

Applicants
D N Rackham
Second statement
Exhibit: DNR2
6 July 2020

CR-2018-001745

CR-2018-001881

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (CH.D.)

IN THE MATTER OF BEAUFORT ASSET CLEARING SERVICES LIMITED
AND IN THE MATTER OF BEAUFORT SECURITIES LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
AND IN THE MATTER OF THE INVESTMENT BANK SPECIAL
ADMINISTRATION REGULATIONS 2011

SECOND WITNESS STATEMENT
OF DOUGLAS NIGEL RACKHAM

I, **DOUGLAS NIGEL RACKHAM**, of PricewaterhouseCoopers LLP, 7 More London Riverside, London, SE1 2RT, will say as follows:

A. INTRODUCTION

- 1 I am the same Douglas Nigel Rackham who gave a statement in the proceedings relating to Beaufort Asset Clearing Services Limited ("**BACSL**") on 25 July 2018 ("**Rackham 1**"). I am an insolvency practitioner at PricewaterhouseCoopers LLP ("**PwC**"), a professional services firm of the above address.
- 2 On 1 March 2018, upon the application of the Financial Conduct Authority (the "**FCA**") under Regulation 5(1)(h) of The Investment Bank Special Administration Regulations 2011 (the "**IBSA Regulations**"), BACSL entered special administration by order of Mr M H Rosen QC sitting as a Deputy Judge of the High Court.

- 3 By the same order, Russell Downs, Dan Yoram Schwarzmann and I (all of PwC) were appointed to act as the joint special administrators of BACSL (together, the “**Administrators**”). The appointment became effective at 8:23pm GMT on 1 March 2018.
- 4 On the same date (also with effect from 8:23pm on 1 March 2018), upon the application of the FCA under section 359 of the Financial Services and Markets Act 2000 (“**FSMA 2000**”) and paragraph 13(1)(a) of Schedule B1 to the Insolvency Act 1986 (the “**1986 Act**”), BACSL’s sister company, Beaufort Securities Limited (“**BSL**”), entered administration by order of Mr M H Rosen QC and the Administrators were also appointed as the joint administrators of BSL. On 27 February 2020, the Administrators filed a notice bringing BSL’s administration to an end and, the Administrators’ appointment having come to an end, BSL was formally dissolved on 3 June 2020 pursuant to paragraph 84 of Schedule B1 to the 1986 Act. Accordingly, the present application in relation to BSL is brought in the Administrators’ capacity as the former joint administrators of BSL.
- 5 By application dated 25 July 2018, the Administrators sought, in respect of BACSL, the sanction of a client asset distribution plan for the return of client assets held by it, pursuant to rule 146 of The Investment Bank Special Administration (England and Wales) Rules 2011 (the “**IBSA Rules**”) (the “**Distribution Plan**”). The Distribution Plan was approved by the creditors’ committee on 13 July 2018 and was subsequently approved by this Court on 26 July 2018. It took effect on 27 July 2018.
- 6 I am duly authorised to make this witness statement on behalf of the other Administrators, both in their capacity as the joint special administrators of BACSL and as the former joint administrators of BSL. I exercise primary responsibility for the day-to-day conduct of BACSL’s special administration and (formerly) BSL’s administration.
- 7 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 as a result of the work undertaken by me as an Administrator or provided to me by my colleagues at PwC in connection with the appointments in respect of BACSL and BSL, or by certain employees (or former employees) of BACSL and/or BSL, or by the Administrators’ legal advisers, Linklaters LLP (“**Linklaters**”). This statement has been prepared through the exchange of emails and through face-to-face and telephone meetings between me, my colleagues at PwC and Linklaters.
- 8 Where numbers, percentages and values are provided in this statement, they have been provided to me by my colleagues at PwC and are provided on an approximate basis, save where expressly otherwise stated. Certain matters relevant to the approach to valuations are set out at Appendix 3.

- 9 There is now shown to me a paginated bundle of copy documents marked 'Exhibit DNR2' to which I refer in this witness statement. Save where otherwise stated, references to page numbers are to pages of exhibit **DNR2** and are in the form **DNR2/[Tab]/[Page]**.
- 10 Except where context requires otherwise, capitalised terms used but not defined herein have the meanings given to them in the Distribution Plan. Where I refer to the "Website" in this statement, I am referring to the website (<https://www.pwc.co.uk/beaufort>) set up by the Administrators on or around 2 March 2018 to manage client communications (the "**Website**").
- 11 Nothing in this statement is intended to waive privilege in respect of any matter referred to, and privilege is not being waived.
- 12 This is my second witness statement in these proceedings insofar as they relate to BACSL, and my first witness statement in relation to BSL. A copy of Rackham 1, my witness statement in support of the Distribution Plan application, is exhibited at **DNR2/1/4-52**.
- 13 In brief summary, the Administrators consider the special administration objectives prescribed by regulation 10(1) of the IBSA Regulations to have been sufficiently achieved and achieved to the extent reasonably practicable in relation to BACSL, such that it is now appropriate for them to apply to the Court to end the special administration. For reasons which I will explain in this statement, the Administrators consider that the appropriate exit route for BACSL is compulsory liquidation (a process which has the support of the FCA). In addition, prior to the end of the special administration, there remain certain steps to be taken in accordance with the Distribution Plan, in relation to which the Administrators seek additional relief from the Court.
- 14 In relation to BACSL, I therefore make this witness statement in support of:
- (a) First, an application for directions pursuant to paragraph 63 of Schedule B1 to the 1986 Act, as applied by Regulation 15 of the IBSA Regulations, which seeks:
 - (i) a declaration that Objective 1 of the special administration objectives prescribed by regulation 10(1) of the IBSA Regulations, being the return of client assets as soon as is reasonably practicable, has been sufficiently achieved and achieved to the extent reasonably practicable in relation to BACSL; and
 - (ii) an order that the Administrators shall be at liberty to issue a Long Stop Date Notice to clients within the meaning of clause 1 of the Distribution Plan,

(the "**BACSL Application**").
 - (b) Secondly, an application for directions pursuant to paragraph 63 of Schedule B1 to the 1986 Act, as applied by Regulation 15 of the IBSA Regulations, for declarations that:

- (i) the Administrators be at liberty to cause BACSL to pay unclaimed client money into the Insolvency Service Account with the Bank of England in accordance with the terms of a waiver given by the FCA pursuant to section 138A of FSMA 2000, as described at Section H of this statement; and
- (ii) the Administrators shall pay the fees which the Insolvency Service charges (including any Value Added Tax) for receiving the payments referred to in paragraph (i) as a cost of distributing client money,

(the “**BACSL Client Money Application**”).

- (c) Thirdly, BACSL’s petition, acting by the Administrators, for its compulsory winding-up under the 1986 Act, together with an application for orders that:

- (i) the appointment of the Administrators dated 1 March 2018 shall cease to have effect immediately prior to the making of the order for BACSL’s compulsory winding-up, pursuant to paragraph 79(3)(b) of Schedule B1 to the 1986 Act, as applied and modified by regulation 15 of the IBSA Regulations; and
- (ii) each of the Administrators shall be discharged from liability in respect of any action of his as BACSL’s joint special administrator, with effect from the date falling 28 days from the date on which their appointments cease to have effect, save for any claim or claims made against them (or any of them) prior to that date, pursuant to paragraph 98(2)(c) of Schedule B1 to the 1986 Act, as applied and modified by regulation 15 of the IBSA Regulations,

(the “**BACSL Winding-Up Petition**”). If the BACSL Application is granted, such that a Long Stop Date Notice is issued to clients under the Distribution Plan, the Administrators will necessarily need a period of time during which further steps are taken to complete the administration. For that reason, the Court will be invited at the hearing to adjourn the BACSL Winding-Up Petition to a later date (which is currently anticipated to be in December 2020, subject to the Court’s listing availability).

- 15 In relation to BSL, as explained above, the Administrators’ appointments ceased to have effect from 27 February 2020 and the company was dissolved on 3 June 2020. I therefore also make this witness statement in support of an application for an order that each of the Administrators shall be discharged from liability in respect of any action of his as BSL’s joint administrator, with retrospective effect from 26 March 2020, being the date falling 28 days from the date on which their appointments ceased to have effect, save for any claim or claims

made against them (or any of them) prior to that date, pursuant to paragraph 98(2)(c) of Schedule B1 to the 1986 Act (the “**BSL Application**”).

16 The remainder of this statement is structured as follows:

Section B describes the background to BACSL’s special administration.

Section C sets out a summary of the key elements of the Distribution Plan.

Section D deals with the purpose of the BACSL Application.

Section E describes the progress of BACSL’s administration to date, and, in particular, the achievement of Objective 1 (as defined below).

Section F explains and summarises the outstanding “rump” of client assets, which the Administrators have been unable to return.

Section G deals with the petition for BACSL’s compulsory liquidation.

Section H deals with the position in relation to the “rump” of client money, which the Administrators have been unable to return.

Section I describes how, in practical terms, BACSL’s business will be wound down.

Section J addresses the BSL Application.

Appendices 1 and 2 contain, respectively, a description of the ways in which the Administrators have communicated with clients and a summary of the mass communications sent to them.

Appendix 3 summarises the valuation approach adopted by the Administrators.

Appendix 4 lists the “rump” of assets which are dealt with in Section F.

B. Background to BACSL’s special administration

Key background

17 BACSL is an investment bank within the meaning of section 232 of the Banking Act 2009 (the “**Banking Act**”). It is authorised and regulated by the FCA.

18 BACSL operated within the “Beaufort” group of companies. A corporate structure diagram of the group is at **DNR2/2/53**.

19 BSL operated principally as a provider of a broad range of stockbroking services which it carried out for both institutional (corporate) clients and retail clients. The services included investment advice, arranging for the purchase, subscription, or sale of securities, and managing investments on behalf of clients. BSL was FCA-authorized, but it did not operate as an investment bank within the meaning of section 232 of the Banking Act.

- 20 Prior to its entry into special administration, BACSL operated principally as the custodian of client assets and client money on behalf of clients, in connection with BSL's investment business. It was therefore BACSL which provided the clearing and custodian services for BSL's business, which included settling transactions for clients, the safe custody of client assets, and holding client money.
- 21 BACSL held client assets in one of three ways: in the names of clients themselves; in accounts with third parties (held in BACSL's name); or (most commonly) indirectly, in the names of nominee companies. The primary nominee was Beaufort Nominees Limited ("**BNL**"). Raven Nominees Limited ("**Raven**") was the second main nominee. BACSL held client money in two appointed UK bank accounts and in client money transaction accounts with third parties.
- 22 Prior to their entry into administration, BACSL and BSL together employed approximately 118 staff and eight contractors across their three office locations, namely London St Mary Axe, Bristol and Colwyn Bay. The London office conducted the group's central operations.
- 23 As at 1 March 2018 (entry into administration), BACSL had 29,334 clients, for which it held 40,449 client accounts. Of these, BACSL held client assets for 14,694 clients in 16,099 active accounts, and held client money for 13,879 clients in 15,250 active accounts (of which 2,813 had client money holdings only). BACSL had a significant number of clients (approximately 12,000) who held neither client assets nor client money with BACSL at that time and so not all client accounts required action from the Administrators. The total value of all client assets held as at 1 March 2018 was approximately £429 million.¹
- 24 Of the client assets, these fell predominantly into two main categories:
- (a) "**Electronically Held Securities**"
- Electronically Held Securities is the definition which has been given in the Distribution Plan to securities held in dematerialised form. They are held by BACSL electronically via a local central securities depository or a third-party custodian. These assets comprise various securities, including:
- (I) Equities (i.e. ownership interests) such as shares in companies and closed-ended investment companies;
- (II) Fixed-income securities (i.e. debt instruments making payments in fixed amounts or on a fixed schedule), including bonds and debentures;

¹ This value is based on the approach described at paragraph 81 below.

- (III) Collective investment funds (i.e. pooled investments, including unit trusts, open-ended investment companies, and exchange traded funds); and
- (IV) Derivatives (i.e. instruments which derive their value from an underlying investment), including warrants and stock options.

The majority of these Electronically Held Securities (being approximately 62% by number of securities) were held in CREST on behalf of BACSL in accounts registered in the names of nominee companies (BNL and Raven).²

The remaining Electronically Held Securities (being approximately 38% by number of securities) were not held in CREST, but were instead held by BACSL via third-party custodians, being Cortland Capital Market Services (“**Cortland**”), Shaw and Partners Limited, Reyker Securities and AllFunds Bank S.A.U. (“**AllFunds**”). These third-party custodians principally held non-European securities.

(b) **Physical securities**

A small proportion of client assets (being approximately 8% by total number of securities) were certificated, the holding of which was registered (and represented) by physical certificates. Such certificated assets include share certificates, and certificated bonds and warrants. The underlying assets represented in physical form are largely the same as those electronically held, referred at paragraph 24(a) above. In general, assets held in physical form are less liquid and are logistically more challenging to transfer than the equivalent assets held electronically.

Physical assets have been referred to since the outset of BACSL’s administration as comprising two sub-categories, again as defined in the Distribution Plan: (i) “**Physically Held Securities**”; and (ii) “**Physically Held Certificates**”. In each case, they are securities represented by physical certificates, but are held in different ways:

- (a) Physically Held Securities refer to certificates which are registered in the name of BACSL or one of its nominees (in most cases, either BNL or Raven); and

² CREST is the central security depository for markets in the United Kingdom and Ireland. It is owned and operated by Euroclear UK & Ireland Limited. It is the operator of an electronic settlement system to settle a broad range of securities, and it can also hold stock certificates on behalf of its customers.

- (b) Physically Held Certificates refer to certificates which are registered directly in the names of the underlying clients. The physical certificates were held at BACSL's offices.

25 As to the composition of BACSL's clients:

- (a) 94% (by number) of BACSL's clients were UK-domiciled.
- (b) The majority of clients, being 96% by number, were individuals, who were classified by BACSL as retail clients. Based on the approach described in paragraph 81 below, their client claims have been valued (in aggregate) at approximately £305 million of client assets and £33 million of client money. Of these, 17% by number (i.e. 2,922 clients) have Self-Invested Personal Pension ("SIPP") accounts.³ Again based on the approach described in paragraph 81 below, SIPP client claims have been valued (in aggregate) at approximately £31.9 million of client assets and £11 million of client money.
- (c) The remaining 4% of clients by number are corporates, many of which we believe are small and medium-sized enterprises. Again based on the approach described in paragraph 81 below, their claims have been valued (in aggregate) at approximately £124 million of client assets and £19 million of client money.

Rackham 1

26 In my first witness statement, Rackham 1, I set out a more detailed summary of the background to BACSL's entry into special administration. A copy of Rackham 1 is exhibited at **DNR2/1/4-52** (see paragraphs 10 to 26).

27 I also set out in Rackham 1:

- 27.1 a summary of the statutory framework applicable to BACSL: see paragraphs 27 to 32 of Rackham 1; and
- 27.2 a summary of the circumstances giving rise to the Distribution Plan and its key terms: see paragraphs 33 to 40 and 61 to 72.

28 The role of each of the FCA and the FSCS is of particular importance in a special administration, as described at paragraphs 41 to 55 of Rackham 1.

³ A SIPP is effectively a tax "wrapper" within which a client's investments are placed until they retire and begin to draw their pension – this gives a client the flexibility to choose their pension investments, rather than using a managed pension fund. BACSL treated the individuals with investments in SIPPs (rather than the administrator of the SIPP) as its clients and, accordingly, there could be a large number of clients invested in a single SIPP. Note, however, that this approach did not necessarily reflect the strict contractual position between the parties.

The IBSA Regime

- 29 The IBSA regime, established under the IBSA Regulations and the IBSA Rules, sets out the framework within which the Administrators have been required to conduct BACSL's special administration.
- 30 The IBSA Regulations created a new "special administration" regime for investment banks: see Regulation 3(1). They were enacted in the wake of the collapse of Lehman Brothers amidst the financial crisis.
- 31 The IBSA Regulations define "client assets" by reference to the meaning which the term has in section 232(4) of the Banking Act (Regulation 10B(13)), namely: "*assets which an institution has undertaken to hold for a client (whether or not on trust and whether or not that undertaking has been complied with)*". Section 233(5A) defines "assets" as including "money".
- 32 The term "*client*" is defined in Regulation 2(1) of the IBSA Regulations as "*a person for whom the investment bank has undertaken to receive or hold client assets (whether or not on trust and whether or not that undertaking has been complied with)*".
- 33 Regulation 3(2) of the IBSA Regulations provides the main features of the regime to be that: (a) an investment bank enters the procedure by court order; which (b) appoints an administrator, who, pursuant to Regulation 3(2)(b)(i), is to "*pursue the special administration objectives*" in accordance with the statement of proposals approved by a meeting of creditors and clients and, in certain circumstances, the FCA.
- 34 In most other respects, the procedure is the same as for the (more common) Schedule B1 administration procedure under the 1986 Act, subject to certain modifications specifically prescribed by Regulation 15 of the IBSA Regulations.
- 35 The IBSA Regulations prescribe the three non-hierarchical special administration objectives which an administrator is required to pursue, pursuant to Regulation 10(1):
- (a) "**Objective 1**" is to ensure the return of client assets as soon as reasonably practicable;
 - (b) "**Objective 2**" is to ensure timely engagement with market infrastructure bodies and the Bank of England, the Treasury, FCA and the Prudential Regulation Authority ("**PRA**"); and
 - (c) "**Objective 3**" is to either rescue the bank as a going concern, or to wind it up in the best interests of its creditors.
- 36 The "*return of client assets*" is defined by Regulation 10(5) to mean that the investment bank relinquishes full control over the assets for the benefit of the client, to the extent of the client's

beneficial entitlement or other ownership right to the asset (having taken account of any entitlement the bank itself, or a third party, might have in respect of those assets).

37 In addition, an administrator is entitled to deal with and return client assets in whatever order he or she thinks best achieves Objective 1: Regulation 10(2) of the IBSA Regulations.

38 The order in which Objectives 1 to 3 are listed is not significant, and an administrator is required to commence work on each objective immediately after appointment, prioritising the order of work on each objective as he or she thinks fit, in order to achieve the best result overall for clients and creditors: Regulation 10(3)(a). The order in which the administrator intends to pursue the objectives must also be set out in the statement of proposals made under paragraph 49 of Schedule B1 to the 1986 Act: Regulation 10(3)(b).

39 In accordance with that order, an administrator is required to work to achieve each objective as quickly and efficiently as is reasonably practicable: Regulation 10(4) of the IBSA Regulations.

C. The Distribution Plan – key elements

40 The Distribution Plan sets out the framework for the return of client assets held by BACSL. I describe in this section, at a high level, the key provisions of the plan in accordance with which the Administrators have sought to return client assets.

41 In Rackham 1, paragraphs 33 to 39, I addressed the reasons for applying to the Court for the sanction of the Distribution Plan. The Distribution Plan was formulated in accordance with Chapter 3 of Part 5 of the IBSA Rules, which is titled “Objective 1”.

42 The Distribution Plan was proposed as a procedure pursuant to which the client assets held by BACSL could be returned to clients who were entitled to them, and therefore by which the Administrators could comply with their duties to pursue Objective 1. The Distribution Plan dealt only with the return of client assets (not client money, save where any corporate action or dividend income entitlement in relation to a client asset gave rise to BACSL receiving client money on behalf of the relevant client).

43 The Distribution Plan was approved by this Court on 26 July 2018 (and took effect on 27 July 2018), pursuant to rule 146 of the IBSA Rules. The Distribution Plan has been amended in accordance with its terms on 26 November 2018, 27 February 2019, 30 October 2019 and 21 January 2020. Those amendments are described below.

44 A redline showing the changes between the original Distribution Plan (as approved by the Court on 26 July 2018) and its current version is at **DNR2/3/54-101**. A copy of the Explanatory Statement accompanying the Distribution Plan is at **DNR2/4/102-134**.

