IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
[2020] EWHC 1501 (Ch)

No. CR-2019-005229

Rolls Building
Fetter Lane
London, EC4A 1NL

Thursday, 7 May 2020

Before:

MR JUSTICE MILES

IN THE MATTER OF **SVS SECURITIES PLC (IN SPECIAL ADMINISTRATION)**

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

MR D. BAYFIELD QC and MR A. AL-ATTAR (instructed by Ashurst LLP) appeared on behalf of the Applicant.

J U D G M E N T

MR JUSTICE MILES:

INTRODUCTION

1 This is an application by the special administrators of SVS Securities PLC ("SVS"), an investment firm which has been in special administration since 5 August 2019, and SVS itself in its capacity as trustee of client monies.

2 There are three heads of relief sought. In broad terms, the administrators apply for the approval by the court of a distribution plan in respect of the client assets of SVS's clients other than the pooled client money. The plan provides for the transfer of substantially all of those assets and the related client contracts to an FCA regulated firm ("the Nominated Broker"). Separately, SVS as trustee of pooled client money which it holds pursuant to the trust constituted by chapter 7 of the FCA's Client Asset Sourcebook ("CASS 7") applies first for a direction permitting it to transfer client money to the Nominated Broker to be held by that broker as a new trustee of that client money and, secondly, for an order in connection with that transfer and other possible distributions in lieu of that transfer which sets out a dispute resolution procedure, and which entitles SVS to make distributions on the assumed footing that only those clients whose claims have been made by a notified bar date and have been agreed by the administrators (or, where there is a dispute admitted, by order of the court) will be subject to such a distribution.

3 In a little more detail, the administrators apply for the approval by the court of a distribution plan made pursuant to Regulation 11 of The Investment Bank Special Administration Regulations 2011 ("the Regulations") and Rule 146 of The Investment Bank Special Administration (England and Wales) Rules 2011 ("the Rules"). The distribution plan concerns client assets held by SVS which at the time of the administrators' appointment had an indicative value of about £286 million. The client assets are held for approximately 11,100 clients.

4 A distribution plan, if approved, will give effect to a wholesale transfer of the great bulk of the client assets in the hands of the administrators to the Nominated Broker which, as I say, is an investment firm authorised and regulated by the FCA. The Nominated Broker has entered into a sale and purchase agreement ("the SPA") by which it has agreed to purchase SVS's rights under its contracts with clients and the shares held by SVS in certain nominee companies which hold substantially all the client assets held by SVS as sub-custodians. The transfer of those shares in the nominee companies will result in the assets they hold being held for the Nominated Broker. Client contracts will be novated to the Nominated Broker subject to terms which have been negotiated between the administrators and the Nominated Broker and which are intended, so far as possible, to replicate the existing terms of business.

5 Under the Rules, the court's approval is required for the distribution plan. This is also a condition for the SPA to become effective. Approval of the distribution plan will permit the administrators to transfer the client contracts and by way of a transfer of the shares in the nominee companies, the transfer of client assets to the Nominated Broker. As I shall explain further below, this kind of bulk transfer of client contracts and assets is one of the permitted methods by which client assets can be returned to clients under the Regulations and in accordance with the Rules.

6 There is a separate regulatory regime for client monies. These are subject to the trust created by CASS 7 and CASS 7A and SVS remains the trustee. It seeks a declaration that it is entitled to transfer to the Nominated Broker approximately £23.7 million of client money notionally pooled as at the date of SVS's special administration pursuant to CASS 7A. This

is being done in conjunction with the transfer of assets under the distribution plan. The effect of the transfer will be that the Nominated Broker will hold the client monies for clients.

7 The FCA, which is supportive of the distribution plan in parallel to the transfer of client monies to the Nominated Broker, has granted SVS a waiver ("the Client Money Waiver") in respect of the requirement under CASS 7A for a firm to obtain the consent of clients to transfer client money to the new firm.

