

On behalf of the Applicants

D N Rackham

First statement

Exhibit: DNR1

25 July 2018

CR-2018-001745

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

IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION
REGULATIONS 2011

FIRST 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 an insolvency practitioner at PricewaterhouseCoopers LLP ("**PwC**"), a professional services firm of the above address. 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**"), Beaufort Asset Clearing Services Limited ("**BACSL**") entered into special administration by order of Mr M H Rosen QC sitting as a Deputy Judge of the High Court. By the same order, Russell Downs, Dan Yoram Schwarzmann and I (all of PwC) were appointed to act as joint administrators of BACSL (together, the "**Administrators**"). The appointment became effective at 8:23pm GMT on 1 March 2018.
- 2 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 and paragraph 11(a) of Schedule B1 to the Insolvency Act 1986, BACSL's sister company, Beaufort Securities Limited ("**BSL**"), entered into administration by order of Mr M H Rosen QC.

3 I make this statement in support of the application (the "**Application**") made by the Administrators pursuant to Rule 146(2) of the Investment Bank Special Administration (England and Wales) Rules 2011 (the "**IBSA Rules**"), for the Court's approval of a distribution plan for the return of client assets held by BACSL prepared pursuant to Part 5 of the IBSA Rules (the "**Distribution Plan**").

4 I am duly authorised to make this witness statement on behalf of the Administrators. Since our appointment, I have assumed primary responsibility for the day-to-day conduct of BACSL's special administration. Save where otherwise indicated, the contents of this statement are derived from facts and matters which are within my own knowledge and belief. These facts and matters have been learned either as a result of the work undertaken by me as a 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 of BACSL and/or BSL, or by the Administrators' legal advisers, Linklaters LLP ("**Linklaters**").

5 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.

6 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 upon appointment on or around 12 March 2018 to manage client communications (the "**Website**"). This statement will be uploaded to the Website once it has been filed with the Court.

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

8 There is now shown to me a paginated bundle of copy documents, marked "**DNR1**", to which I refer in this statement. References to DNR1 are in the form [**DNR1/tab/page number**].

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

9.1 Section B: BACSL

9.2 Section C: BACSL's special administration

- 9.2.1 Applicable statutory framework
- 9.2.2 The Distribution Plan
- 9.2.3 The FCA and FSCS
- 9.2.4 Creditors' Committee
- 9.3 Section D: Key terms of the Distribution Plan
 - 9.3.1 Key terms of the Distribution Plan
 - 9.3.2 Transfer
- 9.4 Section E: Costs
 - 9.4.1 Costs allocation under the Distribution Plan
 - 9.4.2 Calculation of Estimated Costs Reserve
 - 9.4.3 Fee assessor
- 9.5 Section F: Rule 144(2)(b)
- 9.6 Section G: Regulation 11(4A) returns
- 9.7 Section H: Client Consultation
- 9.8 Section I: Notice of Distribution Plan and the Hearing
- 9.9 Section J: Argent Clients
- 9.10 Section K: Conclusion
- 9.11 Annex A: Client communication summary

B. BACSL

- 10 BACSL was incorporated on 3 July 2008. From 29 January 2009, it was authorised and regulated by the FCA (formerly the Financial Services Authority). BACSL operated as an investment bank within the meaning of section 232 of the Banking Act 2009 and its principal business activities were as a clearing, settlement and custody provider to BSL.
- 11 BACSL operated within a group of companies which traded under the name of Beaufort. A corporate structure diagram is at **[DNR1/1/1]**.
- 12 The company that became BSL was incorporated on 5 March 1992 and was previously Hoodless Brennan and Partners Plc and HB Markets Plc. Its principal business activities were as a provider of a broad range of stockbroking services (being investment, advisory and dealing), which it carried out for both institutional

investors and private clients. From 1 December 2001, BSL was authorised and regulated by the FCA's predecessor, the Financial Services Authority, and it was a member of The London Stock Exchange and the NEX Exchange. Although BSL had as part of its regulatory permission the regulated activity of arranging safeguarding and administration of assets, it did not in practice hold client assets and accordingly did not operate as an investment bank within the meaning of section 232 of the Banking Act 2009.