The methods by which client assets may be returned

- 45 The Distribution Plan provides for two principal methods by which client assets may be returned:
- (a) The first method is under a “**Transfer**” in accordance with Clause 5;
 - (b) The second method is by an alternative means of “**Distribution**” under Clause 16.
- 46 A “Transfer”, within the meaning of Clause 5, is the default option for a return of client assets under the Distribution Plan. It means that the relevant client assets are transferred to a “Nominated Broker”, to be held for the relevant clients. A Nominated Broker is a broker selected by the Administrators as a transferee.
- 47 There are a number of conditions which must be fulfilled before a client is eligible for a Transfer, which conditions are set out under Clause 5.4. In summary, they require the completion, or the deemed completion, of a “Claimant Options Form” (as defined in the Distribution Plan), and for any liabilities in connection with the assets to have been discharged (i.e. payment of the relevant client’s “Share of Costs” in relation to the administration, or the discharge of any “Security Interest” held over the assets).
- 48 If the assets are not returned by way of a “Transfer” (either because they are not eligible for a Transfer, or because the client elects against a Transfer), they may instead be returned under an alternative means of “Distribution” where a client gives an instruction to this effect on a completed Claimant Options Form. The permitted means of Distribution are set out in Clause 16.1, namely:
- (a) The transfer of some or all of the client assets to another custodian (i.e. a custodian nominated by the client, not by the Administrators);
 - (b) By the Administrators liquidating some or all of the client assets, and paying away the proceeds to (or on behalf of) the relevant client (the “**Liquidation Return Option**”); and
 - (c) In the case of Physically Held Securities, returning them directly to the relevant client or its nominee, where possible, by arranging for the asset to be re-registered in the name of the client or its nominee (as opposed to that of BACSL’s nominee) and returning the certificate itself.

Long Stop Date

- 49 The Distribution Plan made provision for the process of the return of client assets to be brought to an end on the occurrence of a “**Long Stop Date**”. It was included in the plan to facilitate the expeditious return of client assets (rather than reflecting any specific requirement under the IBSA regime legislation).

50 In order to trigger this date, the Administrators have a power to issue a “**Long Stop Date Notice**”, defined as (Clause 1):

“a notice stating that the Administrators have determined, acting reasonably, that they have achieved Objective 1 to the extent reasonably practicable”.

51 This means that the Long Stop Date Notice can be sent once the Administrators have determined that they have ensured the return of client assets to the extent reasonably practicable.

52 The Long Stop Date is defined under Clause 1 as the date falling two months after the date on which the Administrators send the Long Stop Date Notice.

53 Issuing a Long Stop Date Notice has various consequences under the plan, with which I deal in the following paragraphs. In summary, these are: (i) provisions entitling the Administrators to liquidate and deal with assets where the relevant clients have not provided them with the necessary instructions; and (ii) provisions releasing the Administrators from any obligations to return assets which cannot be dealt with or returned, but which ensure that the relevant clients’ proprietary rights to those assets are protected.

54 As to (ii), these provisions afford the Administrators the necessary release and comfort in respect of assets that they have been unable to return during the period of administration. However, since the clients retain their proprietary rights to those assets, it is important for the assets to be preserved after the Administrators leave office.

Clients who fail to complete a Claimant Options Form by the Long Stop Date

55 First, the Distribution Plan makes specific provision for clients who fail to complete a Claimant Options Form. This form was made available to all clients who were eligible for a Transfer shortly after the Distribution Plan took effect (and was also made available on the Website) in accordance with Clause 15.1 of the Distribution Plan. In short, the form enables each client to give instructions to the Administrators as to how the relevant client assets should be dealt with (for example, whether the assets should be subject to a Transfer or Distribution, as described above).

56 Clause 15.5.1 deals with any Claimant (whose claim to assets has been accepted by the Administrators) who has not provided the Administrators with such instructions. It contains a ‘deeming provision’, entitling the Administrators, in effect, to treat any such client as having elected the “Liquidation Option”, subject to a number of provisos.

57 The Liquidation Option is defined at Clause 17.1.7 and is one of the “Costs Options” through which clients may discharge any outstanding obligations to BACSL (which is a necessary condition to receiving a Transfer or a Distribution of their assets). The provisos are, in summary, that the Administrators consider that it is appropriate and consistent with Objective 1 to do so, and that the client has been given no less than three weeks’ notice in writing of

the intention to liquidate (and the client still fails to respond within that period). (It is different from the Liquidation Return Option referred to above, under which a client has made a positive election for this means of return).

- 58 Clause 15.4 further provides that if, by the Long Stop Date, a Claimant has not provided a completed Claimant Options Form, the Administrators may, if they deem it appropriate, liquidate the client assets and return the proceeds of the liquidation to the Claimant, after deducting that Claimant's Share of Costs and discharging any Security Interest. There are a small number of clients who have failed to complete the Claimant Options Form (or otherwise engage with the Administrators for the return of their securities), for whom the Administrators anticipate being able to rely on this provision to return the liquidation proceeds to the relevant client, because they hold bank details for that client.

Clients with Encumbered Client Assets

- 59 Second, the Distribution Plan makes provision for clients who hold "**Encumbered Client Assets**", but fail to provide instructions to the Administrators prior to the Long Stop Date. In short, an Encumbered Client Asset is an asset over which a third party or BACSL exerts a "Security Interest" as defined in the Distribution Plan (for example, shares subject to a charge). In circumstances where either a third party or BACSL exerts a Security Interest, they will fall within the definition of a "Security Holder" for the purposes of the Distribution Plan.

- 60 If, by the giving of the Long Stop Date Notice, the Administrators still hold any Encumbered Client Assets, clause 7.9 of the Distribution Plan provides, in summary, that:

- (a) if the client who is entitled to those Encumbered Client Assets has not provided the Administrators with instructions via a Claimant Options Form, a Security Holder will be entitled to participate in Distributions or "Shortfall Claims" to the extent of their entitlement as against that client (a "Shortfall Claim" is, in summary, an unsecured claim against the estate reflecting the value of any client assets that cannot be returned); and
- (b) prior to any Distribution, the share of the costs of the administration due from the client with those Encumbered Client Assets may be satisfied by the Administrators liquidating sufficient of those client's Encumbered Client Assets to meet such costs.

- 61 The significance of this is that, under the standard terms and conditions between the Beaufort entities and their clients, BSL and BACSL benefit from a Security Interest over clients' assets and money insofar as sums are owed to them. BACSL is the only party which has asserted any such interest. Accordingly, from the date on which the Long Stop Date Notice is given, the Administrators may in principle use Clause 7.9 of the Distribution Plan to satisfy its security by appropriating client assets to meet a client's outstanding liability to

BACSL (if the client has failed to give the requisite instructions).

62 The Administrators do not, however, anticipate relying on clause 7.9 to liquidate any such client assets. The only such assets (over which BACSL holds security, and where the client has failed to give instructions) now remain those which the Administrators have concluded are not capable of being liquidated (for one or more of the reasons described in Section F below; for example, where it has not been possible to find a willing buyer). If this remains the case at the Long Stop Date, the Administrators intend to waive BACSL's security over those assets and, if it is possible to do so, return the assets to clients (and have already done so in certain cases to date).

63 The Administrators are in discussions with a new broker which may be able to liquidate certain securities that previous brokers have been unable to liquidate. Insofar as this proves to be the case by the Long Stop Date, and insofar as the Administrators are not prevented from returning securities by the issues described elsewhere in this statement, a small number of further returns may be possible as a result of the ability to rely on clause 7.9 following the Long Stop Date Notice. Otherwise, the position is as set out in the above paragraph.

Non-Returnable Client Assets

64 Third, and critically, there is a category of assets defined under the plan as "**Non-Returnable Client Assets**". This category comprises either assets that are not under the Administrators' control, or assets which the Administrators determine (in their absolute discretion, acting reasonably) cannot be the subject of a Transfer or Distribution for "*any legal or practical reason*". All of the assets that have not been returned to clients to date are Non-Returnable Client Assets and the categories of such assets are further broken down in Section F below.

65 If, by the Long Stop Date, the Administrators still hold any Non-Returnable Client Assets, Clause 10.4 of the Distribution Plan provides, in summary, that:

- (a) The Administrators are not obliged to take any further action with respect to such assets pursuant to the plan, and are released from any obligations pursuant to the plan in respect of those assets;
- (b) The clients for whom such assets are held retain their beneficial ownership rights in respect of such assets, and they have the benefit of a "Shortfall Claim" against BACSL's general estate, which is deemed to have been submitted as a proof of debt under Rule 152 of the IBSA Rules.

66 It is important to note that clients do not lose their proprietary rights in the assets simply because the Administrators' obligations under the Distribution Plan fall away (as made clear by Clause 10.4.1).

Tainted Client Assets

- 67 Fourth, there is a category of assets defined under the plan as “**Tainted Client Assets**”, which the Administrators have identified (in accordance with the Clause 1 definitions) as being, in summary, assets which are the subject of a restraint order (i.e. an order prohibiting the disposal of the assets) issued by a competent court, or which the Administrators (acting reasonably) conclude may be tainted due to association with any actual or alleged criminal conduct.
- 68 If, by the Long Stop Date, the Administrators still hold any Tainted Client Assets, Clause 11.3 of the Distribution Plan provides, in summary, that the Administrators are not obliged to effect a Transfer or Distribution of the assets, and are released from any obligations under the plan with respect to them. Again, it is important to note that clients do not lose their proprietary rights in the assets simply because the Administrators’ obligations under the Distribution Plan fall away.
- 69 As at the date of this statement, there are four instances in which assets are characterised as Tainted Client Assets, which are held for eight clients in total. As explained further below (Section F), although Tainted Client Assets are held for eight clients only, by value they comprise a majority of the “rump” of client assets which the Administrators have been unable to return (with a total estimated value of £5.4 million).
- 70 The first instance concerns Tainted Client Assets held within three client accounts. Initially, the Securities & Futures Commission of Hong Kong (“**HKSFC**”) informed the Administrators that they were investigating alleged market manipulation in relation to the client accounts and, accordingly, that the contents of those accounts should be restrained. Accordingly, the Administrators treated the assets in those accounts as Tainted Client Assets on the basis that they may be tainted due to their association with actual or alleged criminal conduct. Subsequently, on 16 July 2019 the HKSFC obtained an injunction granted by the High Court of Hong Kong (Court of First Instance) against a number of defendants, some of whom are clients of BACSL.⁴ The effect of the injunction was to prevent the Administrators from dealing with the assets held by three clients in their accounts with BACSL (albeit I understand that the injunction has not yet been recognised in this jurisdiction). The assets contained within these accounts have a total value of £0.4 million.
- 71 The second instance concerns a group of Tainted Client Assets held for two clients, as a result of two separate injunctions granted by the High Court of Hong Kong.
- 72 First, by an injunction granted on 21 August 2018 by Deputy High Court Judge Keith Yeung, an entity known as China Times Securities Limited (“**CTSL**”) was restrained from dealing

⁴ A copy of the injunction has not been exhibited to this statement for reasons of client confidentiality. The Administrators are able to make a copy available to the Court in advance of the hearing if so required.

with shares in China Silver Group Limited ("**CSGL**"): a copy of the order is at **DNR2/5/135-137**. The impacted client account contains shares in CSGL which were previously held via CTSL (which was not a BACSL client). The Administrators understand that, prior to the order being granted, the shares subject to the injunction were in fact transferred from CTSL to State Street Corporation ("**State Street**"), which is the sub-custodian of Cortland (BACSL's own third-party custodian), to be held for a BACSL client, and that State Street considers itself to be bound by the terms of the injunction, such that it will not effect a transfer without the express consent of the High Court of Hong Kong (an application for consent being a matter which State Street considers to be for the impacted client). The Administrators have informed the impacted client of the position and suggested that it may wish to apply to the Hong Kong court, but it has confirmed that it does not intend to do so.

- 73 Second, by an injunction granted on 4 August 2017 by The Honourable Madam Justice Lisa Wong, a series of previous orders dated 7 April 2017, 21 April 2017 and 28 April 2017 were varied: see **DNR2/6/138-141**. The Administrators have not been able to obtain copies of those orders, but their overall effect appears to be that an entity known as Alegana Enterprises Ltd ("**AEL**") was made subject to a freezing injunction such that it was unable to transfer shares in Pan Asia Environmental Protection Group Limited ("**PAEPGL**"). Again, the Administrators understand that, prior to the relevant orders being granted, the shares in PAEPGL were transferred from AEL to State Street to be held on behalf of a BACSL client, and that State Street is unwilling to effect a further transfer without the express consent of the Hong Kong court. The impacted BACSL client has given no indication that it intends to seek any such consent. (Moreover, the impacted client is itself subject to a restriction preventing it from transferring assets as a result of the fact that it is a defendant to the injunction described at paragraph 70 above.)
- 74 The assets affected by the two civil injunctions described above together have a total value of £1.7 million.
- 75 The third group of Tainted Client Assets are held for one client who is the subject of a freezing injunction granted by HHJ Singleton QC in the High Court of Justice (Family Division) on 20 February 2019 in the context of divorce proceedings, the effect of which is that BACSL is unable to dispose of any assets held for that client other than a transfer to a new broker (provided that the applicant under the freezing order is notified of the transfer and the identity of the new broker).⁵ Despite extensive efforts to bring about a transfer through correspondence with the client and his legal advisers as to the preferred broker to whom the assets should be transferred, the Administrators have been unable to obtain instructions

⁵ A copy of the injunction has not been exhibited to the statement for reasons of client confidentiality. The Administrators are able to make a copy available to the Court in advance of the hearing if so required.

from the client and work is ongoing in this regard. The assets held by this client comprise approximately £0.2 million of the remaining Tainted Client Assets.

76 The fourth group of Tainted Client Assets were the subject of three restraint orders made by the Crown Court sitting at Kingston on 4 December 2014 at the request of the Crown Prosecution Service (“**CPS**”), and were held for three clients. The relevant background to the orders is partly described at paragraphs 26.3 to 26.4 and paragraphs 88.2 to 88.3 of Rackham 1. In summary, the CPS applied to the English court to register an external forfeiture order under Article 20 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“**ERO**”). The external order in question was a Final Order of Forfeiture made by the United States District Court of the Eastern District of New York in respect of three accounts held with BACSL with which the restraint orders were concerned. As part of the English proceedings, the Administrators invited the Court to vary the restraint orders to ensure that the restrained assets could be used to meet certain expenses of the BACSL administration. On 11 November 2019, the Right Honourable Sir Geoffrey Vos made an order granting the Administrators the relief they sought and appointing an enforcement receiver pursuant to Article 20 of the ERO. The order requires the Administrators to take all reasonably practicable steps to transfer the cash and assets subject to the restraint orders to the court-appointed enforcement receiver (after making deductions for costs and expenses) (paragraph 8). On 3 July 2020, the enforcement receiver confirmed the bank account details required to enable the Administrators to transfer cash (but not assets) pursuant to the order. Despite repeated efforts over several months to obtain from the enforcement receiver instructions as to how the assets should be transferred, such instructions have not been forthcoming, primarily because (as the Administrators understand matters) the enforcement receiver does not yet have an alternative broker capable of receiving the assets. This issue accounts for approximately £3.1 million of the overall value of the remaining Tainted Client Assets.

77 The Administrators do not consider that any of the above issues need delay the giving of a Long Stop Date Notice or the conclusion of the administration because they have taken all reasonably practicable steps available to them to deal with those assets (so far as permitted by law). Should anything change before the date of the hearing of this application, the Administrators will update the Court. Insofar as the Administrators are not in a position to return these assets before they leave office, they will remain with BACSL in liquidation (as to which, see below) under the control of the Official Receiver.

D. Purpose of the BACSL Application and the proposed exit route

78 For reasons which I describe in the following Section E, the Administrators have reached a point of near-completion under the Distribution Plan. The Administrators have determined that the special administration objectives have been sufficiently achieved, and, in particular, the objective of returning client assets (Objective 1) has been achieved to the extent

reasonably practicable.

79 The Administrators have succeeded in returning to clients the vast majority of client assets in BACSL's control as at the date of the administration.

80 As broken down in this table, of assets which were valued at approximately £429.1 million (held by BACSL at the date of administration) for 17,507 clients, the assets which remain are valued at approximately £10.3 million and are held for 1,682 clients (representing 9.6% of the original clients by number and 2.0% of the original assets by value):

Category of client	No. of clients	Proportion of the original 17,507 clients who held cash/assets	No. of affected assets	Proportion of original assets by number	Value of Assets (£000)	Proportion of original assets by value	Amount of client money (£000)	Proportion of original client money.
A) Total clients								
Start of the administration (clients who held cash/assets)	17,507	-	61,499	-	429,100	-	53,162	-
B) Clients who have had all of their client assets and client money returned								
Total returned assets/cash	15,825	90.4%	59,102	96.1%	418,758	97.6%	50,060	94.2%
C) Clients who have had either some or none of their client assets or client money returned								
Total remaining clients	1,682	9.6%	2,397	3.9%	10,342	2.4%	3,102	5.8%
(i) Remaining clients who have had no transfer out	425	2.4%	527	0.9%	2,397	0.6%	1,736	3.2%
(ii) Remaining clients who have had some (but not all) of their assets transferred out⁶	1,257	7.2%	1,870	3.1%	7,945	1.8%	1,366	2.6%
(iii) Remaining clients who hold Tainted Client Assets	8	0.1%	272	0.4%	5,393	1.3%	2,648	5%

⁶ This is referred to as a "partial transfer" and means that a client has received a proportion of their client assets or client money, but that a residual balance remains with BACSL.

- 81 In Appendix 3, I explain the valuation approach the Administrators have used for valuations ascribed to the remaining assets recorded in the table above (i.e. category “C”). As I explain in more detail in Appendix 3, in the first months of the BACSL administration, valuations were provided by a third-party data provider (Objectway) or by an expert valuation consultant instructed by the Administrators. Given the passage of time and changes in asset values, it is no longer always appropriate to use those valuations for the remaining assets, such that the Administrators have adopted the methodology described in Appendix 3. For the figures in the column “Value of Assets” (column 6 of the above table), in respect of the assets held at the start of the administration (i.e. category “A”), the valuations are either taken from those provided in the early months of the BACSL administration or, where there is an updated valuation based on the methodology described in Appendix 3, that valuation is used instead. Category “B” is simply the difference between the other two categories.
- 82 The Administrators have considered the available exit routes for BACSL’s special administration, and, for reasons I explain in Section G below, have determined that it is appropriate for BACSL to be compulsorily wound up and for the Official Receiver to act as its liquidator. The principal reason why compulsory liquidation is the appropriate exit route is that BACSL continues to hold a “rump” of client assets which it is unable to return to the clients entitled to them, such that maintaining BACSL in an insolvency process will safeguard the ability of those clients to assert their proprietary rights to the assets in the future (if it is possible for them to do so).
- 83 The table above illustrates that despite the very significant returns of client assets, there remains a small “rump” of assets which it will not be possible to return. I address the categories of these assets (and the reasons why they cannot be returned) in Section F below.
- 84 As a result, the Administrators have determined that all such assets should be classified as “Non-Returnable Client Assets” within the meaning of the Distribution Plan (Clause 1), because it is not reasonably practicable to pursue any further attempts to return them. If and to the extent that the situation changes prior to the termination of the Administrators’ appointment, such that it becomes possible to make further returns, the Administrators will of course take steps to do so.
- 85 As described above, the Distribution Plan contains its own mechanism for bringing an end to the client asset distribution process (and, in particular, for the impact on assets which cannot be returned at that time). The power to issue a Long Stop Date Notice can be invoked if the Administrators consider (as they now do) that Objective 1 has been achieved to the extent reasonably practicable.
- 86 It is my understanding that the Administrators should stay in office only for as long as they consider that the statutory objectives of the BACSL administration can be further advanced. In theory, the Administrators could remain in office indefinitely to pursue every possible

avenue for returning client assets, however remote the prospect of such returns, and however low in value those assets, in pursuit of Objective 1. However, this course of action would be disproportionate and would result in significant wasted costs with little (if any) corresponding benefit.