8 A third application is made by SVS, again as trustee of the client money trust in connection with this transfer, for an order that it is entitled to transfer or distribute the client money pool on the basis of a procedure for the ascertainment and settlement of claims similar to the proof of debt procedure found on the insolvency legislation. This order is sought under the inherent jurisdiction of the court in respect of trusts.

FACTUAL BACKGROUND

9 The factual background has been set out comprehensively in the first witness statement of one of the administrators, Mr Cadwallader. SVS was incorporated in March 2002 and traded initially as a traditional stockbroker in January 2005. It re-registered as a public company. It is and was an investment bank within the meaning of section 232 of the Banking Act 2009 and is authorised by the Financial Conduct Authority, the FCA, which I have already mentioned. SVS was a member of the London Stock Exchange. SVS was a full-service investment firm offering managed services to both retail and institutional clients. Its business consisted of execution only business; capital markets business; advisory business; discretionary fund management business; ISA business; and custody business.

10 SVS has a number of wholly owned subsidiaries. As I have already explained, these act as sub-custodians on the instructions of SVS to hold the vast majority of the client assets of SVS. The subsidiaries were legal owners of the assets but act on the instructions of SVS in relation to client assets and therefore hold such client assets for the ultimate benefit of the relevant clients. There are also certain client assets belonging to one client which are held by a different sub-custodian, which is an independent prime broker. There is provision under a separate agreement with this broker dated 7 April 2020 for this broker to transfer the assets to the Nominated Broker and I shall return to this in a moment.

11 At the date of the administrators' appointment, on 5 August 2019, SVS had approximately 18,600 clients for which it held client assets and client money. The client assets had an indicative valuation at that date of approximately £286 million held for approximately 11,100 clients. Client money was in excess of £23.7 million with some smaller euro and dollar amounts of some 16,600 clients of which 7,550 have client money claims only. The client money was held in a segregated client account in accordance with CASS 7.

12 The large majority, about 92% of the clients by number, were retail clients with portfolios averaging less than £10,000 in value. About 66% of the clients are domiciled in the United Kingdom. The administrators, with the assistance of specialist third party auditors, have carried out a reconciliation of both client assets and client monies and this reconciliation identified no material discrepancies between the client assets and client money held by SVS on the date of the appointment of the administrators and the client assets and client money that SVS had undertaken to hold for its clients.

13 In July 2019, the FCA wrote to SVS highlighting a number of concerns regarding its business. This led ultimately to the directors seeking legal and insolvency advice. On 2

August 2019, the FCA imposed a requirement on SVS with a view to consumer protection and integrity issues. This required SVS to cease all regulated activities and included further restrictions on the use of SVS's own assets and client money and client assets that it held. The directors resolved the same day to apply for special administration and the company was placed into special administration by order of Zacaroli J on 5 August 2011.

STATUTORY BACKGROUND

14 The background to the Regulations generally has been helpfully explained in *MF Global UK Limited* [2012] EWHC 3789 (Ch) by David Richards J. I shall not go over that territory again but, in brief, the Regulations modify the usual administration regime in order to address specific issues arising in investment bank insolvencies which are not dealt with under the administration process for ordinary companies under Schedule B1 of the Insolvency Act 1986, including the treatment of assets held on trust for clients and their swift return. The Regulations were made in response to the problems that had arisen in this regard in the administration of Lehman Brothers. That case had highlighted a number of deficiencies in the existing statutory regime including the absence of any mechanism for setting a bar date for client asset claims, the lack of any rules governing the costs of administering the return of client assets, and the absence of rules about shortfall claims resulting from a deficiency in the assets held by the bank for clients. These shortcomings could not be overcome by a scheme of arrangement under Part 26 of the Companies Act 2006; see *Re Lehman Brothers International (Europe)* [2010] 1 BCLC 496.