- 13 Until 1 March 2018, BACSL acted as the custodian of client assets and client money, which BACSL and/or BSL had undertaken to hold on behalf of clients in connection with BSL's business. The terms of business under which BSL and BACSL entered into a tripartite relationship with clients (current as at the commencement of BACSL's administration) and on which services were provided to clients are at [DNR1/2/2] (the "**Beaufort ToB**").
- 14 The various securities and monies were held by BACSL either directly or indirectly via nominee companies. Beaufort Nominees Limited ("**BNL**") acted as the primary nominee custodian for BACSL, together with Raven Nominees Limited (the "**Nominee Companies**").¹
- 15 The services that BSL provided to Beaufort clients included:
 - 15.1 investment advice;
 - 15.2 arranging for the purchase, sale or subscription of securities; and
 - 15.3 managing investments on behalf of clients,in connection with which BACSL provided clearing and custodian services, which included:
 - 15.4 settling transactions on behalf of clients;
 - 15.5 holding client money; and
 - 15.6 the safe custody of client assets.
- 16 In connection with such services, BSL offered the following types of account and tax wrappers: (i) an online execution only account which meant that clients were not offered any form of advice; (ii) discretionary management services which meant that clients authorised BSL to make investment decisions without recourse

¹ I understand that there are two other nominee companies, Ruby ISA Nominees and Marquee Nominees Limited, as shown in the exhibited structure chart but that neither company was materially utilised.

to those clients; (iii) self-invested personal pensions; and (iv) stocks and shares ISAs.

17 BACSL and BSL together employed approximately 118 staff and 8 contractors across its three office locations, namely London St Mary Axe, Bristol and Colwyn Bay. The London office was the Beaufort headquarters and conducted the group's central operations.

18 As at 1 March 2018, BACSL had approximately 29,000 clients for which it held approximately:

18.1 Client assets: an indicative valuation of approximately £570 million² of client assets for approximately 14,000 clients, as to which:

18.1.1 the significant majority, (accounting for approximately 58% by number) of the client assets are dematerialised securities held by BACSL electronically in CREST (Euroclear UK & Ireland Limited's central securities depository), through BNL. There are also a number (accounting for approximately 34% by number) of dematerialised securities held by BACSL via other custodians (being: Cortland Capital Services LLC, Shaw and Partners Limited, Reyker Securities and Allfunds Bank S.A.);

18.1.2 a small proportion of client assets (accounting for approximately 7% by number) are physically held securities registered in the name of BACSL or the Nominee Companies; and

18.1.3 an even smaller proportion of client assets are physical certificates held by BACSL at BACSL's head office in London in respect of securities registered in the name of clients.³ In such instances, the asset held by BACSL comprises merely the physical certificate evidencing the client's ownership of the underlying security.

² This valuation represents the total value of all client assets based on an independent valuation prepared for the Administrators on an indicative basis as at 16 April 2018. The Administrators will obtain a further independent valuation at the Effective Date of the Distribution Plan and as such this valuation may change in the future. The independent valuation used in this statement: (i) takes the price of the securities and uses an exchange rate as at 16 April 2018; and (ii) takes into account market conditions; and (iii) is based on certain assumptions (which have not been independently verified) related to liquidity and availability.

³ The Administrators understand that BACSL (for the most part) came to hold such physical certificates for clients who transferred them into its custody with the intention that it would (as and when the FCA permitted this) transfer the securities into CREST to be held in dematerialised form, subject to the Beaufort ToB, through BNL as nominee.