- 87 The costs attributable to achieving Objective 1 (and, in turn, the costs share to be borne by each client, defined in the Distribution Plan as the “Claimant’s Share of Costs”), has to date reflected the Administrators’ prudent estimate (determined by the Administrators at an early stage in the administration of BACSL) of what the total costs of pursuing Objective 1 would ultimately be. There will be a reconciliation at the conclusion of the administration, and to the extent that the actual costs incurred are lower than the total costs reserve, clients who have paid their Claimant’s Share of Costs will be entitled to a rebate, reflecting the difference between estimated and actual costs. The FSCS has paid the Claimant’s Share of Costs for a significant number of clients to whom assets have been returned (being the “FSCS Protected Claimants”, as defined in the Distribution Plan) and is consequently now BACSL’s largest creditor.
- 88 However, based on the costs incurred to date and anticipated to be incurred by the Long Stop Date, the Administrators do not expect that they will be in a position to pay any rebate to clients. There is no scope to seek further costs from clients so, although in theory any additional costs would fall on clients (and the FSCS on their behalf), in practice any costs above the costs reserve would be borne by the Administrators themselves. In light of the various obstacles to returning the remaining assets (explained in Section F), the Administrators consider that it would be unreasonable and disproportionate to incur additional costs in seeking to make further returns based on the remote prospect that further steps will become available in the future.
- 89 As at the date of the Administrators’ appointment, the Statement of Affairs filed at Companies House recorded that BACSL had unsecured liabilities of £1,911,120.39, comprising £25,000 due to a single preferential creditor (HMRC), £223,786.58 due to a total of 16 unsecured creditors, and £1,662,333.81 owed to group undertakings. The Administrators are aware of five further preferential creditors, excluded from the Statement of Affairs, who are owed unpaid holiday pay of £10,635.41. It was expected that BACSL would have only £59,000 worth of assets available to meet unsecured creditors’ claims (although that sum would never have been sufficient to meet the expenses of the administration, which rank ahead of the claims of unsecured creditors in any event). BACSL’s Statement of Affairs is exhibited at **DNR2/7/142-150**.
- 90 Since then, the FSCS has paid the costs contributions in relation to the vast majority of BACSL’s clients who are eligible for compensation, pursuant to a Compensation Deed dated 24 August 2018, exhibited at **DNR2/8/151-170**. The total costs contributions which the FSCS has paid to date amount to approximately £47.3 million. Pursuant to clause 6 of the

Compensation Deed, upon paying the costs contribution of an “FSCS Protected Claimant”, the FSCS was immediately subrogated to “*all of the rights and claims of that FSCS Protected Claimant against BACSL...*”. This would extend to the Shortfall Claims of clients against BACSL who have received compensation from the FSCS. The FSCS is therefore by far BACSL’s largest unsecured creditor, representing approximately 98% of all unsecured claims by value. (Non-FSCS eligible clients have paid cost contributions of £1.1 million).

- 91 In the Explanatory Statement to the Distribution Plan, clients were informed that “*The Administrators anticipate that the Long Stop Date will occur only as and when they have taken all reasonably available steps to return client assets to clients*” and that “*The administrators will notify all clients two months in advance of the Long Stop Date*”: see paragraph 3.3 of the Explanatory Statement.
- 92 Nonetheless, issuing the Long Stop Date Notice will have consequences for those clients to whom assets cannot be returned: namely, as I have explained, the Administrators will be released from their obligations to return those assets. Whilst this will not have any impact on the clients’ proprietary rights to their assets (which subsist), the Administrators consider that the prudent course is to seek the Court’s directions in relation to the sending of the Long Stop Date Notice, in the terms set out at paragraph 14(a) above.
- 93 In particular, the Administrators recognise that the affected clients might wish to raise objections to their client assets being designated as “Non-Returnable Client Assets”, and to argue that, contrary to the Administrators’ reasonable determination, there are further steps open to the Administrators to continue attempting to return their assets to them.
- 94 To this end, all clients and creditors were notified of the petition and applications described in this statement and of the window fixed for the hearing by notice published on the Website on 19 June 2020: see **DNR2/9/171-175**. Between 26 and 29 June 2020, the Administrators wrote directly to all clients and creditors of BACSL to provide further notice of the petition and applications described in this witness statement: an example email is exhibited at **DNR2/10/176-178**. A copy of this witness statement, the petition and the relevant application notices will be published on the Website as soon as they have been filed with the Court. I describe at paragraph 200 below one complaint received in response to these notices (which complaint the Administrators understand has now been resolved).

E. Progress of BACSL’s Administration

- 95 In this section, I address the extent to which the Administrators have successfully achieved the special administration objectives. As I have explained above, the Administrators have been extremely successful in returning client assets and client money to clients: see the table at paragraph 79.

96 The progress of the administration is reported to stakeholders by means of six-monthly progress reports, the most recent of which was published on 31 March 2020, and which covers the period 1 September 2019 to 29 February 2020: see **DNR2/11/179-219**.

The statement of proposals

97 The Administrators' statement of proposals (the "**Proposals**") in respect of BACSL was made available to clients in advance of the first meeting of creditors and clients: see **DNR2/12/220-275**. The Proposals stated that the Administrators intended "*to pursue Objective 1 as a priority whilst concurrently pursuing Objective 2 and 3 ii*": see **DNR2/12/225**. The Proposals were approved by a vote on 10 May 2018 at the initial meeting of clients and creditors of BACSL.

98 At that meeting, a creditors' committee was appointed to assist the Administrators in the discharge of their functions, and to represent BACSL's clients as a whole. The committee was initially constituted by five client members, in addition to observers (including a representative of the FSCS) to ensure that a broad range of stakeholders would be represented. I summarised the composition of the creditors' committee at paragraphs 56 to 60 of Rackham 1.

99 As foreshadowed in the Proposals, the Administrators have sought to prioritise Objective 1 without disproportionately harming the pursuit of Objective 3(ii) (winding up BACSL in the best interests of creditors).

100 Objective 2 concerns the "*timely engagement with market infrastructure bodies and the Authorities pursuant to regulation 13*", which the Administrators have met by liaising frequently and consulting with the FCA and the FSCS throughout the course of the administration, and (in relation to the conclusion of the administration) the Insolvency Service and office of the Official Receiver. Representatives of the FCA and the FSCS are invited to attend, and have attended, all meetings of the creditors' committee throughout the administration, and the FSCS has formally been a member since 26 November 2018. Moreover, the Administrators have to a more limited extent engaged with the PRA and the London Stock Exchange.

101 The Proposals stated that the Administrators did not consider it possible to rescue BACSL as a going concern (Objective 3(i)), and accordingly that they intended in due course to take appropriate steps to wind up BACSL in the best interests of creditors (Objective 3(ii)). I have explained above that the main creditor of BACSL is the FSCS and that no dividend will be paid to unsecured creditors.

The means of returning client assets

- 102 As set out above, the large majority (by number and value) of client assets in active accounts held by BACSL at the commencement of the administration have now been returned to clients.
- 103 The return of client assets has taken place, primarily, via one of two mechanisms (reflecting the two methods described at paragraphs 45 to 48 above):
- 103.1 either as part of a group of “Transfers” to a “Nominated Broker” (the “**Bulk Transfers**”), in accordance with Clause 5 of the Distribution Plan; or
 - 103.2 via transfers to individual brokers on behalf of individual clients who selected their own brokers (the “**Bespoke Distributions**”), in accordance with Clause 16 of the Distribution Plan.
- 104 16,895 client transfers took place as Bulk Transfers and 449 client transfers took place as Bespoke Distributions.
- 105 As to the Bulk Transfers:
- (a) 15,807 client accounts were transferred (in whole or part) to The Share Centre Limited (“**TSC**”), which was the primary Nominated Broker under the Distribution Plan, by way of a series of Bulk Transfers; and
 - (b) 1,088 client accounts were transferred (in whole or part) to an alternative Nominated Broker (AFH Private Wealth, or “**AFH**”), which acquired the former Colwyn Bay client base (as described at paragraph 72 of Rackham 1), also by way of Bulk Transfers.
- 106 In addition, a number of clients have had their client assets returned to them via alternative mechanisms, namely:
- (a) over 550 clients have had securities re-registered directly into their names (the securities having previously been registered in the name of a nominee entity);
 - (b) 81 clients requested the Administrators to liquidate all or part of their client portfolio and received the cash proceeds into a bank account nominated by them, in accordance with Clause 16 of the Distribution Plan; and
 - (c) 128 clients have elected to abandon all or part of their client portfolio by electing for the option included in Section 1C of the Claimant Options Form (the assets then being surrendered and forming part of BACSL’s estate).
- 107 A smaller number of clients had their client money returned to them as follows:
- (a) 23 clients had client money paid directly to bank accounts nominated by them, in accordance with Clause 16 of the Distribution Plan; and

- (b) 90 clients had client money returned directly to client accounts held with the administrators of the SIPP scheme in which they participate.

The Bulk Transfers

- 108 As I described above, the large majority of returns have taken place by way of “Bulk Transfers” to Nominated Brokers in accordance with Clause 5 of the Distribution Plan.
- 109 The two Nominated Brokers, TSC and AFH, were selected after an extensive process of identifying appropriate transferee brokers (including in consultation with the creditors’ committee): see paragraphs 67 to 72 of Rackham 1.
- 110 The Administrators faced considerable difficulty in identifying brokers with the ability and willingness to accept transfers from the Beaufort group, including due to:
- (a) the nature of the client base and asset book (in particular the number of clients dealing in very low value stocks (colloquially referred to as “penny stocks”), as well as the prevalence of unlisted, illiquid securities among client assets held by BACSL); and
 - (b) the stigma attached to the Beaufort brand in the market, in light of the irregularities described at paragraphs 22 to 26 of Rackham 1, which resulted in the companies being placed into administration (in particular, certain brokers expressed a concern about damaging relationships with their existing client base).
- 111 In summary, a large number of potential brokers were approached and requests for information were sent to 13 potential brokers. After a substantial amount of work in co-operation with the creditors’ committee and regulatory bodies, the three brokers considered most suitable were invited to make presentations to the Administrators. TSC was ultimately selected as the principal Nominated Broker and received the first Bulk Transfer in September 2018. TSC and AFH were the transferee brokers for subsequent Bulk Transfers.
- 112 The Bulk Transfers took place as follows to clients who had completed the necessary formalities to be eligible for such transfers:
- (a) On 24 September 2018, the first Bulk Transfer to TSC took place and approximately 12,000 clients (representing c.70% of the total client base by number) had assets transferred.
 - (b) On 6 November 2018, the first Bulk Transfer to AFH took place and approximately 300 clients had assets transferred.
 - (c) On 12 November 2018, the second Bulk Transfer to TSC took place and approximately 3,100 clients had assets transferred.
 - (d) On 28 January 2019, the third Bulk Transfer to TSC took place and approximately 750 clients had assets transferred.

- (e) On 16 April 2019, the second Bulk Transfer to AFH took place and approximately 30 clients had assets transferred.
- (f) On 21 May 2019, the fourth Bulk Transfer to TSC took place and approximately 10 clients had assets transferred.
- (g) On 17 September 2019, the third Bulk Transfer to AFH took place and approximately 730 clients had assets transferred.

113 Although TSC and AFH were the most appropriate options as Nominated Brokers, there were limits to the assets and clients they were able to accept. For example, TSC was unable to accept clients resident in certain jurisdictions (so-called “red” jurisdictions) or holding non-UK registered stock, and a large number of physical assets were unacceptable to both TSC and AFH. Similarly, the brokers were unable to accept certain individual SIPP clients where they did not have a pre-existing contractual relationship with the administrators of the SIPP in which clients were invested.

114 Where possible, the Administrators arranged further transfers to deal with certain types of clients or assets on an *ad hoc* basis to brokers other than the Nominated Brokers, in what were effectively “bulk” Bespoke Distributions. Most significantly, on 7 February 2019, 107 clients were transferred to City of London Markets with client consent. By way of further example, in or around October 2019, the Administrators secured the agreement of investment managers James Brearley & Sons Limited (“**JBS**”) to receive assets held for some (but not all) clients invested in two large SIPP accounts. On 16 October 2019, a transfer of assets held by 70 SIPP clients to JBS took place, and a further 8 SIPP clients were transferred on 31 January 2020.

115 Not all transfers have entailed a client being transferred in full: where this did not prove possible, approximately 1,257 clients have been subject to a “partial transfer” only (i.e. only some of their assets and money have transferred, leaving a residual balance of their entitlement on BACSL’s books).

Bespoke Distributions

116 In relation to Bespoke Distributions, it was not, in every case in which a client nominated their own broker, always possible to carry out the requested transfer, for example where the broker was unable to accept the type of asset held by the client (or could only accept a subset of a client’s assets). As explained above, Bespoke Distributions took place in respect of 449 client accounts.

117 There were 75 clients who requested a Bespoke Distribution for whom this was not in fact possible: in those cases, the client was invited either to identify an alternative broker for a Bespoke Distribution, to liquidate their holdings, to have the assets re-registered into their own name (where possible), or to abandon the asset if necessary.

Communications with clients

- 118 Prior to and during the promulgation of the Distribution Plan, the Administrators made extensive efforts to communicate with clients and other stakeholders (such as brokers to whom assets would be transferred). I described in Annex A to Rackham 1 the efforts which we undertook to communicate with clients from the date of our appointment.
- 119 The Administrators consider that all reasonable and proportionate steps have been taken to date to communicate with or in respect of clients, with a view to returning all client assets as far as reasonably practicable.
- 120 During the process of returning assets to clients, the Administrators have continued to pursue an extensive communications strategy, particularly as regards clients who have not responded to earlier communications, or who have not provided the necessary instructions for return of their client assets. We have also, where possible, maintained close communication with those clients to whom a return of client assets has proved challenging, including seeking instructions as to how they wish to deal with their remaining assets.
- 121 At Appendix 1 to this statement, I describe at a high level the key steps which we have taken to communicate with clients to date. At Appendix 2, I describe (also at a high level) each mass communication sent to clients.
- 122 The Administrators consider that this close level of communication has been key to achieving the success of BACSL's administration. In particular, it has resulted in a number of successful returns to certain types of clients, including to:
- (a) clients who chose to receive Bespoke Distributions or who were the subject of Bulk Transfers, but where the relevant transferee brokers were unable to accept all of that client's assets. In some cases, communications with brokers have resulted in partial transfers becoming full transfers, for example because it was possible to establish the conditions upon which the brokers would accept the remainder of a client's assets (for example, some brokers would only accept electronic assets if they were held in CREST so, where possible, the Administrators moved assets to CREST from other custody arrangements to enable a transfer of those assets). In other cases, the Administrators considered whether alternative brokers could accept the problematic stock lines, based on other Bespoke Distributions that had already been completed, and communicated this to affected clients;
 - (b) clients to whom a return of assets was made possible by re-certificating or transferring the assets to the client's name (having previously been held by nominees on behalf of clients) after discussing their options with the Administrators; and

- (c) clients unable to form part of a Bulk Transfer, for whom the Administrators explored alternative solutions (for example, managing to liquidate assets or carrying out multiple transfer actions).

123 The Administrators have also made significant efforts to trace clients whom they have been unable to contact using the contact details held for those clients in BSL's and BACSL's records. This has entailed:

- (a) employing a private search firm (LexisNexis) to help trace unresponsive clients, by reference to public records;
- (b) searching historical emails on BACSL's systems for alternative email addresses (which, on occasion, has resulted in successful contact being made with a client); and
- (c) making general online searches, examining Companies House records, and using corporate research services to identify company contact details.

The above steps have resulted in the Administrators contacting additional clients who would otherwise not have engaged at all with the BACSL administration. Despite these efforts, 126 clients have not engaged with the Administrators at all.

Distribution Plan Amendments

124 The Administrators are empowered, pursuant to Clause 23 of the Distribution Plan, to make additions or modifications to the plan without first seeking the approval of the Court, either where (i) the changes are consistent with the pursuit of Objective 1, are not materially prejudicial to the interests of clients and have been approved by the creditors' committee or (ii) the changes are of a minor, technical or administrative nature.

125 Since it became effective in July 2018, four amendments have been made to the Distribution Plan, in each case as approved by the creditors' committee under Clause 23. Those amendments are as follows:

- (a) on 26 November 2018, an amendment was made to the definition of "*Tainted Client Assets*" in Clause 1 to make it easier for the Administrators to return such assets where the relevant competent authority did not object to the returns. The number of client accounts originally designated as tainted (including those with portfolios which transpired to be empty) has been reduced from 172 to just eight. A significant proportion of those clients with client assets may not otherwise have received a Distribution within the original framework for returns;
- (b) on 27 February 2019, amendments were made to clauses 5.4.1 and 15 (including the creation of a new clause 15.5) to introduce the concept of "deemed election" of the Liquidation Option, permitting the Administrators to liquidate a client's assets where the client has not provided instructions as to how it would satisfy its debt or

pay its share of costs: see paragraphs 56 and 57 above. This facilitated returns to 28 clients who would not otherwise have received a Distribution within the original framework;

- (c) on 30 October 2019, various amendments were made, the most significant of which was the insertion of a new clause 26 (as well as a new paragraph 10 in Schedule 4, the “Return Procedure”) to introduce a power to convert Electronically Held Securities into Physically Held Securities and *vice versa*, to facilitate distributions to clients. In particular, this facilitated the transfer of certain Physically Held Securities, where a single certificate represented the consolidated entitlement of multiple clients to the securities, and where (once they were converted to Electronically Held Securities), it was possible to transfer the entitlements of some or all of those clients. The amendment also permitted certain Electronically Held Securities to be converted to Physically Held Certificates, which were then posted to clients. To date, this has facilitated returns of 50 assets to 37 clients which would not have been possible within the original framework; and
- (d) on 21 January 2020, amendments were made to the definition of Physically Held Securities, to Clause 26 and to Schedule 4 (the ‘Return Procedure’), to address the difficulty in returning certain securities that were neither held electronically nor certificated (i.e. no physical certificate exists), categorised by the Administrators as “**Defaulting Assets**”. The only external record of BACSL’s entitlement to these assets is the fact that BNL is registered in the register of members of the issuer (holding the assets on BACSL’s behalf). These changes were made principally to ensure that such assets would be caught within the existing returns framework in the Distribution Plan. This facilitated returns to 53 clients which would not have been possible within the original framework.

Client Money

126 The Administrators have been equally successful in returning the vast majority of client money held by BACSL: being approximately 94.2% of client money held at the date of administration, totalling £50 million (out of £53.1 million originally held). This has been achieved by, in summary, pursuing the following strategy:

- (a) Clients were provided with a statement which described and explained their entitlement to client money (“**Client Money Claim Statement**”) (where clients had an entitlement to client assets, they were provided with a “**Client Assets Claim Statement**”).
- (b) In particular, the Client Money Claim Statements set out a client’s pro-rated entitlement to money held in the general co-mingled “pool” of client money held by BACSL on behalf of its clients (at the point of its administration), after the

costs of distributing the client money pool are accounted for, in accordance with Chapter 7 (Client Money Rules) of the Client Asset Sourcebook (“**CASS**”). All pre-administration client money is required to be distributed in accordance with Chapter 7A of the CASS Rules and the IBSA Regulations, and the Distribution Plan deals only with post-administration client money.

- (c) Where a client either agreed with or did not respond to the Client Money Claim Statement, where possible, the Administrators sought to include the client money due to them in Bulk Transfers or Bespoke Distributions as appropriate.