15 The Regulations introduced a regime for investment bank administrators to set bar dates for proprietary claims, for defraying administration costs from the client assets, and for addressing the quantification of shortfall claims. The Regulations are supplemented by the Rules which provide, among other things, for how distributions under the Regulations are to be formulated and approved. I shall return to the Rules in a moment.

16 Regulation 10 provides that a special administrator has three special administration objectives. Objective 1 is to ensure the return of client assets as soon as is reasonably practicable. "Return" is defined by Regulation 10(5) as:

> "...the investment bank relinquishes full control over the assets for the benefit of the client to the extent of … (a) the client's beneficial entitlement to those assets (where the assets in question have been held on trust by the investment) ... having taking into account any entitlement the investment bank might have, or a third party might have, in respect of those assets …."

17 As originally enacted in 2011, the Regulations contain two main provisions to facilitate the return of client assets. The first was a bar date process under Regulation 10 for client assets other than client money. The second connected provision was the power under Part 5 of the Rules to promote a distribution plan. The bar date provision, which has become known as a soft bar date, allows administrators to establish the universe of claimants interested in the distribution of client assets. The distribution plan is a description given to the terms of the distribution of client assets, including dealing with the payment of the costs of the exercise. Fleshing this out a little, the administrator may set a bar date before which claims must be submitted, giving clients a reasonable time to make such claims; see Regulation 11(1)-(3).

18 If the administrator does set a bar date, the return of assets requires the permission of the court. This will involve the administrator providing a plan of distribution requiring court

approval. Claims made after the bar date, called "late claims", will not disturb a return of client assets made pursuant to an approved plan. Such a return gives good title save for circumstances amounting to bad faith on the part of the administrator in which a recipient was complicit: see Regulations 11(5) and (6). Also, the administration costs incurred in respect of a pursuit of Objective 1 are to be paid from the client assets in accordance with Rules 135, 137, and 144.

19 The Regulations were amended in 2017 to implement recommendations made by Mr Peter Bloxham in a report published in January 2014 and presented to Parliament pursuant to section 236 of the Banking Act 2009. The key recommendations of Mr Bloxham's report included, first, the introduction of a mechanism to facilitate the transfer of customer relationships and positions, secondly, the extension of the soft bar date mechanism to cover client monies, and thirdly, the introduction of a hard bar date mechanism (that is one that entirely extinguishes late claims) for both client assets and client money. These recommendations were implemented by Regulations 10B to 10I and 12A to 12E respectively.

20 So far as is relevant to the present applications, Regulation 10B applies where, to paraphrase, the administrator enters into a binding agreement to transfer all or some of the property rights and liabilities of the investment bank to a transferee and, for the purposes of that transfer, the arrangement includes provision for the transfer of client assets to the transferee.

21 Regulation 10B introduces specific provisions to override the normal impediments to a transfer of client assets and related contractual rights, including by overriding restrictions on assignment, any requirements to give notice or to obtain consent from clients in relation to, the transfer of any entitlement to the return of assets other than by the transfer proposed and confidentiality or data protection obligations which might otherwise prevent or impede an efficient transfer. Where the transfer takes place, there is a deemed novation of the client contracts so that the client is treated as having made the client contract with the transferee. The administrator is obliged to ensure that the terms of the transfer enable clients to exercise their rights in relation to the assets as soon as reasonably practicable after the transfer.

22 Regulation 10C imposes additional restrictions on what is called "a partial property transfer" being one which does not transfer all of the client assets to the transferee. In such a case, the provisions of Regulation 10B(3)(b), which override specific consent requirements, are disapplied and, in addition, provision must be made in the arrangement to give effect to what are called reverse transfer rights under which a client is entitled to demand a transfer back to the investment bank which acted as the transferee.

23 Pausing there, the distribution plan in the present case is a partial property transfer. It provides for reverse transfer rights in accordance with the Regulations. Mr Cadwallader explains in his witness statement that there are, in fact, no contractual restrictions on transfer which apply in this case.

