rules 2011 (the **IBSA Rules**).

6 In Crooks (3), I updated the Court on matters following the filing at Court of the application by the Joint Administrators for the approval of the distribution plan for the return of Client Assets held by WealthTek prepared pursuant to Part 5 of the IBSA Rules (the **Distribution Plan**) on 9 May 2024 (the **Application**).

7 The purpose of this statement is to provide further updates to the Court following the filing of Crooks (3) on three specific matters, being (i) discussions with the Financial Conduct Authority (**FCA**), (ii) discussions with the identified broker and (iii) further communications from clients in the few days since the filing of Crooks (3).

B. Discussions with the FCA

8 As I set out in paragraph 27 of Crooks (3), the Joint Administrators have been in discussions with the FCA with a view to the provision of consent by the FCA to:

(a) WealthTek conducting such regulated activities as are necessary to give effect to returns of Client Assets held by WealthTek under the Distribution Plan and the distribution by the Joint Administrators of Client Money under CASS 7A, notwithstanding the requirements stipulated in the First Supervisory Notice dated 4 April 2023 (the **FSN Consent**); and

(b) modification of the requirements of CASS 7A.2.4R and CASS 7A.2.7-AR, pursuant to section 138A of Financial Services and Markets Act 2000 (**FSMA**), such that any unclaimed Client Money held by WealthTek by the Long-Stop Date may be paid by WealthTek into the Insolvency Services Account (each as defined in the Distribution Plan; being, in the case of the latter, a bank account maintained by the Insolvency Service, the ordinary purpose of which is for the deposit by insolvency office-holders in insolvency proceedings generally of unclaimed dividends) (the **CASS Waiver**).

9 On 4 June 2024, my colleagues at BDO and NRF and I attended a Microsoft Teams meeting with representatives from the FCA to discuss both the FSN Consent and the CASS Waiver.

10 In that meeting, the FCA confirmed that, although WealthTek did not hold regulatory permissions to safeguard and administer client assets and to hold client money prior to its entry into special administration (which position has remained unchanged in the course of the special administration), the FCA would nonetheless:

(a) issue a form of FSN Consent in short order; and

(b) give consideration to the granting of the CASS Waiver on the terms sought by the Joint Administrators, once a formal application for the same has been submitted by the Joint Administrators pursuant to section 138A of FSMA (I note that NRF had previously submitted a draft of the requested form of the CASS Waiver to the FCA on behalf of the Joint Administrators, for the FCA's consideration).

11 On 5 June 2024, the FCA issued the FSN Consent [**SC4/1/1-3**].

12 So far as Client Money is concerned, the Joint Administrators will submit an application under section 138A of FSMA for the CASS Waiver in the coming weeks, noting that this waiver will only become necessary on and from the Long-Stop Date (as defined in the Distribution Plan). Since the Long-Stop Date – in short, the future date on which the Joint Administrators certify that they have achieved Objective 1 under Regulation 10, to the extent reasonably practicable – is not projected to occur for some time (and likely at least well into 2025), the granting of the CASS Waiver is not considered by the Joint Administrators to be time-critical for the purposes of the approval of the Distribution Plan.

13 No equivalent of the CASS Waiver is required in respect of the proceeds of Client Assets following their liquidation on the occurrence of the Long-Stop Date. Subject to the Court's approval of the Distribution Plan, such proceeds will instead be paid into the Insolvency Services Account in accordance with clause 8.3 of the Distribution Plan.

C. Discussions with the identified broker

14 As I explained in paragraph 30 of Crooks (3), an FCA-regulated broker has (subject to ongoing discussions) been identified that represents the most suitable candidate for WealthTek's clients.

15 Following the FCA's site visit at the broker's premises on 28 and 29 May 2024, the Joint Administrators are continuing to negotiate the terms of the asset transfer agreement to be entered into between WealthTek and the broker and progress is being made.