127 The Administrators are currently holding approximately £3.1 million of client money. I address the Administrators’ proposals for dealing with the residual client money balance in Section H below.

F. The outstanding “rump” of client assets

128 Despite the Administrators’ success in returning client assets, there are a number of assets which still remain with BACSL and which the Administrators have been unable to return to clients. In this section, I explain why, in spite of the Administrators’ best efforts, it has not been possible to return this residual “rump” of assets.

129 In summary, there remain 1,682 clients to whom some assets have not been returned, representing 9.6% by number of the original active BACSL client base.⁷ They hold assets totalling approximately £10.3 million (representing 2% by value of the original asset base).

130 These remaining clients hold in aggregate 2,397 assets, representing 3.9% by number of the assets held at the start of the special administration. At Appendix 4, I set out details of the stock lines which comprise these assets. There are 763 such stock lines, which represent 17.6% of the total number of stock lines held in BACSL at the outset of the administration.⁸

131 Of these remaining (2,397) assets, 34% by number (totalling £9.8 million in value) are Electronically Held Securities, 41% by number (totalling £0.5 million in value) are Physically Held Securities, and 25% by number are Defaulting Assets (as defined above) or shares in insolvent companies (which are of nil value).

132 Electronically Held Securities are in principle the most straightforward type of client asset to transfer (largely because there is generally a ready market for the type of securities which are held); however, as set out above, there remain a number of these which the

⁷ This percentage is based on the number of clients holding assets now as against the number holding assets at the commencement of the administration. It does not include clients holding only client money. If those clients were factored in, the percentage would be 11.6% of the overall client population. The 1,804 clients include those clients holding Tainted Client Assets.

⁸ A “stock line” refers to a type of security, which may be held by one or more clients. An “asset” refers to a client’s holding in that stock line. Stock lines are identified by unique IDs (such as ISINs or Sedol numbers) and otherwise referred to as a “security”. So, for example, a client may have 10 shares in a company but this would constitute a single asset.

Administrators have been unable to return. For the most part, these comprise securities held by BACSL through its third-party custodian, Cortland, which in turn held the assets through its sub-custodian, State Street.

133 The “rump” of assets falls broadly into the following twelve categories, being impacted by issues which are either specific to particular assets or specific to the clients who hold them. It is important to note that a client (or their assets) can fall into more than one of the following categories:

- (a) First, Electronically Held Securities which have been disabled or suspended from trading, or are otherwise non-withdrawable;
- (b) Second, assets which are highly illiquid, or held with third-party custodians where another custodian cannot be found, including over the counter (“**OTC**”) assets (a concept which I explain below);
- (c) Third, certain Physically Held Securities where a certificate in the name of one of BACSL’s nominees is held for one or multiple clients;
- (d) Fourth, “*InLiquid*” assets (a concept which I explain below);
- (e) Fifth, Defaulting Assets with uncooperative or unresponsive issuers;
- (f) Sixth, shares in Rangers International Football Club (“**RIFC**”), that RIFC has indicated may not be the subject of a transfer, and whose dividend and voting rights are currently suspended (the “**Rangers Shares**”);
- (g) Seventh, clients to whom Physically Held Certificates cannot be returned for practical reasons;
- (h) Eighth, clients holding SIPP accounts;
- (i) Ninth, funds the Administrators are waiting to receive from the Official Receiver in its capacity as the liquidator of Silex UK Plc;
- (j) Tenth, clients unacceptable to transferee brokers and who have not otherwise provided instructions that the Administrators are able to execute;
- (k) Eleventh, certain assets held for a dissolved Belizean company; and
- (l) In addition, the “rump” includes assets designated as Tainted Client Assets, which I have addressed above and which is therefore not repeated here.

To assist the Court in understanding the scale of the issue in each case, I have identified below the number of clients affected by each issue. (Since a client may be affected by more than one issue, simply aggregating the number of clients listed against each issue does not provide a true picture of the scale of remaining clients.)

Issue	Number of clients	Number of client assets	Value of Assets (£000)
a) Clients with suspended/disabled stocks in CREST	29	39	0
b) Clients with highly illiquid assets, including OTC securities	37	39	49
c) Clients with Physically Held Securities in the name of a nominee	849	923	228
d) Clients who hold Inliquid assets	542	591	0
e) Clients who hold Defaulting Assets	638	693	0
f) Clients who hold Rangers Shares	4	4	0
g) Clients to which Physically Held Certificates (in the name of the client) cannot be returned for practical reasons	32	49	0
h) Clients who hold assets in SIPP accounts	362	465	268
i) Clients entitled to distributions arising from the liquidation of Silex	184	184	0 ⁹
j) Clients unacceptable to transferee brokers and who have not otherwise provided instructions that the Administrators are able to execute	193	394	2,386
k) Assets held for a dissolved Belizean entity	2	100	2,018
l) Tainted Client Assets	8	272	5,393

⁹ Applying strictly the valuation methodology adopted by the Administrators (see Appendix 3), there is currently nil value attributed to these assets. In reality, however, the Administrators expect shortly to receive a substantial cash payment as a result of the liquidation of Silex: see below. The Administrators will distribute any cash proceeds received in respect of the Silex asset to the underlying clients. The anticipated proceeds are estimated to be £317,000, but the actual figure paid to clients will be lower because the Official Receiver is entitled to deduct its costs.

¹⁰ This includes two distinct client accounts held on behalf of one legal entity.

(a) Electronically Held Securities that are disabled or suspended, or are otherwise non-withdrawable

- 134 The Administrators have encountered a number of assets which appear to have either been disabled in CREST, or where trading in the asset has been suspended.
- 135 “Disabled assets” refer to securities that were once publicly tradeable but are not tradeable any longer. Consequently, no trades can be entered by any CREST user for that asset (which prevents even a “free of payment” transfer from BACSL to another broker), and the asset cannot be liquidated or materialised. It is therefore impossible for the Administrators to deal with that asset. Assets may be disabled because, for example, the issuing company has chosen to de-list or a relevant authority has de-listed the security, typically for regulatory non-compliance. (In principle, a disabled asset could be re-enabled within CREST, but it is rare for this to occur.)
- 136 CREST periodically provides lists of securities that have been disabled. In addition, for publicly traded securities, the stock exchange on which the assets were traded will issue an official notice to markets where shares have been suspended, cancelled or disabled. In BACSL’s case, disabled assets are mostly held through BACSL’s third-party custodian, Cortland, and the Administrators are only notified of the issue at the point of contacting Cortland to attempt to trade the asset in question.
- 137 As to “suspended assets”, this term refers to assets that have been suspended from trading at the direction of the relevant exchange, for example the London Stock Exchange, the Hong Kong Stock Exchange, or the New York Stock Exchange. This has occurred where, for example, a regulatory authority has given a direction to the relevant exchange to suspend trading. While the suspension is in effect, it is not possible to transfer the asset to another broker for the underlying client, even if the transfer is effected without charge.
- 138 By way of example, by an order dated 14 November 2018 issued by the US Securities and Exchange Commission (“**SEC**”), shares in Ultimate Rack Inc, a company registered and incorporated in the state of Nevada whose securities are held by a number of clients of BACSL, were revoked pursuant to Section 12(j) of the Securities and Exchange Act of 1934. The revocation of those shares had the effect that any clients of BACSL holding the shares as part of their portfolio could no longer trade them. I exhibit at **DNR2/13/276-277** a copy of the relevant SEC order.
- 139 It is difficult to quantify precisely the overall number of assets affected by these issues due to the limitations of reporting. However, to give some sense of the numbers involved there are 39 known remaining assets held by BACSL across 28 stock lines that are disabled or suspended in CREST in this manner, affecting 29 remaining clients (as noted above, not all disabled or suspended assets are in CREST).

b) Assets which are highly illiquid and for which an alternative broker cannot be found

140 A small minority of the assets held by BACSL have transpired to be highly illiquid, i.e. there are no willing buyers or there is no available market for the assets, such that they cannot be liquidated (an issue which is particularly acute for OTC securities) and in most cases, an alternative broker will not accept them.

141 This has proved problematic in cases where the Administrators have attempted to liquidate the assets because the relevant client has elected this option as the preferred method of return. Although in principle the securities could be transferred to another broker, it has sometimes been difficult to identify a broker willing to accept the assets as (being highly illiquid) they are unlikely to generate any future revenue and will only incur further costs for the broker: the fact that there is no available market for the assets is an indication that they may be of little or no value. Where this has been the case, the Administrators have invited clients to identify a purchaser for the assets or to consider abandoning them.

142 In addition to the illiquid assets described above, there are a number of Electronically Held Securities held through Cortland, and, in turn, through State Street, which have not been accepted by transferee brokers for a range of other reasons, including where the asset is traded "over-the-counter" (without an intermediary) or where the jurisdiction of the issuer or relevant exchange presents an obstacle to that broker. It is harder to find alternative custodians for OTC securities, or to find potential buyers for them, because they are not traded on a regulated exchange, which means that they are subject to less oversight and regulation, and may therefore be perceived to carry higher risk. Moreover, OTC markets require special access which some brokers may not have.

143 The broker originally used by the Administrators does not have access to the markets to liquidate OTC securities. The Administrators liaised extensively with Cortland to resolve this issue and, additionally, liaised with an alternative broker (Winterflood Securities) with a view to liquidating the OTC securities. However, Winterflood was also unable to liquidate the majority of OTC securities due to restrictions on clearing and settlement for low-priced securities (and, in fact, has not to date liquidated any OTC securities).

144 There are 39 remaining assets held by BACSL across 33 stock lines that are regarded as highly illiquid affecting 37 remaining clients. Of those remaining assets, 14 are OTC securities (including those held via Cortland) and held by BACSL across 14 stock lines affecting 7 clients.

c) Physically Held Securities where a single certificate is held for one or multiple clients

145 There are a number of Physically Held Securities for which the certificates are held in the name of one of BACSL's nominees, namely, BNL or Raven. In most cases, the certificate is

held not for a single client, but as a consolidated holding for the benefit of multiple clients, thus preventing a return of the asset to individual clients.

146 Where possible, the Administrators have sought to arrange for the relevant asset to be re-registered in the names of underlying clients. A further means of dealing with this problem has been (following the incorporation of Clause 26 in the Distribution Plan on 30 October 2019) to instruct the relevant depositaries, clearing systems, registrars or issuers to cause the securities to be dematerialised, and either to re-certificate them as Physically Held Certificates (in the names of underlying clients), or to “convert” the securities to electronically-held assets.

147 However, in certain cases, none of these solutions has been available because:

- (a) the underlying issuers or registrars have been uncooperative or non-responsive, or, in cases where the registrars have changed, they have proved difficult for us to identify (for example, because the issuer has not responded to requests to identify the new registrar); or
- (b) the cost of re-registration has been disproportionately high relative to the estimated value of the assets to be re-registered; or
- (c) a particular client’s individual holding has not met the minimum requirements set by an exchange to facilitate re-registration (for example, certain Australian exchanges will only permit re-registration where the value of the holding is at least AU\$500).

148 By way of illustration, the Administrators sought to re-register shares in a BVI-incorporated company, Sefton Resources Inc. (“**Sefton**”), which were held in certificated form in the name of BNL, into the names of underlying clients (of which there are 156). Sefton demanded a fee of £45 per shareholder, resulting in a total fee of £7,020. The Administrators’ investigations revealed that the total combined value of all the Sefton shares was approximately £78, causing the Administrators to conclude that it would clearly be disproportionate to pay for re-registration in those circumstances.

149 Where the issue has been that it is disproportionately expensive to re-register the securities, we have invited the relevant client to meet the costs if they wish to have the assets returned to them, and that invitation has been relayed by letter. An example of a letter sent to holders of the Sefton shares is exhibited at **DNR2/14/278-279**. If a client has refused (or failed to respond) then their assets cannot be returned to them.

150 Despite the efforts described above, there are 923 remaining assets held by BACSL across 90 stock lines that are affected by this issue, which affects 849 remaining clients. Furthermore, where the Administrators have been unable to return Physically Held

Securities, the brokers used by the Administrators have not been able to liquidate them (as an alternative means of return).

d) *InLiquid assets*

151 Certain assets are treated as being no longer 'active', principally in the sense that the company to which the assets relate (for example, the issuer of shares or securities) has entered an insolvency process and there is no prospect (or only a very remote prospect) of any distribution being made (or where the prospect of a distribution is entirely unknown), or the company has been dissolved altogether.

152 In certain cases, the Administrators have been confident that the asset is worthless and untradeable (indeed, the assets are often no longer held anywhere externally in any event). Where the Administrators have enough evidence to satisfy themselves that the asset is worthless (e.g. a share in a dissolved company), it is expunged from client ledgers and no longer forms part of the relevant client's holding.

153 In other circumstances, however, it is not possible for the Administrators to satisfy themselves that the asset is worthless. This may include, for example, a share in a company in insolvent liquidation where the liquidator has confirmed that there is very little prospect of any returns being made to unsecured creditors (much less to shareholders), but where the (low) possibility remains open until the final position is made clear by the relevant liquidator. In those circumstances, the assets are designated as "InLiquid", a term used historically by BACSL to designate inactive assets held in a specific account.

154 An example of InLiquid assets are shares in Gable Holdings Inc. ("**Gable**"), a Liechtenstein-registered insurer which had a public listing on the UK Alternative Investment Market, but which was wound up by the Liechtenstein courts at the end of 2016. BACSL currently holds ordinary shares in Gable on behalf of 25 clients. It will take some time for the assets and liabilities of Gable to be fully understood (not least due to possible policyholder claims). Given that shareholders rank at the bottom of the priority waterfall, the Administrators expect that there will be no (or very limited) residual value available to shareholders but are nonetheless holding the assets until this is finally established.

155 There are 591 remaining assets held by BACSL across 15 stock lines that have been designated "InLiquid" by the Administrators, which affects 542 remaining clients. In most instances, affected clients hold only "InLiquid" assets. There are 522 such clients.

e) *Defaulting Assets with uncooperative or unresponsive issuers*

156 As I have described above, the Administrators have identified a category of assets (Defaulting Assets) which are not held electronically, but for which no physical certificate exists: the only external record of BACSL's entitlement to them is the fact that BNL is registered in the register of members of the issuer. Such assets can only be returned to

clients where the relevant issuer or registrar will agree to amend the applicable register in favour of the underlying client. If the issuer or registrar fails to do so, the Administrators are unable to deal with (and return) the asset (because there is no record of BACSL's entitlement to it anywhere other than in the applicable register).

157 In four cases, the Administrators have successfully contacted the issuer in question and secured its agreement to amend the register to transfer (by re-registration) the security to BACSL's underlying client (typically in anticipation of a certificate being issued to that client later). However, in practice only two such issuers have in fact made the requested amendment for 53 clients to date, despite extensive efforts by the Administrators in correspondence.

158 In other cases, this has not been possible at all, either because the assets relate to companies (for example, the issuers of shares) which are themselves undergoing insolvency processes, or because the relevant issuer has refused to give effect to our request or has failed to respond despite the best efforts of the Administrators' team to initiate contact (and, in one case, to raise a complaint) with the issuer.

159 There are 693 remaining Defaulting Assets held by BACSL across 16 stock lines that the Administrators have been unable to return for these reasons, which affects 638 remaining clients.

f) Rangers Shares

160 There is a small sub-set of shares, the Rangers Shares issued by RIFC, which the Administrators have been unable to return to clients because of specific restrictions placed upon those shares by RIFC. The Rangers Shares are held on behalf of clients in the name of BNL.

161 RIFC is solvent, and the assets are potentially valuable to clients, but it has restricted its shares from being traded or transferred at present. I understand that RIFC wrote to the underlying clients for whom the Rangers Shares are held, pursuant to section 793 of the Companies Act 2006, requiring them to provide further information about their interests. Further, I understand that Article 15.5 of RIFC's Articles of Association entitles its board of directors, in cases where a shareholder has been served with a notice under section 793 and has failed to provide the requested information, to direct that its shares be subject to various restrictions, including upon the ability to vote at general meetings, receive distributions and, most relevantly, transfer the shares. Those restrictions will remain in place until the defaulting shareholder has remedied the default by providing the requested information.

162 I understand that four clients holding Rangers Shares have not provided the information requested pursuant to the section 793 request and, accordingly, the Administrators are unable to transfer their shares to a new broker so that they can be returned. The value of

Rangers Shares (as generated using the methodology described at Appendix 3) is nil, although the Administrators are aware of at least one trading platform where the shares are given an indicative price of £0.18 per share based on data from 2019, which would mean that the 8,162,083 shares held by the four clients represent approximately £1.5 million in value. The shares remain registered in the name of BNL, and will remain with BACSL until such time as the transfer restrictions are lifted. The Administrators have written to those clients for whom they have contact details to explain that it is incumbent upon them to take steps to remove the restriction to facilitate a transfer and that the Administrators will otherwise be prevented from returning the assets to them.

g) *Clients to which Physically Held Certificates cannot be transferred for practical reasons*

163 Physically Held Certificates (assets held in certificated form in the name of an underlying client) are subject to the return procedure set out in Part C of Schedule 4 to the Distribution Plan. The process ought to be straightforward, as it has been where a client is responsive to the Administrators' communications and nominates a postal address to which the certificate(s) can be returned (subject to satisfying 'Know Your Customer' ("KYC") and sanctions procedures).

164 Where a client has failed to respond to the Administrators' communications, our general approach has been to post the certificate to the relevant client at the address for them that is recorded in BACSL's books and records, provided the client has satisfied KYC and sanctions checks, and there is a confirmed address on record.

165 However, in other circumstances, it has not been possible to take the general approach described above. Typically, this is either where (i) although there is an address for the relevant client on record, we are aware that the address is incorrect or out-of-date (e.g. because previous correspondence has been returned) or (ii) it has not been possible to conduct KYC and sanctions checks on the relevant client, in which cases the Administrators may be prevented from posting physical certificates. Where a client is non-responsive, it is more difficult to carry out the necessary checks and this difficulty is compounded where the relevant client is an individual who has passed away, in which case there is an additional administrative burden in dealing with the deceased's estate.

166 An additional complicating factor is where the relevant clients are based overseas. This is for the practical reason that the tools available to the Administrators to perform KYC and sanctions checks, and to undertake tracing efforts, are more comprehensive insofar as they relate to the UK. The Administrators do not have access to equivalent tools for all overseas jurisdictions.

167 There are 49 remaining assets held by BACSL across 59 stock lines that the Administrators have been unable to return for these reasons, which affects 33 remaining clients (of which the vast majority are either overseas clients or domestic corporate clients).

h) SIPP clients

168 There are 362 remaining clients who are investors in SIPP schemes. A SIPP is effectively a tax “wrapper” into which a client’s investments are placed until retirement and pension drawdown. The main advantage of a SIPP is that it affords a client greater flexibility than would, for example, a managed pension fund.

169 The key difficulty encountered in returning assets held for clients invested in SIPP schemes is that such transfers are likely to have significant tax consequences for those clients. I understand that this is because a transfer may have the effect of “breaking” the “SIPP wrapper” resulting in the potential crystallisation of significant tax liabilities for both SIPP clients and SIPP administrators. In order to effect a transfer in a tax-efficient way, the co-operation of both the underlying client and the administrator of the relevant SIPP scheme is required and has been sought throughout the BACSL administration.

170 Most recently, on 6 February 2020, a letter was sent to all remaining SIPP administrators (copied to their respective clients), explaining that the SIPP administrators were required to take urgent action to facilitate the return of their clients’ assets, and that the recovery of those assets would be significantly more difficult once the BACSL administration had concluded. A copy of the letter is exhibited at **DNR2/15/280-282**.

171 The Administrators received 11 responses to the 6 February 2020 letter from SIPP administrators and their clients. Where responses were received from clients, they were encouraged to liaise with the SIPP administrators directly to facilitate returns.