24 Returning to the Regulations, Regulation 12B permits an administrator to apply to the court having set at least one soft bar date for permission to set a hard bar date after which any late claims to clients' assets will be extinguished and the value of such claims will rank instead as an unsecured claim in the administration estate. (The distribution plan in this case envisages that the administrators may at some stage wish to apply for a hard bar date but no such application is made at the moment.)

25 The position may therefore be summarised as follows. First, Regulation 11 provides a framework for a distribution plan providing that after a soft bar date has been set, client assets may only be returned with the approval of the court. Rule 144 sets out the minimum prescribed content for the plan. Second, the return of assets may take place by the transfer of assets to another institution; see section 233(4) of the Banking Act 2009 and Regulation 10(5). Third, Regulations 10B and 10C, dealing respectively with total and partial property transfers, and Regulation 12B provides certain overrides in deeming provisions to facilitate this.

26 As already mentioned, the Rules prescribe a procedure for the approval of the distribution plan. Notice of a bar date is to be given to all clients of whom the administrator is aware and to the FCA; Rule 138. As I have mentioned, Rule 144 sets out the minimum parameters of the distribution plan. I pause to observe that I am satisfied that those formal conditions are met by the distribution plan in the present case. By Rule 145, the plan has to be approved with or without modification by the creditors' committee. An application for approval is then to be made by the administrator to the court; see Rule 146(2) and must be sent in advance of the hearing to clients, the FCA, and persons notified under Rule 143 (which concerns clients who have not made a claim by the soft bar date but who appear to have claims under the records maintained by the firm). Those classes of person must also be informed about the venue for the hearing.

27 Under Rule 146, there are two specific requirements for the making of an order. First, that the administrators have made the necessary notifications under Rule 143 and, second, that the creditors' committee has approved the distribution plan or, if not, has been given an opportunity of giving their reasons for not approving. Assuming those two preconditions are met, the court will then consider whether to approve a plan with or without modifications. The court has a discretion and I will return to the principles governing its exercise in a moment.

28 Rule 134 governs the expenses of the administration to be paid out of the firm's assets. It sets out a priority waterfall for expenses and is derived from the Insolvency Rules 1986. That rule is concerned with the administration estate.

29 Rule 135 is a special rule which governs expenses to be paid out of the client assets. These expenses include, in order of priority: expenses incurred in the pursuit of Objective 1; necessary disbursements paid in the course of pursuing Objective 1; and remuneration in the pursuit of Objective 1. It will be noted that this rule ties the payment of the expenses to be paid from client assets to the achievement of Objective 1 and not the other objectives under Regulation 10.

30 Rule 137 provides that in the distribution plan the administrator shall set out how the administrator proposes that expenses to be paid from client assets are to be allocated between client assets.

31 The Rules also address the procedure for dealing with client asset claims under the distribution plan. Clients must submit a client asset proof in accordance with Rule 139(3). The is similar to a proof of debt but its content reflects the proprietary nature of the claim. Rule 141 provides that the cost of proving is to be borne by the claimant. Claimants who have not submitted a claim by the soft bar date but who appear in the records of the firm as having such a claim are, as I have said, to be treated in accordance with Rule 143 which requires a special notification by the administrator to be sent to the clients' last known contact details stating that the administrator shall treat the claim in accordance with the

records of the firm unless he has heard from the client within 14 days. A provision is made for such clients in the distribution plan in accordance with the records the administrators have if nothing is heard from those clients; see Rule 144(4).

32 I have mentioned the court's discretion. Counsel for the applicant, Mr Bayfield QC, took me to a number decisions which illustrate the approach of the court in applications for approval of a distribution plan, namely: *Re MF Global UK Ltd* [2012] EWHC 3789 (Ch); *Re Hume Capital Securities* [2015] EWHC B25 (Ch); and *Re Beaufort Asset Clearing Services Limited* [2018] EWHC 2287 (Ch). The cases establish the following points. First, account must be taken of the purpose of the distribution plan under the Rules, which is to assist in the achievement of Objective 1 of returning client assets as early as possible. The court must be satisfied that the plan provides a fair and reasonable means of effecting the distribution of the client assets to which the plan relates.