16 The draft asset transfer agreement is now well advanced between the parties. The broker reverted with comments on the draft asset transfer agreement on the date of this witness statement and NRF is considering those comments with a view (without waiving privilege) in due course to advising the Joint Administrators on the appropriate approach to be taken.

17 The Joint Administrators do not propose to disclose the identity of the identified broker to clients until the asset transfer agreement is executed by all relevant parties. The Joint Administrators are of the opinion that disclosing the identity of the broker to clients before the necessary arrangements are in place might be capable of causing confusion in the unlikely event that, for example, the Joint Administrators are subsequently unable to agree the form of asset transfer agreement with the identified broker. The Joint Administrators are, however, content to share the details of the identified broker and a copy of the latest draft asset transfer agreement with the Court, on a confidential basis, if it would assist the Court for them to do so.

18 The Joint Administrators' intention remains to finalise the terms of, and enter into, the asset transfer agreement with the identified broker as soon as reasonably practicable such that the majority of Client Assets are capable of being transferred to the broker in accordance with Regulation 10B as soon as reasonably practicable after 20 June 2024, following the issuance of Client Assets Confirmation Statements (as defined in the Distribution Plan), the satisfaction of the Transfer Conditions for each relevant client (as defined in the Distribution Plan), and the making of the necessary arrangements on the part of the Joint Administrators (including giving the transfer instruction to the custodian of Client Assets) and the nominated broker.

19 In that regard, I would like to clarify that no "Transfer" (as defined in the Distribution Plan) is capable of being "automatic". Each client is required to engage with any identified broker by completing customer due diligence before any Transfer can take place (see clause 5.4(a) of the Distribution Plan). All clients will therefore be able to consider the identity of the broker and the terms on which they would be transferred to it, before a transfer takes place. Any client who does not wish to be transferred to the nominated broker can opt out of such a transfer by sending a "Client Assets Return Method Form" and instead select a method of Distribution for their Client Assets.

20 In the unlikely event that the Joint Administrators are unable to agree the form of asset transfer agreement with the identified broker, or the broker otherwise has cause to withdraw from negotiations, such that there is no transferee nominated for the purposes of the Transfer provisions under the Distribution Plan, the "Distribution" procedure contained in Clause 6 of the Distribution Plan (and as I explained in paragraph 97(d)(ii) of Crooks (2)) will nonetheless continue to be available to clients as a method of obtaining the return of their Client Assets. Accordingly, in that event, Distribution would instead be the sole means by which Client Assets

would be returned to clients under the Distribution Plan. In other words, the Joint Administrators remain confident that the Distribution Plan can function properly as the means by which Objective 1 of the special administration can be achieved even in the unforeseen eventuality that the Transfer provisions have no immediate efficacy following approval of the Distribution Plan by the Court. In this regard, the position is no different at the present time to the situation as presented to the clients' and creditors' committee when it approved the Distribution Plan.

D. Communications from clients

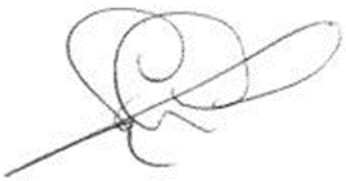
21 Since the filing of Crooks (3) with the Court, the Joint Administrators received an additional email from Mr Pluck on 5 June 2024 [**SC4/2/4**]. I set out details of all prior communications with Mr Pluck in paragraphs 18 to 25 of Crooks (3).

22 The Joint Administrators are not intending to engage with the statements made in Mr Pluck's latest correspondence. Nevertheless, on the date of this witness statement, the Joint Administrators contacted Mr Pluck to provide further details of the venue of the Court hearing [**SC4/3/5**]. The Joint Administrators regard it as an open possibility that Mr Pluck will be in attendance at the Court hearing but, to the best of my knowledge, he does not intend formally to appear or be represented.

23 The Joint Administrators have otherwise received no further communications from clients indicating any form of objection to the Distribution Plan.

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: 6 June 2024

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