172 Separately, SIPP clients have often not completed the necessary account opening requirements with brokers, such that it has not always been possible to transfer assets away from BACSL. Because the co-operation of both clients and SIPP scheme administrators is required to effect transfers, I understand that transferee brokers have faced a greater administrative burden than when transferring clients with different types of investments.

173 As at the date of this statement, there remain 465 assets held by BACSL in respect of SIPP clients which the Administrators have been unable to return, affecting 362 clients.

i) Clients entitled to distributions arising from the liquidation of Silex

174 Prior to its administration, BACSL was appointed as the security trustee in relation to a bond issuance by one of its clients, Silex. BACSL acted as trustee for the registered holders of the bonds, the majority of whom, at the time of the issue of the bonds, were also clients of BACSL. Pursuant to the underlying bond documents, Silex granted BACSL (on behalf of the bondholders) a fixed charge over certain of Silex’s assets and a (since crystallised) floating charge over the remaining assets not subject to the fixed charge. In 2017 and 2018, Silex missed scheduled interest payments on the bonds, which ultimately led to the Administrators petitioning for Silex to be wound up.

- 175 On 11 September 2019, Silex was wound up by order of ICC Judge Mullen and is presently under the control of the Official Receiver: see **DNR2/16/283-285**. The Administrators have made substantial efforts to assist the Official Receiver in the course of Silex's liquidation, and currently expect that BACSL will receive a distribution (as a secured creditor) of approximately £317,000, less the Official Receiver's costs. In its capacity as security trustee, BACSL will then be required to distribute those funds to the registered bondholders, the majority of whom hold their bonds as clients of BACSL (and BACSL will therefore be required to distribute those sums to the relevant clients in accordance with the terms of the Distribution Plan, as those sums will derive from client assets).
- 176 As at the date of this statement, the Official Receiver has not confirmed when Silex will distribute the funds to BACSL in order that they can be returned to the relevant clients. The Administrators are unable to take further steps in respect of these funds unless and until BACSL receives the funds (the timing of which is beyond their control). The Administrators do not consider that this issue alone should prevent the termination of the special administration. If it cannot be resolved prior to the termination of the Administrators' appointments, the issue will fall to be resolved by the Official Receiver (which will, in practice, need to transfer funds as between two accounts over which it has control, following which it can make distributions to clients of BACSL).
- j) *Clients unacceptable to transferee brokers and who have not otherwise provided instructions that the Administrators are able to execute*
- 177 The Administrators' ability to return assets to clients via third-party brokers is dependent upon the willingness of those brokers to accept clients. Each third-party broker will have its own onboarding process and will be required to comply with internal policies and procedures before it can accept a transfer of assets on behalf of clients of BACSL. This has not always proved possible, for example where the broker has been unable to complete independent KYC checks for clients. Thus, even though these assets are in principle capable of being transferred (e.g. they are not disabled or suspended assets), the assets have not been accepted by a transferee broker.
- 178 In some cases, brokers have refused to accept a client, but have not given specific reasons for the refusal. Based on discussions between members of the Administrators' team and the brokers in question, I understand that this can relate to, for example, the jurisdiction in which a client is resident.
- 179 Where transferee brokers have rejected transfers (whether or not the reasons are known), the clients cannot be transferred to a third-party broker, leaving the Administrators with limited alternatives. The Administrators have sought to engage with each of the clients in this category directly, including through the mass communications described in Appendix 2 of this statement. The Administrators have written to all of the clients in this category on at least five occasions between October 2019 and the date of this statement, and have also made

extensive efforts to contact affected clients by telephone and by email. Where the client has responded to the mass communications and calling campaigns, but has not provided sufficient information or instructions to enable a return, the BACSL client services team has made further attempts by email or telephone to re-engage with those clients. Additionally, clients in this category have been the subject of tracing efforts, including writing to identifiable directors of corporate clients in order to seek instructions, where possible. Despite those efforts, for the assets falling within this category, that engagement has not resulted in the receipt of effective instructions from underlying clients for one or more of various reasons: no instructions being forthcoming at all; the failure to provide the necessary KYC information to permit the Administrators to give effect to the instructions; or, in one case, because the administrator of an estate has not yet obtained a grant of probate, and cannot therefore instruct the Administrators.

- 180 193 clients are affected by this issue, of which 125 clients have assets ascribed a nil value. The issue affects 394 assets with a total value of approximately £2.38 million, of which £2.375 million is held by just 33 clients.
- 181 A significant proportion (by value) of the assets falling within this category relates to one entity which the Administrators understand itself acted as an intermediary (the “**Intermediary Client**”), and which maintained a number of different accounts with BACSL for different underlying clients of the Intermediary Client. The Intermediary Client has been the subject of investigation by the U.S. Department of Justice (the “**DOJ**”) and has since been indicted in connection with the subject matter of that investigation. The assets held in the accounts on behalf of the Intermediary Client were at one time designated by the Administrators as Tainted Client Assets, but are no longer so designated following liaising with the DOJ.
- 182 By the time the client assets held in the Intermediary Client’s accounts ceased to be designated as Tainted Client Assets, the nominated brokers to whom the Administrators were transferring assets were no longer accepting further BACSL clients.
- 183 That being the case, the Administrators sought further instructions from the Intermediary Client between 6 October 2019 and 15 January 2020 as to an alternative means of return. Following the Intermediary Client’s indictment, however, the individual who had previously been corresponding with the Administrators on behalf of the Intermediary Client ceased corresponding with the Administrators on around 14 December 2019. The Administrators believe that this may be because he has been incarcerated in the United States. Between March 2020 and May 2020, the Administrators therefore sought to contact the underlying clients of the Intermediary Client, for whom the Administrators understand the Intermediary Client to have been holding the relevant assets on trust, using the contact details available for each of them. The Administrators principally sought to contact the underlying clients by letter and email. Only one underlying client responded, enabling some returns to be made in respect of three client accounts. The other underlying clients did not respond to the

Administrators' communications. The Administrators therefore continue to hold significant assets (valued at approximately £1.477 million in total) on behalf of underlying clients of the Intermediary Client from whom it has not been possible to obtain instructions to which they can give effect.

k) Assets held for a dissolved Belizean entity

184 The final category of "rump" assets relates to two accounts held on behalf of a Belizean entity (the "**Belize Client**"). Across the two accounts, the Belize Client has assets valued at approximately £2.018 million. The Belize Client was formerly treated as holding Tainted Client Assets, but the Administrators have since been able to remove the 'tainted' designation following liaison with the relevant foreign authority.

185 As part of their general client-communications strategy, the Administrators sent a large volume of correspondence to the Belize Client using the contact details that BACSL held on file for it, consistent with the way in which the Administrators have sought to engage with all clients of BACSL throughout the administration to enable the return of client assets: see Appendix 2. The Administrators subsequently discovered from public sources (as part of their investigations into clients whose claims had not been resolved), however, that the Belize Client had been voluntarily dissolved in Belize pursuant to section 102(6)(B) of the International Business Companies Act, Chapter 270 of the Substantive Laws of Belize, dated 22 November 2017. This likely explains why the Administrators were unable to establish contact with the Belize Client.

186 In March and April 2020, the Administrators twice wrote to the International Financial Services Commission of Belize (the "**IFSC**"), through whose website the Administrators had learned of the dissolution of the Belize Client, notifying it that the Administrators had two client accounts for the Belize Client and requesting information as to the relevant Belizean government office with which the Administrators should correspond to ascertain in whom or what entity the Belize's Clients' assets and claims had vested following its dissolution. The Administrators understand that the IFSC is the Belizean government authority responsible for financial regulation within the jurisdiction. No response was received to those communications.

187 Consequently, the Administrators have since taken Belizean legal advice as to this issue, for the purposes of identifying the successor in title. In summary, and without any waiver of privilege being given or intended, the Administrators understand that upon the dissolution of the Belize Client, its assets have vested *bona vacantia* in the Belizean state. Upon advice from Belizean counsel, the Administrators now propose to write to the Belizean Office of the Attorney General and the Office of the Public Trustee, in order to make suitable arrangements to transfer the relevant assets to the Belizean state.

188 In the event that such transfer has not taken place by the date of the hearing fixed for this application, the Administrators anticipate that it should in any event be possible for it to take place before the Long Stop Date itself.

189 This issue affects one client (i.e. the Belize Client) holding 100 assets with a total value of £2.018 million across two client accounts.

G. BACSL's proposed liquidation

190 As I have explained in this statement, the Administrators consider that the special administration objectives prescribed by Regulation 10(1) of the IBSA Regulations have been sufficiently achieved and achieved to the extent reasonably practicable, such that it is now appropriate to apply to the Court for the Administrators' appointment to cease to have effect, pursuant to paragraph 79(3)(b) of Schedule B1 to the 1986 Act, as applied and modified by regulation 15 of the IBSA Regulations.

191 Further, the Administrators seek an order for their discharge from liability in respect of their actions as joint special administrators of BACSL, save for any claim or claims made against them (or any of them) prior to that date, pursuant to paragraph 98(2)(c) of Schedule B1 to the 1986 Act, as applied and modified by regulation 15 of the IBSA Regulations.

192 The Administrators consider that the only outstanding matters in the administration are: (i) to issue the Long Stop Date Notice under the Distribution Plan, (ii) to undertake the work necessary to end the administration following the issuing of that notice, (iii) to make certain returns of client money if and when that becomes possible, as described in paragraphs 229 and 230, and (iv) to make any further returns to clients if this becomes possible in the period between issuing the notice and the end of the administration (in particular, if there are any responses to the Long Stop Date Notice or developments relating to the "rump" of assets).

193 The Administrators have considered the available exit routes for BACSL's special administration and have determined that it is appropriate for BACSL to be compulsorily wound up and for the Official Receiver to act as its liquidator.

194 This exit route was envisaged by the Proposals, which explained that "*once the objectives have been achieved and funds available for the benefit of Unsecured Creditors have been distributed, we will apply to the Court under Paragraph 79 Sch.B1 IA86 to terminate the Special Administration and for BACSL to be placed in liquidation*" or, in the alternative, "*Apply for a court order ending the Special Administration and for BACSL to be wound up*": see page 19 of the Proposals.

195 The principal reason why compulsory liquidation is the appropriate exit route is that, as explained in the preceding Section F, BACSL continues to hold a "rump" of client assets which the Administrators are unable to dispose of or return to clients. The clients entitled to

those assets will retain their proprietary interests in the assets, notwithstanding the occurrence of the Long Stop Date (and the closure of the distribution process).

- 196 The Administrators consider that maintaining BACSL in an insolvency process will best safeguard those clients' proprietary rights to their assets, which will fall under the control of the Official Receiver. If it becomes possible to return any such assets in the future, it may be possible for the relevant client to approach the Official Receiver to facilitate a return, thereby preserving the possibility of a return for such clients. That is evidently preferable to the remaining assets being abandoned.
- 197 The Administrators consider that the fact that BACSL continues to hold this rump of assets is not a reason for the Administrators to remain in office because – in light of the matters addressed in detail in the preceding section – making any further attempts to return those assets would not be reasonable or proportionate.
- 198 The Administrators therefore consider that the only practical solution is for BACSL to be placed in compulsory liquidation, such that the assets can continue to be held by BACSL for those clients. I understand that the jurisdictional basis for placing BACSL in compulsory liquidation will be the subject of legal submissions at the hearing.
- 199 As explained at paragraph 94 above, all clients and creditors were notified of the petition and applications and of the window fixed for the hearing by notice published on the Website on 19 June 2020: see **DNR/9/171-175**. Between 26 and 29 June 2020, the Administrators wrote directly to all clients and creditors of BACSL to provide further notice of the applications described in this witness statement: an example email is exhibited at **DNR2/10/176-178**. A copy of this witness statement, the petition and the relevant application notices will be published on the Website as soon as this statement has been filed with the Court.
- 200 On 30 June 2020, the Administrators received an email sent on behalf of a client (a corporate entity acting as a trustee) in response to the above notices: a redacted copy of the email and the Administrators' response to it is exhibited at **DNR2/17/286-287**. The email did not state that the client objected to any of the relief sought by these applications, but instead expressed dissatisfaction with the way in which the relevant client's account was resolved and, in particular, how it was treated for the purpose of establishing eligibility for FSCS compensation (as to which, see paragraphs 87 to 88 above). The email also explains that the client has made a complaint to the Insolvency Service.¹⁰ The Administrators have been in correspondence with the client for several months and there has been a delay in confirming FSCS eligibility. In response to the 30 June 2020 email, the Administrators wrote to the client informing it that the FSCS has now confirmed the client's eligibility for compensation and, as such, the client's Share of Costs (which had previously been covered

¹⁰ The Administrators understand that this was in turn referred to the Institute of Chartered Accountants in England and Wales.

in part by the liquidation of assets held by the client) would be compensated by the FSCS. That part of the Share of Costs has been credited to the client's account and, following the receipt of satisfactory KYC documentation, has now been paid to the client together with dividends received by the client). The issue has therefore been resolved. Having explained these points to the relevant client, the Administrators understand that the client will withdraw the complaint. Nonetheless, the Administrators will provide the client with a copy of this evidence and will update the Court as to this correspondence in advance of the hearing.

201 I am not otherwise aware of any claims or potential claims that any party is intending to pursue against the Administrators in respect of our conduct of BACSL's special administration (save only in relation to the complaint referred to in the preceding paragraph, which the Administrators understand has been withdrawn), nor am I aware of any facts or matters which could reasonably be considered to give rise to such claims. Moreover, subject to the above, no client or creditor has raised any objections or issues in relation to the application for our discharge from liability, subsequent to the publication of the notice on the Website.

202 If the BACSL Application is granted, such that a Long Stop Date Notice is issued to clients under the Distribution Plan, the Administrators will necessarily need a period of time during which further steps are taken to complete the administration. As explained above, the Court will be invited at the hearing to adjourn the BACSL Winding-Up Petition (as well as the applications for relief under paragraphs 79(3)(b) and 98(2)(c) of Schedule B1 to the 1986 Act) to a later date, enabling the Long Stop Date Notice to be issued and take effect, and for the work necessary to end the administration following the notice (and passing of the two-month notice period) to be undertaken. The Administrators will seek an adjourned hearing (which is currently expected to be in December 2020, subject to the Court's availability), after the Long Stop Date has passed. The reason the Administrators are unable to identify a precise date on which the adjourned hearing should take place is because certain matters require the input of third parties (for example, seeking confirmation from HMRC that the administration can be brought to an end). In so far as relevant, the Administrators will adduce evidence prior to the adjourned hearing to update the Court as to any further relevant developments by that date, including as to the issuing of the Long Stop Date Notice to clients. The Administrators will also prepare and publish a progress report in accordance with rule 221(1)(a) of the IBSA Rules (it being clear that it would not be appropriate to prepare that report now given the intention to seek an adjournment and the certainty that further developments will take place over the coming months).

BACSL's insolvency

203 BACSL is insolvent as it is unable to pay its debts within the meaning of section 122(1)(f) and section 123 of the 1986 Act. As I have described above, more than £50 million of

unsecured creditor claims have been made against the estate and the Administrators anticipate that those claims will be left unsatisfied.

The Recast Insolvency Regulation

204 The Administrators consider that BACSL is an undertaking within Article 1.2 of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the “**Recast Insolvency Regulation**”). The Administrators therefore consider that the Recast Insolvency Regulation will not apply to BACSL’s compulsory liquidation.

205 The Court was satisfied, at the time of granting the administration order in respect of BACSL, that the Recast Insolvency Regulation did not apply, on the basis that BACSL was (at that time) an “*investment firm ... covered by Directive 2001/24/EC*” within the meaning of Article 1.2(c) of the Recast Insolvency Regulation: see the recitals to the administration order. In this regard:

(a) The definition of such a firm is:

“any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis” (Article 4.1.1 of Directive 2014/65/EU)¹¹.

(b) “*Investment services and activities*” are defined to mean “*any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I*”. Section A of Annex I to Directive 2014/65/EU includes services such as the reception and transmission of orders in relation to one or more financial instruments and the execution of orders on behalf of clients. The financial instruments referred to in Section C include, inter alia, transferable securities, money-market instruments, options, futures and swaps.

206 It is clear that BACSL was an “*investment firm*” at the date of the special administration order, because its regular business entailed providing services referred to in Section A in respect of financial instruments in Section C of Annex 1 to Directive 2014/65/EU. The position is somewhat less clear today given that BACSL is an entity in administration and its activities have necessarily been curtailed. Having said that, the Administrators consider that BACSL does still fall within the definition of “*investment firm*” because certain of the activities it

⁶ For the definition of investment firm within the meaning of Article 1.3 of Directive 2001/24/EC on the reorganisation and winding-up of credit institutions (as amended), cross-reference must be made to Article 4.1(2) of Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, which in turn incorporates the definition of this term in (what is now) Article 4.1(1) of Directive 2004/39/EC on markets in financial instruments (recast) (known as MiFID II), which contains the above definition of investment firm.

undertakes on behalf of clients are likely to fall within the services referred to in Section A in respect of financial instruments in Section C of Annex 1. By way of example, the Administrators consider that BACSL undertakes the reception and transmission of orders insofar as it instructs brokers to liquidate assets on behalf of clients when the 'liquidation option' is selected pursuant to the Distribution Plan. For this reason, the Administrators consider that BACSL remains an undertaking within Article 1.2 of the Recast Insolvency Regulation, which will therefore not apply to its compulsory liquidation. The Administrators understand that the issue has little practical impact because there are no cross-border insolvency issues to consider in relation to BACSL.

No alternative exit route

- 207 I understand that Regulations 20 and 21 of the IBSA Regulations provide alternative exit routes for an investment bank in special administration.
- 208 I do not consider that Regulation 20 is applicable in this case. Regulation 20 applies only where an administrator pursues the first part of Objective 3 (as described in Regulation 10(1)(c)(i)), i.e. to "*rescue the investment bank as a going concern*". It has been clear from the outset of the administration that it would not be possible to rescue BACSL as a going concern, and this was stated by the Administrators in their statement of proposals (dated 20 April 2018). I understand the concept of rescuing a company as a going concern to connote the retention of all or a material part of the business of the company together with the restoration of its solvency so that the company can properly continue to trade as a going concern: there is (and was) no prospect of this in the case of BACSL, which had no remaining business and could not possibly have been rescued as a going concern.
- 209 Indeed, in the proposals the Administrators stated that they intended "*to take appropriate steps to wind up BACSL's affairs in accordance with [IBSA] Objective 3(ii)*", i.e. to seek to wind it up in the best interests of its creditors.
- 210 I also do not consider that Regulation 21 provides an effective route for ending the administration. Regulation 21 applies if the administrator considers that Objectives 1 and 2 have been sufficiently achieved, and goes on to pursue the second part of Objective 3 (i.e. to wind the investment bank up in the best interests of its creditors). In such circumstances, IBSA Regulation 15(2) provides that the administrator may: (a) give a notice which is to be treated as a notice under paragraph 84 of Schedule B1 (as applied by regulation 15); or (b) make a proposal in accordance with Part 1 of the 1986 Act (company voluntary arrangement, or "**CVA**").
- 211 The first limb of Regulation 21(2) contemplates that a notice may be served that would be treated as a notice under paragraph 84 of Schedule B1 to the 1986 Act (as applied by regulation 15). Regulation 15 amends paragraph 84 of Schedule B1 under the heading of

'Modification or comment', stating "*The administrator shall only send a notice under subparagraph (1) if the investment bank no longer holds client assets*" (emphasis added).

212 As explained in this statement, a rump of client assets remains with BACSL and is likely to do so indefinitely. Accordingly, it would be inappropriate to serve a notice under paragraph 84 of Schedule B1, such that the first limb of Regulation 21(2) does not provide an effective route to ending BACSL's administration.