33 Secondly, the context in which the application is brought before the court is itself material. The distribution plan can only be approved if the creditors' committee has approved it or has had an opportunity to explain why it has not approved it and its role in relation to the distribution plan will be a particularly material factor in the court's decision. Individual clients will have been notified both of the plan before the hearing and are able to make representations against it so that their input, or the lack of it, will again be material. The FCA has to be notified of a hearing and its objections, or lack of them will be relevant. Finally, the making of the application will itself indicate the exercise of professional judgment on the part of the administrators as officers of the court and weight is to be given to their judgment. While none of those factors can be conclusive, and the court must exercise its own judgment, they are to be given particular weight.

34 Third, if the court is satisfied that all relevant persons have been given a proper opportunity to make representations and have either specifically agreed to them or at least not objected to them, the court is very likely to be slow to withhold approval or substitute its own assessment of what is fair and reasonable as a means of effecting the distribution of client assets for the purposes of Objective 1.

THE CREDITORS' COMMITTEE

35 There is a creditors' committee, constituted shortly after the company entered special administration. It consists of four client members and the FSCS. Its meetings have been attended by at least one representative of the FCA. The FSCS, as a statutory compensation scheme, has a significant role. The great majority of clients are entitled to compensation for any losses arising from the insolvency of the firm and this includes the costs of returning their assets up to a limit of £85,000 per client. In practice, the FSCS is bearing the great bulk of the costs of the administration and will pay at least the vast bulk of the costs of the distribution plan if approved. The administrators have, indeed, appointed a cost assessors selected by the FSCS to advise on the costs of the administration. It will be seen that the FSCS has a keen interest in the outcome of the administration and as part of that, the distribution plan.

THE DISTRIBUTION PLAN

36 The plan has been developed by the administrators after extensive consultation with the FSCS, the FCA, and members of the creditors' committee. The administrators also employed specialist consultants to assist in identifying a suitable transferee. I have read the terms of the SPA, the distribution plan, and the explanatory statement. I have also read the

witness statement of Mr Cadwallader which explains the plan in further details. Mr Bayfield, counsel for the applicants, has also helpfully taken me through it. I do not consider it necessary for the purposes of this judgment to go through the details of the plan. In short, as I have already explained, it provides for the transfer of the client contracts and the client assets to the Nominated Broker. It is anticipated that the vast bulk of the assets will be transferred. In general, this will take place by the transfer of the shares in the custodian companies which will become sub-custodians of the Nominated Broker. As already explained, in the one case where shares are held by an independent prime broker, that broker will itself transfer the relevant assets to the Nominated Broker.

37 Provision is made in the plan for those very limited cases where assets cannot be transferred because of, for instance, a freezing order, or possible sanctions, or for some other reason. Provision is also made for any client who does not wish to remain with the Nominated Broker to require a reversal or, under the terms of business that have been negotiated, to move to another firm. In the latter regard, the administrators agreed with the Nominated Broker that a client will be able to transfer without penalty for a reasonable period after the completion of the transfer.

38 The plan also contains a dispute resolution procedure for the determination of claims. As required by the Rules, the plan explains the allocation of costs which are, in essence, to be shared per capita rather than by reference to value. This is considered by the administrators to be a fairer basis for allocation as the costs of transferring the assets of clients do not vary much according to the size of their portfolio. There is a formula capping the amount of costs at the level of the value of clients' assets. It is also to my mind of some relevance that this method of allocating costs will maximise the liability of the FSCS (and therefore minimise the costs which will fall on the clients themselves).

39 The administrators consider that the transfer to the Nominated Broker is the best way of achieving a return of the assets to clients as quickly as possible in accordance with Objective 1. It is likely to be less expensive than returning assets individually to clients. After the completion of the transfer, clients will be able to give instructions in respect of their assets to the Nominated Broker and, as I have already said, they will be able if they so wish, to move them to another broker or require their return to SVS.