- 18.2 Client money: approximately £50 million of client money for approximately 13,000 clients (of which 2,800 have client money claims only). Each client money balance is held in a segregated client account (i.e. an account which is segregated from BACSL's (own) firm accounts) in accordance with the requirements of Chapter 7 (Client Money Rules) of the Client Asset Sourcebook ("**CASS**"), published by the FCA as part of the FCA Handbook. The segregated client accounts are held, variously, with the following custodians: Barclays, Royal Bank of Scotland, State Street Corporation, Allfunds S.A. and Cortland Capital Services LLC.
- 18.3 There are approximately 11,200 clients who have zero client assets and client money (i.e. BACSL had not undertaken to hold any money or assets for them as at the Administrators' appointment).
- 19 As to the composition of BACSL's clients:
- 19.1 94% of BACSL's clients are domiciled in the United Kingdom (the "**UK**"). The average age of BACSL's natural person clients is 55 and 27% of them are over 65 years old.
- 19.2 The majority of BACSL's clients (27,623, i.e. 97% of all clients) are individuals, classified as retail clients and whose claims are (in aggregate) to approximately £350 million of client assets and approximately £32 million of client money. They hold individual portfolios to client assets and/or client money averaging less than £22,700 in value (excluding clients with zero balances).
- 19.3 The remaining 3% (i.e. 918) of BACSL's clients are corporates, many of which we believe are small and medium-sized enterprises. Their claims are to approximately £220 million of client assets and £18 million of client money.
- 20 As at 1 March 2018, on the basis of the Administrators' analysis to date, it appears that the client assets and client money held by BACSL substantially matched the client assets and client money that BACSL had undertaken to hold for its clients, save for a limited number of isolated deficiencies. In particular:
- 20.1 Client assets: reconciliation work is still on-going but, at present, the Administrators have identified a shortfall on an indicative value basis of approximately £370,000 in relation to 74 stock lines in respect of which 1,864 clients have claims.

- 20.2 Client money: reconciliation work is still on-going but, at present, the Administrators have identified a shortfall approaching £300,000. Pursuant to Regulation 10H(3), the Administrators are obliged, once the reconciliation exercise is complete, to transfer an amount equal to any such shortfall from BACSL's own bank account to the client money accounts. However, as BACSL does not have any material funds, it is unlikely that the Administrators will be able to complete any such transfer.
- 21 Further, as at 1 March 2018, a number of clients were indebted to BACSL and/or BSL in respect of loans the firms had made to those clients for the purchase of securities by them (the "**Client Debts**"). The aggregate total of the Client Debts is approximately £1.4 million. Under the Beaufort ToB (Clause 20), all investments which BACSL and/or BSL hold on behalf of such clients are subject to a first ranking security interest for the payment of any liabilities which the clients have incurred to the firms, including the Client Debts.
- 22 Prior to 1 March 2018, BACSL and BSL had been subject to various regulatory procedures, stemming from various FCA concerns including as to BACSL's handling and reconciliation of client assets and client money. In brief summary, I understand that:
- 22.1 From 2013 onwards, BACSL was subject to ongoing monitoring by the FCA which required BACSL to submit various regulatory confirmations regarding the status, quantity and amounts of client portfolios held by it to the FCA.
- 22.2 On 13 October 2016, BSL entered into a voluntary requirement notice, known as a "**VREQ**", which (subject to certain limited exceptions) effectively prevented BSL from accepting new money from new and/or existing clients under BSL's discretionary fund management service (the "**DFM Service**"). On 23 December 2016, BSL entered into a second VREQ, which (subject to certain limited exceptions) effectively closed the DFM Service.
- 22.3 On 8 September 2017, a third VREQ was entered into, which required, in summary (subject to certain limited exceptions), BSL and BACSL to cease accepting new client assets or client money, to cease increasing existing or granting new credit lines to clients and to cease providing third-party administration or outsourced services.