213 In addition, the Administrators do not consider that it would be appropriate to make a proposal for a CVA, such that the second limb of Regulation 21(2) is also inapposite in this case. First, the clients entitled to the remaining rump of assets have proprietary rights to them, which cannot be modified by a CVA proposal under Part 1 of the 1986 Act. Secondly, where (as explained above) there are no funds to pay unsecured creditors, there is no property which would fall to be distributed under a CVA.

The Hard Bar Date

214 A 'Hard Bar Date' mechanism is provided for by IBSA Regulation 12B. In short, the Hard Bar Date is intended to allow the Administrators to dispose of all client assets which BACSL still holds after the Hard Bar Date has passed (i.e. to which eligible claimants have not made a claim by that date).

215 The Administrators have, from a very early stage in the administration, treated all clients of BACSL as having claimed the client assets recorded in the Client Assets Claim Statements that were sent to them by the Administrators. This approach was taken to minimise the efforts to which clients were required to go in order to make a claim for their assets, and is an approach that has facilitated the successful transfer of thousands of non-responsive clients to the Nominated Brokers.

216 The fact that all clients of BACSL are deemed to have made a claim for their client assets in this manner means that all clients recorded as being entitled to assets in the books and records of BACSL are 'eligible claimants' for the purposes of IBSA Regulation 12B.

217 Regulation 12B(5)(a) provides that "*Where the administrator sets a hard bar date, the administrator, after that date – [...] (a) must return client assets to eligible claimants*". The Administrators understand that there is some uncertainty as to whether they are able to comply with the requirements of Regulation 12B(5)(a), such that there is an argument that they may not (even in principle) be entitled to set a Hard Bar Date. That is because it is somewhat unclear whether the provision imposes an *absolute* obligation to return all client assets (which, for the reasons discussed in this statement, is not possible here). The Administrators take no position here as to whether that argument is correct because, in any event, even if the Administrators were in principle entitled to set a Hard Bar Date, there would be no practical benefit to doing so because BACSL does not hold assets for any person who

is entirely unknown and who may subsequently emerge as a “Potential Claimant” within the meaning of the Distribution Plan.

218 For completeness, I note that paragraph 3.3 of the Explanatory Statement stated that:

“The administrators will notify all clients two months in advance of the Long Stop Date, which will not be before a Hard Bar Date, it is therefore important that you take any actions required by you as soon as possible” (emphasis added).

219 The underlined wording above was not intended to imply that a Hard Bar Date would be set in all circumstances, nor that the Long Stop Date was required to follow a Hard Bar Date. This is clear from Clause 3.4.1 of the Distribution Plan, which provides that the Administrators “*shall be entitled and have the option to*” apply for a Hard Bar Notice. The Explanatory Statement also makes this clear: see, e.g. paragraph 2.4 of the Explanatory Statement.

220 Moreover, Clause 8.3.3 of the Distribution Plan, which deals with the Administrators’ entitlement to liquidate any assets held for Potential Claimants by the Long Stop Date, also empowers them to transfer the liquidated proceeds to BACSL’s bank account (for the benefit of its general estate) – but only in circumstances where a Hard Bar Date has occurred which, for the reasons explained above, will not be the case here. Accordingly, Clause 8.3.3 contemplates that a Long Stop Date can occur before a Hard Bar Date (such that it is not incumbent on the Administrators to set a Hard Bar Date before a Long Stop Date has occurred).

221 In any event, the fact that a Hard Bar Date is not being set cannot cause any prejudice to creditors, both because the purpose of the Hard Bar Date is principally to protect the position of the Administrators rather than the interests of creditors (its main effect being to allow the Administrators to dispose of client assets) and because, as noted above, there would be no practical benefit to seeking it in this case.

Disclaimer

222 For completeness, I note that the IBSA Regulations confer a power upon special administrators under the IBSA regime to disclaim onerous property, in the same manner that a liquidator is so empowered under the 1986 Act. This is because of the application (in unmodified form) of section 178 of the 1986 Act to the IBSA regime: see IBSA Regulation 15(4)(b).

223 In short, I understand that the power does not assist the Administrators in the present circumstances. Section 178(3) provides that “*onerous property for the purposes of this section*” concerns: (a) any unprofitable contract, and (b) “*any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act*”.

224 The rump of client assets that cannot be returned to clients are not ‘unprofitable contracts’, and nor are they “*property of the company*” (emphasis added). Legal title to most of the remaining assets is vested in BNL, and in any event the assets in question are properly classified as trust property to which the underlying clients of BACSL are beneficially entitled. It would also not be in the interests of BACSL’s remaining clients to disclaim their assets, nor would it be consistent with any of the statutory objectives under the IBSA Regulations. In these circumstances, section 178 of the 1986 Act offers no assistance to the Administrators.

Position of the FCA

225 On 12 June 2020, the FCA was notified directly of the intention to present the winding up petition and make the applications for relief under paragraphs 79(3)(b) and 98(2)(c) of Schedule B1 to the 1986 Act: a copy of the letter to the FCA is at **DNR2/18/288-289**. That notice was filed with the court on 30 June 2020. The FCA confirmed its consent to the winding up in an email dated 3 July 2020, which is exhibited at **DNR2/19/290**.

226 I also confirm that, to the Administrators’ knowledge, no other petition or application for any other insolvency procedure in respect of BACSL is pending.

Position of the Official Receiver

227 As there will be no funds remaining within BACSL’s estate to pay for a commercial insolvency practitioner to be appointed as BACSL’s liquidator, it is anticipated that BACSL (and any client assets or money that remain within its custody, or the custody of its nominee entities) will ultimately fall under the control of the Official Receiver. Any client seeking to recover their assets from BACSL after it enters liquidation will therefore need to liaise with the Official Receiver.

228 The Administrators have discussed the approach described in this witness statement with the Official Receiver, and understand that the Official Receiver supports the proposed exit route in principle (i.e. BACSL’s compulsory liquidation and the Official Receiver acting as liquidator). The details of the handover will of course be the subject of further discussions over the coming months as the end of administration approaches.

H. Client Money held by BACSL

229 As at the date of this statement, approximately £3.1 million of client money remains with BACSL. Of that amount, approximately £2.6 million is subject to an injunction or some other form of restraint. For the large majority of this money, the funds are associated with the Tainted Client Assets described above (either because the funds are derived from those assets or they are held by the same clients who are subject to the relevant restraint) so as to prevent its return, such that (unless the restrictions are removed to enable BACSL to transfer the funds) those funds will be required to remain with BACSL upon its liquidation.

As a result of the anticipated return of the funds described at paragraph 76 above, the Administrators expect that the amount of client money held by BACSL which is subject to an injunction or other form of restraint will be reduced to £0.6 million imminently. Insofar as the relevant authorities or competent courts release or waive the other injunctions or restraints before the Administrators leave office, the Administrators will of course distribute those funds to clients.

- 230 In relation to the balance of approximately £500,000 which is not subject to any legal restriction, the Administrators continue to liaise with certain clients and SIPP administrators to make further returns where this is possible and hope to be able to distribute a further £340,000 (because, for example, the Administrators are exploring alternative means of verifying the bank details for UK clients who are not engaging). The Administrators anticipate that BACSL will hold a residual balance of approximately £160,000, not including the sums subject to an injunction or other form of restraint, when BACSL is otherwise ready to be placed into liquidation. This residual balance is expected to remain because the clients entitled to those funds have not engaged with the Administrators and there will therefore be no ability to pay the funds to them. If and to the extent the position changes prior to the termination of the Administrators' appointments, they will of course take steps to return further funds.

Pre-administration client money

- 231 Of this residual balance (i.e. £160,000), the majority – being approximately £150,000 – will consist of pre-administration client money, held for clients who have not provided BACSL with payment details so as to enable payments to be made, and who are not actively engaging with the Administrators to facilitate such payments.
- 232 I am advised that CASS 7A.2.6AR was introduced by the FCA in July 2017 to provide a mechanism under which pre-administration client money can be returned to clients in the event of the failure of an investment firm such as BACSL or, where such returns are not possible, to permit the firm to close its client money pool and transfer any unreturned client money (after exhausting a prescribed sequence of steps to return the money) to the firm. In brief summary, where a firm has unsuccessfully attempted to distribute pre-administration client money balances to clients and has taken “*reasonable steps*” to notify clients of the proposed course of action, CASS 7A.2.6AR permits the application of the unreturned balance to (i) costs incurred as a result of the distribution exercise and (ii) making good any outstanding shortfall in the client money pool to clients to whom such distributions can be made. Any surplus remaining is transferred to the firm itself.
- 233 It is expected that all of the pre-administration client money will be applied to reducing the costs burden ultimately borne by BACSL's clients holding pre-administration client money.

234 Clients have previously been told that failure to engage may result in the loss of their client money entitlements, including by reference to CASS 7A.2.6AR: see **DNR2/20/291-305** and **DNR2/21/306-308**. The Administrators are complying, and will comply, with the prescribed sequence of communications set out in CASS 7A.2.6AR, which requires them to first request contact details for all affected clients and to explain the consequences of the proposed reliance upon CASS 7A.2.6AR, and to send a follow-up communication using a different method if a client has not responded within 28 days of the first request.

235 The court is not asked to make any order in respect of pre-administration client money: the relevant rules provide sufficient guidance to the Administrators and this information is provided only by way of background. However, the Administrators do consider that a small amount of pre-administration client money (approximately £20,000) should be treated in the same way as post-administration client money: see below.

Post-administration client money

236 Of the residual client money expected still to be held by BACSL (i.e. £160,000), £10,000 is post-administration client money. I am advised that CASS 7A.2.6AR does not apply to post-administration client money and the position is therefore different.

237 Here, the Administrators are seeking relief because there is a risk that, when the Administrators leave office (and upon BACSL entering liquidation), client money that remains with BACSL will be very difficult to recover for any claimant who subsequently discovers their entitlement and wishes to take steps to recover it. The same concern applies to a small amount of pre-administration client money (approximately £20,000) belonging to clients who have sought to claim their client money entitlement, but for whom it has not been possible to conduct the KYC checks necessary to facilitate payments. The Administrators consider it unfair that those clients should lose their pre-administration client money entitlement for that reason alone.

238 Ideally, the Administrators would leave all such unclaimed client money with a third-party custodian upon leaving office, although such a placement of funds would ordinarily be precluded by the CASS Rules.

239 CASS 7.9.6R(2) provides that the firm “*must distribute [...] client money in accordance with CASS 7.7.2 R, so that each client receives a sum which is rateable to the client money entitlement calculated in accordance with CASS 7.9.7 R*”. Deviation from these rules is permitted only through a formal waiver obtained from the FCA, pursuant to section 138A of FSMA 2000.

240 I am informed by Linklaters that there is precedent for such a waiver being granted in analogous circumstances, such that residual unclaimed client money could be placed with the Insolvency Service. On 25 October 2018, the FCA made a direction under section 138A of FSMA 2000 for the modification of certain CASS rules insofar as they applied to Lehman

Brothers International (Europe) (in administration) (the “**LBIE Waiver**”) to the effect that, subject to certain conditions, LBIE was entitled pay any unclaimed client money to the Insolvency Service.

241 The terms of the LBIE Waiver envisaged that residual or unclaimed client money would be placed in the Insolvency Service’s ‘Unclaimed Dividends Account’ in order that clients entitled to those funds might subsequently seek to claim them “*at any time*”. The LBIE Waiver further provided that “*upon such payment into the Insolvency Service’s Unclaimed Dividends Account, the interests in client money of any such clients will cease*”.

242 The Administrators have submitted a waiver application form in order formally to obtain the FCA’s consent. The application was made on 7 June 2020 and the FCA has confirmed that it should be in a position to give a final answer shortly, and in any event before the date of the hearing. The Administrators will update the Court as to the position in respect of the waiver prior to the date of the hearing and will adduce supplemental evidence as appropriate. This provides an effective solution and a meaningful prospect of return for claimants who have yet to seek to claim their client money entitlement, for whatever reason.

243 The Insolvency Service has indicated that it will only be able to accept client money to the Unclaimed Dividends Account in the manner outlined in this section if a Court order specifically requires them to do so. It is for this reason that the Administrators seek an order in the terms set out at paragraph 14(b) above.

244 For completeness, there is a statutory framework for any person who considers themselves to be entitled to money paid in to the ‘Insolvency Service Account’ to apply to the Secretary of State for payment, and to appeal the Secretary of State’s decision by way of appeal to the Court if they are dissatisfied with it: regulation 32 of the Insolvency Regulations 1994, SI 1994/2507. Accordingly, the Administrators consider that no prejudice will arise to clients whose client money entitlements are paid into the Insolvency Service’s Unclaimed Dividends Account.

I. Practical matters relating to the conclusion of the BACSL Administration

245 In this section of my statement, I describe the practical steps that the Administrators expect to take in order to bring the administration to an end and ensure a smooth transition from administration to liquidation. The matters I describe are based upon the Administrators’ current plans for the handover of the company, but it is important to note that these proposals are the subject of ongoing discussions with, in particular, the Official Receiver and the Insolvency Service and remain subject to their agreement.

Information and assets/cash to be handed over to the Official Receiver and the Insolvency Service

- 246 As I describe elsewhere in this statement, it is anticipated that the Official Receiver (as liquidator) and the Insolvency Service (as the recipient of certain client money) will, respectively, be responsible for managing the company and its remaining assets or cash post-administration.
- 247 For this reason, the Administrators will work closely with both parties to furnish them with the necessary information and data to allow them to perform their respective roles effectively. In particular:
- (a) extracts of client information, containing information on all remaining clients and their assets, will be provided to the Official Receiver;
 - (b) extracts of client information and their remaining cash balances will be provided to the Insolvency Service; and
 - (c) if the Official Receiver or the Insolvency Service requires it, and it is necessary to do so, clients' transaction histories will also be provided.
- 248 In relation to the rump of assets that the Administrators have been unable to return to clients for the reasons explained in Section F of this statement, the position is as follows:
- (a) securities held in certificated form will be delivered to the offices of the Official Receiver at an agreed date; and
 - (b) where securities are still in electronic form, the position is slightly more complicated. The Administrators propose to pre-fund the custody of electronic assets for the Official Receiver for three months following the end of the BACSL administration. This is to ensure that the Official Receiver can continue to access certain platforms and liaise with custodians to facilitate the return of client assets if necessary. After this period, the Official Receiver will decide how it wishes to proceed if there are still unreturned client assets at that date.

Other practical matters

- 249 BACSL currently occupies premises at 23 Austin Friars pursuant to a rolling monthly lease with a serviced office provider. The Administrators have given notice on their current office space and will vacate most of those premises at the end of July 2020, retaining a smaller space at the same premises on a rolling monthly basis to maintain the IT infrastructure.
- 250 Most of the fixtures and fittings used by BACSL are leased, including certain of its IT equipment. All such leases will be terminated as and when they are no longer required. The small number of fixtures and fittings legally owned by BACSL are of negligible value and will be disposed of in the most cost-efficient way.

251 12 individuals are retained by the Administrators as employees of BACSL to assist in the management of the company. The Administrators anticipate that eight of the remaining employee contracts will be terminated at the end of July following the requisite notice period. The Administrators anticipate retaining four employees for a short period of time after this date to provide support with the closure activities.

BACSL's nominee entities

252 As described above, the large majority of client assets held by BACSL were held via several nominee entities and sub-custodians (as opposed to being held directly in BACSL's name). The nominee entities are all wholly-owned subsidiaries of BACSL, and accordingly the Administrators need to make appropriate arrangements for nominees in advance of the anticipated liquidation: see **DNR2/2/53**.

253 Prior to the commencement of the Administration, BACSL had four nominee entities (the "**Nominees**"): BNL, Raven, Ruby ISA Nominees Limited ("**Ruby**") and Marquee Nominees ("**Marquee**"). BNL and Raven held the large majority of assets whereas Ruby held a smaller number of assets (principally ISA accounts). Marquee held only limited assets and was dissolved on 7 May 2019.

254 I became the sole director of BNL, Raven, and Ruby on 21 October 2019, in place of the former director (who had held a senior managerial role within the Beaufort group, and had subsequently been retained as an employee of BSL to assist the Administrators until the end of October 2019).

255 The significant majority of the remaining assets are legally held in the names of BNL, Raven or Ruby. It is therefore important that control of those entities be passed to the Official Receiver at the same time as the Official Receiver becomes the liquidator of BACSL so that the Official Receiver can, as required, deal with the assets held by the nominees for BACSL clients. Accordingly, prior to exiting office, and as part of the handover to the Official Receiver, the Administrators have agreed with the Official Receiver that the preferred course is for the remaining Nominees to be placed into compulsory liquidation under its control. The Administrators will continue to liaise with the Official Receiver to finalise those arrangements and intend to present winding-up petitions in respect of BNL, Raven and Ruby, to be heard at the same time as the BACSL winding-up petition.

J. The BSL Application – discharge from liability

Introduction

256 As explained above, the BSL Application is brought by the Administrators in their capacity as the former joint administrators of BSL. On 27 February 2020, the Administrators filed a notice bringing BSL's administration to an end, and the Administrators' appointment having come to an end, BSL was formally dissolved on 3 June 2020: see paragraph 84(6) of

Schedule B1 to the 1986 Act. A copy of BSL's final progress report is exhibited at **DNR2/22/309-327**.

257 The BSL Application seeks an order for the Administrators' discharge from liability in respect of their actions as BSL's joint administrators, with retrospective effect from 26 March 2020, being the date falling 28 days from the day on which the Administrators' appointments ceased to have effect, save for any claim or claims made against them (or any of them) prior to that date, pursuant to paragraph 98(2)(c) of Schedule B1 to the 1986 Act.

258 I describe below the background to BSL and its entry into administration, and the progress of the administration leading up to its conclusion. There are two specific points to draw to the Court's attention, namely, certain mis-selling claims relating to the pre-administration conduct of BSL and the role of BSL in an indictment from the DOJ.

BSL's business

259 BSL was incorporated on 5 March 1992 under the name of Quickfavour Limited (having changed its name to Hoodless Brennan and Partners Limited on 9 December 1992, Hoodless Brennan and Partners Plc on 7 June 1999, HB Markets plc on 12 February 2010, HB Markets Limited on 19 January 2013 and, finally, to BSL on 16 April 2013). From 1 December 2001, BSL was authorised and regulated by the Financial Services Authority, the FCA's predecessor, and it was a member of the London Stock Exchange and the NEX Exchange.

260 As I described above, BSL operated principally as a provider of a broad range of stockbroking services which it carried out for both institutional (corporate) clients and retail clients. The services which BSL offered to Beaufort clients included investment advice, fundraising, arranging for the purchase, subscription, or sale of securities, and managing investments on behalf of clients.

261 Since BACSL (from 2008) had performed the role of custodian in respect of client assets and client money held on behalf of Beaufort clients (and in connection with BSL's investment business), BSL did not itself provide safe custody and transaction settlement services, nor did it hold any client assets or client money. It was therefore BACSL which provided the clearing and custodian services for BSL's business, which included setting transactions for clients, the safe custody of client assets, and holding client money.

262 Accordingly, during the period leading up to BSL's administration, BSL did not hold client assets or client money (despite having the relevant regulatory permissions to do so). As at the date of the Administrators' appointment, BSL was not holding client assets or money.

263 As noted above, BSL and BACSL together employed approximately 118 staff and eight contractors across its three office locations, namely London St Mary Axe, Bristol and Colwyn

Bay. The London office conducted the group's central operations. BSL employed some staff and was the tenant entity for the leases of all the Beaufort group's offices.

- 264 In practice, and so far as the Administrators can ascertain, BSL's employees ran the businesses of BACSL and BSL as one inextricably linked business, whereby investment advice and services in connection with securities (and the management of investments) were provided by BSL alongside custodial services provided by BACSL, as part of the same overall package offered to clients.