40 Clients of SVS have been given notice of the applications and related documents. In particular, the intended use of the distribution plan was first notified in the administrators' report and statement of proposals dated 25 September 2019. The administrators issued a bar date notice in respect of client assets pursuant to Regulation 11 on 27 November 2019, which was published in the *Gazette* on 29 November 2019, and the *Financial Times* and international edition of the *Financial Times* on 2 December 2019. The distribution plan was approved by the creditors' committee on 21 April 2020 and, together with an explanatory statement, was published to all clients on 24 April 2020 via the administrators' website following notification by email or post. This method of publication is expressly permitted by the Rules. Clients have been able to download the distribution plan and explanatory statement from a dedicated website and, additionally, request hard copies from the administrators without extra charge. Notice of this hearing has been publicised on the same website and in the notifications sent to clients by either email or post, as well as being referred to in the explanatory statement.

41 In addition, the administrators liaised with the court to ensure that a notice was placed on the daily court list to the effect that details for participation in the court hearing could be obtained from the court office and, further, the administrators volunteered to supply the

same on request in the explanatory statement. The hearing took place remotely using Skype for Business and, as I understand it, around 14 clients were on the call. None of them objected to the distribution plan.

42 In addition, the distribution plan was notified to the FCA in accordance with Rule 146(3)(d) and the FCA has confirmed it does not intend to attend a hearing. As I have said, it was involved in the formulation of the plan and it has given the FCA waiver in respect of the transfer of client money, which may reasonably be regarded as part of the same overall transaction (albeit subject to other regulations). The FSCS, which is intensely interested in the plan by reason of its liability for costs, has not objected to the plan. Indeed, in its capacity as a member of the creditors' committee, it joined in approving it.

43 I have so far referred to the Nominated Broker anonymously. There is a reason for this. The identity of the Nominated Broker has been disclosed to the creditors' committee and the FCA and I have been informed of its identify. The reason for the anonymisation is a concern that if its identity was disclosed before the transfer had been effected it would be overwhelmed with premature enquiries from clients, who might understandably be anxious about their assets and interests. The Nominated Broker has explained in a letter to the administrators that its preparations for addressing enquiries from clients have been affected by the Covid-19 pandemic which has required homeworking. It has had an impact on IT systems and slowed the recruitment of additional staff. They have asked that their identity should not be disclosed until 1 June 2020.

44 I do not consider the anonymisation of the Nominated Broker to be a cause for concern. It is regulated by the FCA and its identity, as I have already said, has been disclosed to the FCA and the members of the creditors' committee. The administrators have also explained that they are prepared to disclose the identity of the broker to clients on a confidential basis on the footing that clients agree not to contact the broker before the SPA becomes effective and the transfer is completed. Moreover, as I have already explained, clients have the right to transfer to another broker or require a transfer back to SVS. So if they have any concerns about the identity of the Nominated Broker, notwithstanding all of the matters which I have mentioned, they are able to transfer their assets elsewhere.

45 I should highlight one specific point concerning the distribution plan. It applies not merely to the client and his assets in the hands of the administrators on appointment but also to the fruits of those assets, such as dividends and maturity payments accruing since the date of the administration. These monies are not part of the client money pool under CASS 7 or 7A. CASS 7A.2.7 requires such post-administration monies to be returned to clients.

46 Mr Bayfield submits that there is no logical reason not to transfer the assets, or the fruits of those assets. He also submits that the transfer of the assets to the Nominated Broker is a way of returning them to clients. He informed me that a similar approach was taken in the case of *Re Beaumont* (referred to above) where Arnold J approved the distribution plan. I accept these submissions. Under the Regulations, which concern client assets generally, the return of assets is defined broadly enough to include a return by way of transfer to a third party. I can see no reason to read CASS 7A.2.7 differently. I also accept the submission that it makes commercial sense for the fruits to be transferred with the assets.