- 23 By 1 March 2018, in summary, the FCA had formed the view that both BACSL and BSL were insolvent and, further, that it was necessary for insolvency practitioners to be appointed: (i) in order to protect client assets from being dissipated and to protect customers of both firms; and (ii) due to concerns that the firms may have been involved in financial crime. The FCA's press release dated 2 March 2018 to this effect is at [DNR1/3/19].
- 24 The FCA applications were heard on 1 March 2018, and prior to the unsealing that day of the grand jury indictment in proceedings by the United States ("US") Department of Justice ("DOJ") on 1 March 2018 against BSL, Beaufort Management Services Limited (a separate company in Mauritius) and eight other corporate and individual defendants (the "US Proceedings"). BSL was charged with conspiracy to commit securities fraud and to launder money in violation of US law (the "DOJ Indictment"). The grand jury indictment unsealed on 1 March 2018 is at [DNR1/4/21] and the DOJ press release is at [DNR1/5/50]. On 20 March 2018, a further (superseding) grand jury indictment was issued [DNR1/6/53], accompanied by a DOJ press release dated 22 March 2018 [DNR1/7/86], adding various further defendants.
- 25 The allegations against BSL are not directly relevant to the present Application for the approval of the Distribution Plan. In brief, however, the core allegations were that:
- 25.1 A number of individuals employed by or connected with BSL agreed to launder £6.7 million for an undercover FBI agent, for whom brokerage accounts were opened at BSL in the names of off-shore shell companies, which the undercover agent represented to be the proceeds of securities fraud.
- 25.2 BSL along with others facilitated at least 10 "pump-and-dump" schemes involving US publicly traded companies listed on US over-the-counter exchanges. This meant that BSL along with others was artificially inflating the price of securities by disseminating false promotional news and conducting a series of intra-group match-trades to demonstrate liquidity and then offloading the securities (the prices of which were by that stage vastly inflated) to unsuspecting third-parties at a profit.
- 25.3 Once fraudulent trades were executed in the US, the proceeds of those trades were subsequently received into client accounts. The allegation is

that the trades resulted in proceeds of more than \$50 million dollars being received by BSL.

25.4 BSL transferred funds to corporate bank accounts at an offshore bank named Loyal Bank Limited (also a defendant to the US Proceedings). Loyal Bank then provided debit cards to its clients to withdraw funds from those accounts in an untraceable manner to conceal the source of the funds and facilitate ongoing securities fraud.

26 In addition to the appointment of the Administrators:

26.1 On 1 March 2018, the FCA issued supervisory notices (the “**FSNs**”) which, among other things, prohibited BACSL and BSL from carrying on any regulated activity or disposing, dealing with or diminishing the value of any of their assets and of any client assets and client money without the FCA’s prior written permission [**DNR1/8/89**].

26.2 On 2 March 2018, the Securities Exchange Commission (the “**SEC**”) issued a complaint against BSL and several other parties in connection with the same criminal charges raised by the DOJ relating to alleged securities fraud (the “**SEC Complaint**”). The SEC Complaint is at [**DNR1/9/111**] and accompanying press release at [**DNR1/10/128**].

26.3 On 6 March 2018, the National Crime Agency (the “**NCA**”) served the Administrators with 3 restraint orders (the “**Restraint Orders**”) in relation to three accounts held by BACSL (the “**Restrained Accounts**”). The Restrained Accounts were thought to hold cash and securities representing traceable proceeds of a securities fraud scheme or conspiracy in violation of US laws. The Restraint Orders had originally been made in December 2014 pursuant to a mutual legal assistance request from the United States and extended by means of subsequent court orders.

26.4 Since that time, it has been alleged by the US Government in the US Proceedings that the Restrained Accounts contain the proceeds of money laundering committed by the key defendant in those proceedings. On 24 March 2018, that key defendant was convicted of money laundering in a Final Order of Forfeiture of the Eastern District of New York (the “**Forfeiture Order**”). By the Forfeiture Order, all securities or funds held on deposit in the Restrained Accounts have been ordered to be forfeited.