BSL's entry into administration

- 265 As noted above, on 1 March 2018, upon the application of the FCA under section 359 of FSMA 2000 and paragraph 13(1)(a) of Schedule B1 to the 1986 Act, BSL entered administration by Order of Mr M H Rosen QC. The Order was made at the same time and as part of the same application as the Order relating to BACSL.

- 266 The appointments in relation to BSL were originally due to end on 1 March 2019. The Administrators sought the views of secured and preferential creditors of BSL as to the possibility of extending the administration by a further 12 months to 28 February 2020. The extension was deemed necessary to allow the Administrators further time to realise BSL's assets, to pay dividends to secured and preferential creditors (and to unsecured creditors in relation to the prescribed part), and to assist in the administration of BACSL (for example, BSL was party to various contracts that were required to be maintained for the continuation of BACSL's administration). Accordingly, on 19 February 2019, the administration was extended until 28 February 2020 with the consent of the company's creditors: see **DNR2/23/328-331**.

The purpose of the administration

- 267 The statutory purpose of BSL's administration was to (i) achieve a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration or, failing that, (ii) realising the company's assets to pay a dividend to secured or preferential creditors: see paragraph 3 of Schedule B1 to the 1986 Act.

- 268 It was clear from the outset of the BSL administration that there was no prospect of saving BSL as a going concern: see the first progress report of 28 September 2018 (exhibited at **DNR2/24/332-356**, which said "*We don't think the Company's unsecured creditors, totalling c.£29,500,000, will receive a dividend*". Moreover, the proposals in respect of BSL stated that "*It is not reasonably practical to rescue BSL as a going concern given the cessation of trade, so we are proposing to continue the Administration with a purpose to achieve objective (b), or failing that, objective (c)*". see **DNR2/12/224**. In the event, there were no funds available to make any distribution to creditors at the end of BSL's administration, save in respect of the prescribed part.

269 By the time of BSL's second progress report of 26 March 2019, it had become clear that the purpose of achieving a better result for the BSL's creditors as a whole could be achieved – the progress report noted that due to the interconnectedness of BSL and BACSL's businesses, BSL had continued to support BACSL in returning client assets, and that *"In facilitating this, it has significantly mitigated the level of claims that Clients could have against the Company and will allow us to achieve objective (b) of the statutory purpose"*.

The conduct of BSL's administration

The progress of the administration

270 The position in relation to preferential, secured and unsecured creditors as at the date of commencement of the BSL administration was as follows:

- (a) £57,752 was owed to preferential creditors. This represented unpaid wages and pensions contributions to the employees of BSL;
- (b) £260,340, was owed to Barclays Bank plc as the sole secured creditor; and
- (c) c.£30 million was owed to unsecured creditors, the large majority of which was owed to the FSCS in relation to the mis-selling claims described below.

271 In pursuit of the statutory purpose, the Administrators' work in relation to BSL has focused predominantly on the realisation of assets, assisting with ongoing investigations, working with the FSCS to assist in the adjudication of client claims, and complying with other applicable statutory duties. Additionally, due to the shared services such as systems infrastructure and staff between BSL and BACSL there has continued to be a close and ongoing relationship between the entities.

272 As at the date of the Administrators' appointment, BSL was party to various contracts with third parties, including for IT services and access to Bloomberg terminals. By arrangement with BACSL, those contracts were maintained in place for most of BSL's administration, with BACSL meeting the costs of those contracts. That was because those services were required not by BSL itself, but by BSL as a service provider to the group, to meet the objectives described above. All of those contracts were assigned or novated to BACSL shortly before the end of BSL's administration.

273 Most costs incurred during the BSL administration related to facilitating the return of client assets and client money held in BACSL. For this reason, the Administrators considered that it was appropriate that those costs should be met from BACSL's administration (as explained above in relation to the BACSL Application, the FSCS ultimately bears most of the costs of the BACSL administration).

Realisations in BSL's administration

- 274 BSL's statement of affairs is exhibited at **DNR2/25/357-368**. The statement of affairs was based on the book values contained in the management accounts of the company as at 31 March 2018.
- 275 As at that date, the statement of affairs indicated that total estimated realisable assets were approximately £4.7 million, excluding assets subject to a fixed or floating charge. Of that amount, c.£2.2 million related to intercompany positions due from BACSL (in the amount of c.£1.65 million) and BSL's parent company, Beaufort International Associates Plc (in the amount of c.£540,000). The remaining balance of c.£2.5 million comprised debts due from corporate debtors, prepayments and short-term investments such as shares and warrants held by BSL. Additionally, there were intangible assets with a book value of approximately £2 million, comprising the amortised value from the purchase of a third-party client database and capitalised IT development costs.
- 276 In reality, it was clear from an early stage of the BSL administration that it was highly unlikely that it would be possible to realise sums at or close to the book value contained in the statement of affairs. First, the largest book debts were owed by BACSL, which was itself insolvent. Moreover, in BSL's statement of proposals dated 25 April 2018 (exhibited at **DNR2/12/241**, being the same document containing the proposals in respect of BACSL) the Administrators explained that:
- "The value of uncharged assets is based on the book value contained in management accounts prepared as at 31 March 2018 rather than the date of Administration. The attributed values appear [...] high and are unlikely to be achieved on realisation. The majority of these assets relate to prior business acquisitions and loans (including a loan facility, which has since been repaid [...]) The remaining assets include fixtures and fittings and miscellaneous other assets which we would not expect to realise [at] book values".*
- 277 In the event, the Administrators realised total assets of £768,898 during the BSL administration. The realisations are described below:
- (a) £313,334 was realised under the repayment of loans which BSL had made.
 - (b) £197,227 was recovered by way of additional receipts in relation to business rates refunds, and rent rebates.
 - (c) £136,506 was realised in consideration for transfers to TSC and AFH.
 - (d) £73,299 was realised in respect of commission paid to BSL in its role as a broker.
 - (e) A total of £21,754 was recovered in relation to the collection of outstanding book debts on BSL's ledger.

- (f) A total of £17,976 was recovered through the sale of certain shares.
- (g) £3,295 was realised through the sale of office equipment (including computer monitors) and fixtures.
- (h) £5,507 was recovered from bank accounts denominated in foreign currencies and interest income.

278 In consideration for the transfer agreement between BSL and BACSL described at paragraph 288 below, BSL received a nominal fee from BACSL, together with an agreement that future assets recoveries made by BACSL will be applied to provide partial repayment of the costs BACSL incurred in funding those parts of the BSL administration relating to the return of client assets and client money: see paragraph 273 above.

Distributions in BSL's administration

- 279 On 15 July 2019, the Administrators made a distribution of £260,340 to Barclays Bank Plc in full satisfaction of its secured debt.
- 280 On 17 May 2019, BSL declared a first and final dividend of 100p in the £ to preferential creditors. That dividend was for a sum of £57,752 and was paid to preferential creditors (including in relation to unpaid wages and pensions contributions to employees) on 25 June 2019. No further payments were made to any preferential creditor of BSL.
- 281 On 17 January 2020, BSL made a distribution of the prescribed part to unsecured creditors pursuant to Section 176A of the 1986 Act and the Insolvency Act 1986 (Prescribed Part) Order 2003. The total value of claims approved for the prescribed part distribution was £27,779,420 and related principally to mis-selling claims submitted against BSL and covered by the FSCS. The prescribed part was calculated by taking 50% of the first £10,000 and 20% of the balance of net assets to calculate a prescribed part of £68,800, representing a dividend of 0.24p in the £. The largest single dividend was £58,945 and was paid to the FSCS.

Mis-selling claims

- 282 Prior to the commencement of its administration, BSL was the subject of approximately 700 mis-selling claims (with a total value of approximately £4 million) from customers claiming that the Discretionary Fund Management (“DFM”) service that BSL offered had been mismanaged (the FCA required it to restrict the operation of its DFM service prior to the commencement of BSL’s and BACSL’s administrations).
- 283 Those claims form part of the unsecured claims against BSL in its administration. However, the large majority of those claimants are eligible for compensation from the FSCS. By arrangement between the Administrators and FSCS, claimants asserting mis-selling claims have been directed to the FSCS to pursue them, and I understand are being paid in full up

to the statutory maximum. The Administrators provided information and assistance to the FSCS in assessing claims when requested to do so.

284 The resolution of outstanding mis-selling claims by the FSCS did not provide any basis for further extending the BSL administration. On 27 February 2020, the Administrators caused BSL to enter into a data-sharing agreement with the FSCS to ensure, in a GDPR-compliant manner, that the FSCS had access to the records and information it required to resolve the outstanding claims. The dissolution was discussed with the FSCS, which did not raise any objections.

US Department of Justice Indictment

285 Finally, I note that BSL was made a party to an indictment by the DOJ on the date of administration. The Administrators liaised with the DOJ throughout the administration in relation to that indictment and the connected proceedings, and cooperated with requests for information where they were made.

286 We explained well in advance to the DOJ that the Administrators were intending to bring BSL's administration to an end in February 2020. The DOJ confirmed that they did not take any position on this, and raised no objection to this course of action. I understand (although this is now entirely a matter for the DOJ's discretion) that once BSL has been dissolved, the DOJ will simply amend the indictments no longer to refer to BSL.

The end of the administration

287 In light of the fact that the sole secured creditor and preferential creditors had been paid in full, the prescribed part had been distributed to unsecured creditors, and the only unsecured creditors of BSL had sufficient recourse to the FSCS where necessary, the Administrators considered that the purpose of BSL's administration had been achieved to the extent possible and that it was accordingly appropriate for the company to be dissolved.

288 In preparation for the end the administration of BSL, the Administrators took the following key steps:

- (a) novating those contracts required for the ongoing administration of BACSL from BSL to BACSL. For example, employee contracts, IT infrastructure and office services;
- (b) transferring remaining employees, who will continue to assist the Administrators, from BSL to BACSL;
- (c) transferring residual future asset recoveries from BSL to BACSL. In particular, certain assets that the Administrators were unable to realise during the Administration were assigned to BACSL, with any future realisations made by BACSL to be applied against the costs met by BACSL on behalf of BSL; and

(d) as described above, the settlement in full of the claims of the secured, and preferential, creditors, as well as the payment of a prescribed part dividend to all unsecured creditors whose claims had been admitted for that purpose.

289 The Administrators received formal clearance from HMRC in respect of BSL's corporation tax and VAT affairs, confirming that they (HMRC) had no objection to the officeholders ceasing to act: see **DNR2/26/369**.

290 On 27 February 2020, the Administrators filed notice under paragraph 84(4) of Schedule B1 to the 1986 Act: see **DNR2/27/370-372**. The Administrators' appointment in relation to BSL came to an end with effect from the date of registration: see paragraph 84(4). The notice was given on the basis that the Administrators considered that the company had no remaining property which might permit a distribution to creditors: see paragraph 84(1). Three months from the date of registration of the notice given under paragraph 84(4), the company was dissolved (being on 3 June 2020): see paragraph 84(6).

291 That notice was published on the Website on 11 March 2018.¹² The Website is the principal means by which documents are delivered to creditors of BSL. On 12 April 2018, the Administrators gave notice pursuant to rule 1.50 of the Insolvency (England and Wales) Rules 2016 to the effect that any documents required to be delivered to creditors would be delivered by way of publication on the Website: see **DNR2/28/373**.

292 The Administrators filed a copy of the relevant notice with the court on 28 February 2020.

Relief sought

293 For these reasons, the Court is asked to make an order for the Administrators' discharge from liability in the above terms, on the basis that they were each appointed by the Court pursuant to section 13(1)(a) of Schedule B1 to the 1986 Act and section 359 of FSMA 2000.

294 Creditors of BSL have been made aware of the intention to bring this Application through a notice published on the Website on 19 June 2020: see **DNR2/9/171-175**. In addition, in BSL's final progress report dated 26 February 2020, exhibited at **DNR2/22/312**, creditors were informed that, "*An order of the High Court is being sought to obtain a discharge from liability in respect of any of our actions as administrators, this will occur after the expiry of the administration order but will have the same effect as if it were granted before*": see page 3 of the progress report. The Administrators also wrote directly to the only secured creditor, Barclays Bank plc, on 16 June 2020 notifying them of the intention to bring this application for discharge, and to the FSCS (as the largest unsecured creditor) on the same date: see **DNR2/29/374-375** and **DNR2/30/376-377**. The FSCS has subsequently confirmed that it does not object to the relief sought in the applications described in this witness statement:

¹² The Website notice is not exhibited to this statement because it would be duplicative of the paragraph 84 notice itself.

see **DNR2/31/378**. The Administrators will notify creditors (also through a publication on the Website) of the Order for discharge having been made and of its effect.

295 I am not aware of any claims or potential claims that any party is intending to pursue against the Administrators in respect of our conduct of BSL's administration, nor am I aware of any facts or matters which could reasonably be considered to give rise to such claims. Moreover, no client or creditor has raised any objections or issues in relation to the application for our discharge from liability, subsequent to the publication of the notice on the Website.

296 Accordingly, the Administrators respectfully suggest that the Court can be satisfied that no prejudice to BSL's creditors will result from granting the order on the terms sought.

Conclusion

297 In light of the facts and matters set out above, the Court is respectfully asked to:

- (a) grant the declaration and order sought in the BACSL Application in the terms set out at paragraph 14(a) above, pursuant to paragraph 63 of Schedule B1 to the 1986 Act, as applied by Regulation 15 of the IBSA Regulations;
- (b) grant the declarations sought in the BACSL Client Money Application in the terms set out at paragraph 14(b) above, pursuant to paragraph 63 of Schedule B1 to the 1986 Act, as applied by Regulation 15 of the IBSA Regulations;
- (c) make orders ending BACSL's special administration and discharging the Administrators from liability in the terms set out at paragraph 14(c) above, pursuant (respectively) to paragraphs 79(3)(b) and 98(2)(c) of Schedule B1 to the 1986 Act, as applied and modified by regulation 15 of the IBSA Regulations;
- (d) make an order for the compulsory winding-up of BACSL; and

- (e) make an order discharging the Administrators from liability in relation to their conduct of BSL's administration in the terms set out at paragraph 15 above, pursuant to paragraph 79(3)(b) of Schedule B1 to the 1986 Act.

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



.....

Douglas Nigel Rackham

Dated this 6th day of July 2020

Appendix 1 – Summary of steps taken to communicate with clients

As referred to at paragraphs 118 to 123 of this witness statement, the Administrators undertook extensive efforts to communicate with clients in order to facilitate the return of client assets. The overall purpose of the extensive communications exercise undertaken by the Administrators has been to ensure that clients are aware of their entitlements and that they are on notice of their rights and obligations in respect of client assets and monies, and the means by which they are entitled to the return of those client assets and monies. The key steps were as follows:

- (a) the Administrators established a dedicated client communications team (the “**Client Team**”) with a telephone helpline and Website: <https://www.pwc.co.uk/beaufort>;
- (b) the Client Team assisted and responded to an approximate total of 26,000 client queries (approximately 11,000 by email and approximately 15,000 by telephone). The Website has had over 54,000 total visits;
- (c) in addition, the Administrators have communicated extensively with BACSL’s clients by way of direct correspondence. At Appendix 2 to this statement, I list the mass communications that have been sent to clients. That list does not include the extensive communications sent to individual clients or small numbers of clients in respect of specific issues;
- (d) where clients could not be reached, for example because there was no known address, the Administrators undertook efforts to trace clients, as explained below. As of August 2018, the Administrators were aware of 5,394 clients who were non-responsive, and a LexisNexis check was carried out with the following results:
 - (i) 2,815 clients were identified as living at the address which the Administrators held for them, and renewed efforts were subsequently made to seek a response from these clients;
 - (ii) 376 clients were described as “*gone away*”, and attempts were made to trace these clients;
 - (iii) 924 clients were traced to a new address, and a new letter was sent to that address asking them to engage with Beaufort Client Services;
 - (iv) 366 clients were understood to be deceased, and efforts were therefore made to engage the estate of the deceased;
 - (v) 947 could not be identified by LexisNexis and alternative action was required;
- (e) the Administrators have made significant efforts to encourage and invite clients to submit claims to client assets via an online claims “**Portal**” operated by the Administrators and, in doing so, to provide express agreement (where eligible) to

receiving FSCS compensation automatically. To date 9,804 clients have logged onto the Portal;

- (f) where clients have not engaged with the Portal, but would otherwise be entitled to FSCS compensation, the Administrators agreed with the FSCS a method for ensuring that those clients would not be deprived of the compensation available to them: see paragraphs 53 to 55 of Rackham 1;
- (g) a creditors' committee was established, with the first meeting held on 10 May 2018. The composition of the creditors' committee has changed from time to time. At present, it comprises four members, including the FSCS, representing the interests of the major sub-groups of clients. In addition to formal members, a number of observers attend meetings of the creditors' committee, including the FCA. To date, seven formal creditors' committee meetings have been held on the following dates:
 - (i) 23 May 2018
 - (ii) 6 June 2018;
 - (iii) 21 June 2018;
 - (iv) 13 July 2018;
 - (v) 26 November 2018;
 - (vi) 27 February 2019; and
 - (vii) 30 October 2019
- (h) as at the date of this statement, there are 129 clients who have not engaged with the Administrators at all, despite the extensive efforts to trace and engage with them.