47 I return then to the question of approval. The two statutory pre-conditions under Rule 143(5)(a) have been complied with. As to the exercise of my discretion, the plan has been carefully formulated in consultation with the creditors' committee, the FCA, and the FSCS. Clients have been notified of this hearing and, though a number have attended, none has

objected. The administrators consider, in the exercise of their professional judgment as office holders, that the plan is an efficient and speedy way of returning assets in accordance with Objective 1. I give appropriate weight to their views. Overall, I am satisfied that this is a proper case for approval of the distribution plan and I give that approval.

48 Turning to the issues concerning client money, the first part of SVS's application concerns the transfer of pooled client monies to the Nominated Broker as part of the same overall transaction as the transfer of assets I have dealt with above. Under CASS 7A.2.4(2), on a "primary pooling event", such as a special administration order, the firm is required to distribute the client money pool in accordance with Rule 7A.2.5, which sets out their client money entitlements. This is stated to be subject to paragraph 4 of that rule, which provides, as an alternative to distribution, the transfer of the client money pool to another firm for safekeeping on behalf of the client. There are various conditions to such transfer contained in paragraph 4(b) to (e) including, so far as material, that the firm has the specific consent of the client for transfer to the other firm and that the other firm has in advance given contractual undertakings that it will comply with the client money regulations and will give certain notices to clients in respect of client money.

49 As to the requirement of client consent, the FSA has provided a waiver pursuant to section 138A of the Financial Services and Markets Act 2000 which gives it the power to disapply, among other things, CASS 7A in respect of any person. The waiver was provided in a letter of 27 March 2020. As to the required undertakings, these were provided by the Nominated Broker on 24 April 2020.

50 I am satisfied that SVS has the power to make the transfer. There is obvious commercial sense in their doing so as part of the broader transfer of assets to the Nominated Broker. The administrators do not strictly require any order from the court. However, it appears that the present case is the first in which such a transfer of client monies has been considered and the administrators would like the protection of a court order directing them that they are at liberty so to act and I am prepared to give that direction.

51 The final limb of the relief sought concerns the terms of any distribution of client monies. The reason for the application is that there is nothing in CASS 7 or CASS 7A about how a firm in administration is to resolve disputes or ascertain the amounts of claims. There is no equivalent of a proving process found under the insolvency legislation. In essence, what is sought on this application is a direction helping to fill that gap. It would allow the administrators first to follow a set dispute resolution procedure and, secondly, to make distributions on the basis that the only clients with a client money entitlement are those who have notified their claims by an extended bar date (24 April 2020) and are either agreed by the administrators or admitted by order of the court. As explained by Mr Bayfield, if there were unresolved claims before any distribution was made, the administrators would make a provision or reserve in respect thereof.

52 The order sought is based on the order made by David Richards J in the case of *MF Global UK Ltd (in special administration) (No 3)* [2013] 1 WLR 3874, where he explained that the problem arose because of the absence of provisions under the then CASS 7 and 7A rules covering disputes or their resolution. At [24], he said that he had no doubt that it would be in the interests of all claimants for there to be such a procedure and I consider that the same applies here. The insolvency has been widely publicised. The administrators have undertaken extensive efforts to notify clients, have provided information derived from the company's books and records, and have invited any clients who dispute that information to provide information of their own. There are some clients who have not engaged but their

potential claims account for a small proportion of the whole. It is, in my view, in the interests of the clients taken as a group that all claims be resolved as quickly as possible and that this takes place under a set procedure.

53 At [25] and following, David Richards J considered the question of jurisdiction and concluded that the court had an inherent jurisdiction in relation to the administration of trust to make the order. Mr Bayfield confirmed that the order in the present case is modelled on the order made by the judge in that case.

54 I consider that it is appropriate to make the order sought and I will do so in the terms of the draft minute of order Mr Bayfield has taken me through.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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**** This transcript is approved by the Judge ****