C. BACSL'S SPECIAL ADMINISTRATION

Applicable statutory framework

- 27 The IBSA Regulations came into effect on 8 February 2011 and created a new special administration regime for investment banks. They are supplemented by the IBSA Rules, which came into force on 30 June 2011.
- 28 There have to date been only a relatively small number of special administrations under the IBSA Regulations. To the best of my knowledge, there have to date been only two distribution plans approved by the Court. These were the distribution plan approved in the context of the special administration of MF Global UK Limited, which commenced on 31 October 2011; and that approved in the context of the special administration of Hume Capital Securities plc, which commenced on 16 March 2015.
- 29 Pursuant to Regulation 10(1) of the IBSA Regulations, the Administrators are required to pursue three objectives:
- 29.1 Objective 1 is to ensure the return of client assets as soon as is reasonably practicable. By Regulation 10(5), the "return of client assets" means, in summary, that BACSL relinquishes full control over the assets for the benefit of the client to the extent of the client's entitlement to those assets.
- 29.2 Objective 2 is to ensure timely engagement with market infrastructure bodies and the Bank of England, Treasury, FCA and Prudential Regulation Authority.
- 29.3 Objective 3 is to either (i) rescue BACSL as a going concern, or (ii) wind it up in the interests of the creditors.
- 30 The present Application is primarily concerned with the Administrators' pursuit of Objective 1. In relation to Objective 1, in summary:
- 30.1 The Administrators are entitled to deal with and return client assets in whatever order they think best achieves this objective: Regulation 10(2).
- 30.2 If they think it is necessary in order to expedite the return of client assets, Regulation 11(1) entitles the Administrators to set a bar date for the submission of: (i) claims to the beneficial ownership, or other form of ownership, of client assets; or (ii) claims of persons in relation to a

security interest asserted over, or other entitlement to, those assets. This is known as the “**Soft Bar Date**”.

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

30.4 Accordingly, as soon as the Administrators propose to return client assets, they are required to draw up a distribution plan under Rule 144(1) of the IBSA Rules. The content of the distribution plan is prescribed by Rules 144(2) to 144(5).

30.5 Once the Administrators have drawn up a distribution plan under Rule 144, they are required: (i) to seek the approval of the creditors’ committee under Rule 145; and (ii) to apply to the court for approval of the distribution plan under Rule 146.

31 Regulation 11(8) expressly dis-applies Regulation 11 to client money. Accordingly, a distribution plan under Rule 146 relates to client assets other than client money. For that reason, where I refer in this witness statement to the term “client assets”, I refer to client assets other than client money.

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

The Distribution Plan

33 On 9 May 2018, the Administrators set a Soft Bar Date of 8 June 2018 pursuant to Regulation 11(1). In accordance with Regulation 12E and Rule 138:

33.1 On 9 May 2018, notice of the Soft Bar Date was given to (i) all clients whose claims to client assets the Administrators were aware of; and (ii) the FCA.