Appendix 2 – Summary of mass communications

Written communications

No.	Description	Date
1	<p>Notification of appointment of administrators</p> <p><i>A letter notifying all clients of the administration and outlining potential next steps required in order to return client assets and cash</i></p>	15/03/2018
2	<p>Further update on client recoveries and distributions, client data notifications (GDPR) and cessation of ISA manager status</p> <p><i>Update to clients on client asset reconciliations and distributions, providing GDPR data notification and cessation of ISA manager.</i></p>	12/04/2018
3	<p>Creditors Meeting Notification</p> <p><i>Notification to clients and creditors of the meeting of creditors to be held in May.</i></p>	20/04/2018
4	<p>Client Assets and Client Money Bar Dates Notification</p> <p><i>Notification to all clients of the Bar Date and final notice to submit any outstanding claims</i></p>	09/05/2018
5	<p>Reminder to login to Client Portal</p> <p><i>Communication to clients who had not logged in to the Client Portal to view their statements and submit a claim, where required.</i></p>	29/05/2018
6	<p>Reminder to submit claim (have logged in)</p> <p><i>A reminder issued to clients who had logged into the portal to submit a claim, where required.</i></p>	29/05/2018
7	<p>Post Bar Date Notification Letter</p> <p><i>Notification to clients informing them that the Bar Date has passed and next steps</i></p>	13/06/2018
8	<p>Notice to all clients and creditors of BACSL (Proposals Approved)</p> <p><i>Notification issued to all clients and creditors to inform them that the Administrators' Proposals were approved and the next steps</i></p>	13/06/2018
9	<p>Distribution Plan Term Sheet to all clients of BACSL</p> <p><i>A communication explaining the terms of the Distribution Plan</i></p>	03/07/2018

No.	Description	Date
10	Distribution Plan Publication to all clients of BACSL <i>A communication notifying clients of the publication of the Distribution Plan and that a copy has been placed on the website.</i>	11/07/2018
11	3rd CASS Reminder Communication to all clients holding cash/assets who haven't submitted claims <i>The 3rd CASS reminder to all clients who had not submitted a claim</i>	13/08/2018
12	Distribution Plan Witness Statement, Updated Distribution Plan and Distribution Plan Addendum <i>A notice of the documents uploaded to the website in respect of the Distribution Plan</i>	25/07/2018
13	Distribution Plan Approved by Court <i>Notification of the Distribution Plan approval to all clients and the next steps</i>	30/07/2018
14	The Share Centre Named as Preferred Broker Comm to all Clients with Cash/Assets <i>Notification to all clients with cash and/or asset balances that The Share Centre have been named as a Nominated Broker for future transfer of accounts</i>	08/08/2018
15	Notice to clients of fraudulent activities <i>A notification warning clients of fraudulent activities being carried out by third parties in respect of Beaufort and advising them that all communications would be issued by the Administrators or Beaufort directly.</i>	17/08/2018
16	Notification of bulk ISA Transfer <i>Notification to all clients holding an ISA account of a proposed bulk transfer of their ISA account.</i>	24/08/2018
17	Corporate Client FSCS Eligibility Form Comm <i>A form sent to all corporate clients to request further information to enable an assessment to be conducted in respect of eligibility for FSCS to cover their costs associated with the Administration and shortfalls.</i>	18/07/2018
18	Letter to clients traced to potential new addresses	21/06/2018

No.	Description	Date
	<i>Correspondence issued to clients for whom we received notification of "goneaway" for from the earlier mailings and had managed to trace a new address using a third party supplier.</i>	
19	Letter to 890 clients traced to potential new addresses from non-respondent LexisNexis tracing <i>Correspondence issued to additional clients for whom we received notification of "goneaway" from the earlier mailings and had managed to trace a new address using a third party supplier.</i>	05/09/2018
20	Blank Confirmation Form Question Follow-up Email to 145 Clients <i>Communication issued to clients who had not fully completed their statement confirmation forms as required</i>	20/09/2018
21	Communications to clients with rounded figures in August Statements (Corrected) <i>Revised statement issued to those who were previously provided with rounded figures in their statement to show their full holdings of certain assets</i>	07/09/2018
22	Date of birth Email to clients without one on file <i>Email issued to all clients who had missing personal information on their files, requesting updated information</i>	06/09/2018
23	Tranche 1 Statement TSC Transfer Mailing/Email <i>Communication issued to clients included in the first bulk transfer to The Share Centre, including their client statements notifying them of their inclusion in an upcoming transfer</i>	03/09/2018
24	Non-Tranche 1 Statement Mailing/Email <i>Communication issued to clients not eligible for the bulk transfer to The Share Centre, providing them with their latest statements and options available to them to transfer</i>	03/09/2018
25	335 Clients with assets who didn't have statements produced <i>Client statements issued to those who required manually produced statements</i>	September 2018
26	Communications to clients with Disputed Claims asking them to agree to Tranche 1 Transfer	07/09/2018

No.	Description	Date
	<i>Communication issued to all clients who had disputed their client statements seeking their agreement to transfer in the upcoming bulk transfer</i>	
27	<p>Communications to clients with Disputed Claims Now Agreed asking them to agree to Tranche 1 Transfer</p> <p><i>Communication issued to all clients who had disputed their client statements but whose dispute was subsequently resolved to seek their agreement to transfer in the upcoming bulk transfer in advance of the required 21 day notice period</i></p>	12/09/2018
28	<p>Communications to clients with Disputed Claims asking to agree or provide evidence</p> <p><i>Communication issued to clients with remaining disputed claims to provide supporting evidence to their disagreement or revised agreement</i></p>	26/09/2018
29	<p>Communications to Tranche 1 clients holding Rangers shares who were excluded from original Transfer Statement Communications as Statements weren't prepared asking if they still wish to be in Tranche 1 Transfer</p> <p><i>Communications specific to the clients holding Rangers shares to provide them with the original transfer statement and seeking engagement on proposed transfers</i></p>	12/09/2018
30	<p>Communications to 10 Corporate clients approved as FSCS-eligible</p> <p><i>Communications issued to confirm FSCS eligibility to 10 corporate clients who had submitted their FSCS eligibility questionnaires</i></p>	10/09/2018
31	<p>Letter to clients removed from Tranche 1 for PwC/TSC reasons (not opting-out)</p> <p><i>Communication issued to clients informing them that they were unable to be transferred to The Share Centre as part of the bulk transfer.</i></p>	21/09/2018
32	Communications to all non-Tranche 1 clients re: announcement of second nominated broker (AFH)	27/09/2018

No.	Description	Date
	<i>Communication to all remaining clients of a second Nominated Broker, AFH.</i>	
33	<p>Communications to all BACSL Creditors re announcement of publication of first progress report</p> <p><i>Communication to all clients and creditors to inform them of the publication of the first progress report on the PwC website.</i></p>	28/09/2018
34	<p>Update Letter to clients removed from Tranche 1 for PwC/TSC reasons (not opting-out)</p> <p><i>Communication issued to clients unable to be transferred to The Share Centre as part of the bulk transfer informing them of their options</i></p>	05/10/2018
35	<p>Scam Email Warning Notification to all Clients with Email Addresses</p> <p><i>Email issued to all clients with email addresses informing them of a potential scam email being issued to a small number of Beaufort clients</i></p>	05/10/2018
36	<p>Letter to 352 Tranche 2 (AFH Private Wealth) Clients about 6th November Proposed Transfer (incl. Transfer Statements)</p> <p><i>Communication issued, including transfer statements providing notice of a proposed bulk transfer to AFH</i></p>	12/10/2018
37	<p>Over £50k Costs Statement Comms</p> <p><i>Communication issued to clients with costs over the £50k FSCS compensation limits, including providing them with revised statements and notice of the amounts not covered by the FSCS</i></p>	12/10/2018
38	<p>August Manual Statement Email Notification</p> <p><i>Updated client statements issued to those who required manually produced statements</i></p>	17/10/2018
39	<p>Tranche 1A Transferred Statements</p> <p><i>Statements issued to clients who were part of The Share Centre transfer informing them of what had transferred</i></p>	18/10/2018
40	<p>TSC Tranche 1B Transfer Statement Packs</p> <p><i>Transfer statements and notification of intended transfer in the next bulk transfer to The Share Centre</i></p>	19/10/2018

No.	Description	Date
41	<p>TSC Tranche 1B Transfer Communications to clients originally scheduled to be in Tranche 1A</p> <p><i>Tailored communication to clients due to transfer to The Share Centre but were originally due to transfer to The Share Centre in the earlier bulk transfer but were subsequently unable to transfer.</i></p>	29/10/2018
42	<p>Letter to TSC Transferred Clients with Open trades</p> <p><i>Letters to clients with open trades and who were transferred to The Share Centre notifying them of their requirement to settle their open trades with the relevant counterparty.</i></p>	15/11/2018
43	<p>TSC Tranche 3 Transfer Statement Packs</p> <p><i>Transfer statements and notification of intended transfer in the next bulk transfer to The Share Centre</i></p>	18/12/2018
44	<p>Retained Statement (14-Dec-18), Liquidation, Full, Partial or No Transfer Comms</p> <p><i>Statements issued to clients with their remaining holdings still held by BACSL and notice if they have transferred in full, partially or not at all.</i></p>	24/01/2019
45	<p>Second Corporate FSCS Eligibility Chaser to 85 Corporate Clients</p> <p><i>Communication issued to all corporates who had not completed the FSCS eligibility questionnaire to seek FSCS compensation cover.</i></p>	07/02/2019
46	<p>Retained Statement Communications (141218) to Clients Requiring Manual Statements</p> <p><i>Statements issued to clients who were unable to have automatically produced statements highlighting their remaining holdings still held by BACSL and notice if they have transferred in full, partially or not at all.</i></p>	26/03/2019
47	<p>Client Asset Shortfall Compensation Payment Communications</p> <p><i>Communication issued to all clients impacted by securities for which BACSL did not hold sufficient units. The communication also informed those eligible for FSCS protection would receive compensation.</i></p>	23/05/2018
48	<p>T6 AFH Transfer Statement Communications</p>	20/06/2019

No.	Description	Date
	<i>Transfer statements and notification of transfer issued to all clients who were included in the AFH bulk transfer.</i>	
49	T6 AFH Transfer Date Delayed Communications <i>Correspondence issued to clients previously advised of an upcoming transfer to AFH, notifying them of a delay to the transfer.</i>	11/07/2019
50	T6 AFH Confirmation <i>Confirmation letter of the bulk transfer to AFH</i>	13/09/2019
51	T6 AFH Dropouts <i>Correspondance issued to clients who were unable to be transferred to AFH, and requesting their engagement and instructions on the return of their remaining portfolio</i>	01/10/2019
52	CTV's April 2018 <i>Consolidated tax vouchers issued to all clients providing them with details of dividends paid for the period</i>	04/2019
53	Remaining clients letter 1 <i>A letter and statement issued to clients informing them that of their remaining portfolio still held with BACSL and setting out their potential options and required engagement to facilitate their return</i>	28/10/2019
54	US Withholding Taxes <i>A letter to clients impacted by non-compliance in respect of US withholding taxes by Beaufort pre-administration and informing them of potential outstanding balances due to the US tax authorities</i>	10/10/2019
55	Remaining clients letter 2 <i>A second letter and statement issued to clients informing them of their remaining portfolio still held with BACSL and setting out their potential options and required engagement to facilitate their return</i>	December 2019
56	SIPP administrator letter	January 2020

No.	Description	Date
	<i>Correspondence issued to all SIPP administrators requesting their engagement enclosing a list of their remaining clients and assets held with BACSL</i>	
57	Remaining clients letter 3 <i>A final letter and statement issued to clients informing them of their remaining portfolio still held with BACSL and setting out their potential options and required engagement to facilitate their return</i>	February 2020
58	SIPP administrator chaser <i>Correspondence issued to all remaining SIPP administrators informing them of the administrators' intended actions in respect of assets and cash transfer if no instructions were received.</i>	March / April 2020
59	Notice of applications <i>Letters and emails issued to all remaining clients and creditors informing them of the applications made and requesting engagement to finalise their accounts.</i>	June 2020
60	Return of Client Money letters <i>Letters issued to all clients who continue to hold client money requesting the relevant details to return the funds or informing them of the details held on file to which the administrators intend to attempt to distribute funds.</i>	July 2020

Other communications

61	Outbound Calls as a result of LexisNexis tracing (to clients that LexisNexis couldn't trace) <i>Calls made to clients that LexisNexis was unable to trace to attempt to make contact</i>	Throughout the administration
62	Outbound Calls to clients aged 65+ <i>Calling campaign to clients over 65 years old to seek engagement outside of the electronic methods</i>	06/2018 – 07/2018
63	Outbound Calls to Clients we have received Data Subject Access Requests for from Claim Management Companies <i>Calls to clients who had submitted a Data Subject Access Request via a Claims Management Company to inform them</i>	Throughout the administration

	<i>they could simply submit a misselling claim to the FSCS should they wish</i>	
64	Outbound calls to clients who ticked NO to FSCS Compensation question, but YES to both statements <i>Calling campaign to clients who had rejected FSCS compensation but had accepted both of their statements and would otherwise be eligible for FSCS protection.</i>	18/07/2018
65	Outbound calls to clients with portfolios valued above £50k yet to submit claims <i>Calling campaign to clients with portfolios valued over £50k who had not yet submitted claims.</i>	18/07/2018
66	Outbound calls to clients with portfolios valued between £20k-£50k yet to submit claims <i>Calling campaign to clients with portfolios valued between £20k - £50k who had not yet submitted claims</i>	01/08/2018
67	Outbound calls to clients with portfolios valued between £1k-£20k yet to submit claims <i>Calling campaign to clients with portfolios valued between £1k and £20k who had not yet submitted claims</i>	06/08/2018
68	Client called/emailed to request paper statements (ongoing) <i>Facilitating requests for calls requesting paper statements</i>	Ongoing
69	Attempted to contact clients with >£5k remaining cash/assets <i>Continuous attempts to contact clients with assets and/or cash over £5k</i>	Throughout the administration

Appendix 3 – Valuation approach

- 298 To assist the Court, I set out in this Appendix a brief overview of the approach taken by the Administrators to the valuation of the ‘rump’ of assets remaining in the BACSL estate. Making meaningful and reliable valuations is challenging in circumstances where the remaining assets in BACSL are those falling into one of the problematic categories described in this statement. Precise valuations would assist the Administrators and the Court in assessing the proportionality of taking further steps to return assets to clients but, unfortunately, this is often not possible. The valuations provided in this statement in respect of remaining assets should be regarded as indicative and have been reached in accordance with the approach described below.
- 299 Relatively ‘vanilla’ securities that are traded regularly in the market are generally easier to value reliably – third-party valuation data is often available, and the Administrators have access to that data through BACSL’s IT systems provider. Even in the absence of third-party data, it is often possible to identify recent transactions in those securities to obtain a reasonable indication of the value of the relevant securities. However, the more ‘vanilla’ the asset, the more likely it is to have been returned to clients already. Where securities are not traded on an exchange (or are traded very infrequently), there is often an absence of suitable reference data.
- 300 At the commencement of the BACSL administration, the Administrators received valuation data from a third-party data provider, Objectway, and identified indicative valuations as at March 2018 for client assets held by BACSL. Even at that early stage, it was clear that some assets were difficult to value (e.g. because the available data was historical). It would plainly be inappropriate always to rely on those valuations today given the passage of time and, accordingly, the Administrators only do so where this is considered appropriate: see below.
- 301 Shortly after their appointment, the Administrators sought the advice of an expert valuation consultant (the “**Expert Valuer**”) who was asked to identify values through fundamental analysis (i.e. by seeking to establish the intrinsic value of the asset by reference to the financial status of the issuer, and broader economic and financial factors where appropriate, but without reference to trading history). However, it was not always possible for the Expert Valuer to suggest reliable values for securities where limited information was publicly available about the issuer or financial information about the issuer was out of date. The Administrators have also on occasion asked certain brokers whether a market exists for assets that are difficult to value.
- 302 Where limited or no trading data exists for a security, the issuer appears inactive, or the broker is unable to establish a price for an asset, the Administrators have tended to proceed on the assumption that the asset in question has negligible or no value.

303 In January 2020, the Administrators sought to establish updated valuation estimates for the rump of the assets, drawing on three main sources of information:

- (a) Third-party valuation data from two providers. First, Objectway (BACSL's supplier of financial software and digital solutions) provides daily updates of the most recently available valuations of (mainly UK) stocks, which it in turn obtains from an agent which tracks the main stock exchanges. Secondly, Cortland (an entity described further in the body of this statement) periodically provides the most recently available US stock valuations.
- (b) Valuations provided by the Expert Valuer referred to above at paragraph 301.
- (c) Information from PwC's internal Business Research Department where available for stocks with limited or no trading data.

304 By selecting the most appropriate value for each security and supplementing this with knowledge of the status of the security in question (for example, securities where the broker has been asked to value or sell a security but could find no available market, or where a security has been suspended or relates to an insolvent company), the Administrators have developed a principled but pragmatic approach to valuing the remaining securities.

305 Applying that approach, the estimated value of all remaining assets is approximately £10.3 million, as set out in the below table.

Summary of valuations of remaining client assets

Category	Number of securities	Valuation (£m)
Dematerialised (CREST/ CORTLAND/ ALLFUNDS)	821	£9.8
Materialised (Physical Certificates)	988	£0.5
Total:	1,809	£10.3

306 The approach is described in further detail below. The approach differs as between dematerialised securities (i.e. those held in electronic form) and materialised securities (i.e. those held in physical form).

For Dematerialised Assets held on the CREST, CORTLAND and ALLFUNDS platforms

307 Where (i) the Expert Valuer's valuation, (ii) two Objectway valuations (being a valuation extracted in July 2018 and a more recent valuation) all show nil value, this is deemed indicative of there being no active market for the relevant security and the value of the asset is deemed to be £0.

308 **Where there is no Expert Valuer valuation:**

- (a) If the latest available Objectway valuation is from pre-2019, the valuation is considered historical and therefore unreliable. The implication is that there is no active market for the security and the valuation has been recorded as £0.
- (b) Where the latest Objectway valuation is negligible in value, and the previous Objectway valuation is also very small, the most recent (negligible) Objectway valuation has been taken.
- (c) Where the latest Objectway valuation is negligible in value, but the difference from the previous valuation is significant, the Administrators have undertaken further investigations, including searches of alternative databases and company websites. The valuation reasonably considered most likely to be accurate was selected. Where I refer to “further investigations” below, I refer to the same types of investigation as are described here.
- (d) Where the previous Objectway valuation was negligible, but the current valuation is significant, further investigations have taken place. The valuation reasonably considered most likely to be accurate was selected.
- (e) For all remaining assets a manual sense-check comparing the latest the Objectway valuation at different points in time was performed. No unreasonable movements were identified. Consequently, the latest valuation was used.

309 **Where there is an Expert Valuer valuation:**

- (a) Where the latest Objectway valuation is from before 2019, the Administrators considered the rationale for the Expert Valuer’s valuation. Where the Expert Valuer’s valuation was based on robust information, further investigations were undertaken and the valuation considered most likely to be accurate was selected.
- (b) Where the latest Objectway valuation is negligible in value and both the previous Objectway valuation and the most recent Expert Valuer’s valuations are negligible, the most recent Objectway valuation has been taken.
- (c) Where the latest Objectway valuation is negligible but either the previous Objectway valuation or the most recent Expert Valuer valuation was significant, further investigations were carried out and the most reliable valuation was selected.
- (d) Where the previous Objectway valuation is negligible in value, and both the latest Objectway valuation and Expert Valuer’s valuation are small, the most recent Objectway valuation has been taken.

- (e) Where the previous Objectway valuation is negligible but either the latest Objectway valuation or the Expert Valuer's valuation are significant, further investigations have been carried out and the most reliable valuation was selected.
- (f) For all remaining assets a manual sense-check comparing the Objectway valuation at different points in time was performed and no unreasonable movements were identified. Consequently, the latest valuation was used.

310 The other elements of the approach to dematerialised securities were as follows;

- (a) Where dematerialised securities are held by BACSL's sub-custodian, Cortland, valuations have also been compared to data provided by Cortland. Where a discrepancy was noted further investigations have been carried out. When the valuations are consistent the more recent of the Cortland valuation and latest Objectway valuation has been used to make the valuations as up to date as possible.
- (b) Where, during the course of the administration, the Administrators have successfully liquidated an asset, the most recently available liquidation price has been compared to the latest Objectway valuation. The Objectway valuations were consistent with the liquidation prices in all cases and so, for ease, Objectway valuations have been used.
- (c) Where, during the course of the administration, the Administrators have been unable to liquidate an asset, the approach to valuation depends upon the reason for this inability. In particular:
 - (i) Where the reason is that there is no market for the stock this is seen as the strongest indication that the stock has negligible value. This is consistent with the Objectway and Expert Valuer's valuations, providing further evidence that the value of these securities is likely very low. Therefore, a negligible valuation has been assigned to these securities.
 - (ii) For assets that we have not been able to liquidate because the Administrators' chosen execution venue is unable to trade in a particular geographical region or because it is unable to trade OTC securities, the reason that the security was not liquidated is not a reflection of the value of the stock but a result of the limitations of the execution venue's access to the market. We have therefore ascribed a valuation using the approach described at paragraphs 308 and 309 of this Appendix.

Assets held in certificated form

311 Where there is an Objectway valuation in or after 2019, it has been assumed that this is a reasonable reflection of the market value of the shares and this valuation has been used.

Where the Expert Valuer derived a valuation for these physical securities it was broadly consistent with the Objectway valuation.

- 312 Where no recent Objectway valuation was available, valuations from the Administrators' business research department have been used where available, provided they are from in or after 2019. The business research department utilises a number of databases to provide valuations of shares.
- 313 If there is no recent Objectway valuation and no valuation has been available from the business research department, it is considered that the stock has no market and therefore a valuation of £0 has been assumed.

Appendix 4 – List of remaining securities

[Please see attachment]

Applicants
D N Rackham
Second statement
Exhibit: DNR2
6 July 2020
CR-2018-001745
CR-2018-001881

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

**IN THE MATTER OF BEAUFORT ASSET CLEARING
SERVICES LIMITED**

**AND IN THE MATTER OF BEAUFORT SECURITIES
LIMITED**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

SECOND WITNESS STATEMENT
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