- 33.2 Pursuant to Regulation 12E(1)(b), the Administrators were also required to give notice of the Soft Bar Date to all persons that the Administrators believed had a right to assert a security interest or other entitlement over the client assets but, aside from BSL, the Administrators were at that stage unaware of any such person. State Street, which is the sub-custodian with which assets custodied by BACSL with Cortland are held, has subsequently asserted a security interest over the client assets sub-custodied with it and the Administrators have since been communicating with Cortland and State Street in respect of this asserted security interest and an in principal agreement has now been reached whereby it will be discharged.
- 33.3 Notice of the Soft Bar Date was advertised in the London Gazette on 9 May 2018, The Times and the internationally distributed edition of The Times on 10 May 2018 (Regulation 12E(3) and Rule 134(4)).
- 33.4 Second and third notices were also given on (or in some cases very shortly after) 13 June and 13 July 2018 respectively.
- 33.5 The Administrators' extensive efforts to communicate with clients are summarised in Annex A to this witness statement. In light of those efforts, the Administrators believe that the notice came to the attention of as many persons who are eligible to submit a claim for the return of client assets as was practicable (Regulation 12E(4) and Rule 134(5)).
- 34 The Administrators concluded that the setting of a Soft Bar Date, and the use of the distribution plan procedure, were necessary in order to expedite the return of client assets. One of the critical aspects of the procedure contained in Regulation 11 is that, by Regulation 11(5), where client assets are distributed in accordance with an approved distribution plan, a late claimant is not entitled to disrupt returns which have already been made and the person to whom the assets have been returned acquires good title to them as against any late claimant (subject to Regulation 11(6) (bad faith and false claims)).
- 35 The Administrators considered, shortly following their appointment, that it was expedient to utilise this procedure in circumstances where, in summary:
- 35.1 The Administrators initially had concerns about the accuracy and reliability of BACSL's books and records. Our concerns arose in part as a result of the FCA regulatory actions from 2013 to 2018, referred to at paragraphs 22 to 23 above, and the US Proceedings referred to at paragraphs 24 to

26 above. Further, there was cause to question the reliability of BACSL's newly installed IT system. (Subsequent work undertaken, including in the course of reviewing information provided to the Administrators by BACSL's clients in response to the setting of the Soft Bar Date, has provided us with greater confidence that the information available to us is, in fact, materially accurate and therefore a reliable basis on which to return client assets and client money.)

35.2 As at the Administrators' appointment, BACSL held some approximately £570 million of client assets for a very large number (approximately 14,000) of clients. Because at least 97% of those clients are retail clients the Administrators have proceeded on the basis that it is possible that many such clients are not sophisticated investors.

35.3 Accordingly, it was considered beneficial to BACSL's clients (specifically, for the expedient return of their assets) to have a clear and orderly procedure for making claims to, and distributing, client assets.

36 As explained below, if the Distribution Plan is approved by the Court, the Administrators intend that the majority of client assets (as well as client money) will be transferred to a nominated broker in accordance with Regulation 10B.

37 The Administrators' current intention is that this transfer will be effected as soon as practicable after 10 September 2018 (possibly in a number of tranches, each of which will in that event constitute a separate Transfer), with any assets not subject to a Transfer also to be distributed separately to clients under the Distribution Plan as soon as reasonably practicable after 10 September 2018.

38 Pursuant to Rule 144(3), that date (10 September 2018) is the earliest date on which any returns of client assets under the Distribution Plan can take place, being the first business day falling 3 months after the setting of the Soft Bar Date.

39 However, the Application is being made at the present time because, in order to ensure that the Transfer and remaining distributions can be effected on or as soon as practicable after 10 September 2018, the Administrators require the intervening 6-week period to prepare for the first client asset returns. In particular:

39.1 During this period, the Administrators will be required to carry out the following substantial tasks: (i) analysing and accepting or rejecting claims submitted by clients in whole or in part; (ii) responding to client queries about the Distribution Plan; (iii) determining, where possible, any disputes

in respect of clients' claims; (iv) finalising the terms of the Transfer agreement with the nominated broker; and (v) completing the necessary practical and administrative steps in order to effect a Transfer or other distribution, such as preparing client statements in accordance with the Distribution Plan. Whilst the Administrators have to some extent been progressing those matters already, it is only once the Distribution Plan comes into effect that its formal dispute resolution provisions can be operated. Furthermore, whilst clients have already been provided with statements showing the client assets that the Administrators believe BACSL holds for them (for the purpose of assisting clients in responding to the Soft Bar Date), the terms of the Distribution Plan provide for the production of more detailed statements showing specified information that is relevant to the process of returning assets outlined in the Distribution Plan itself (such as, for instance, whether or not particular assets will be subject to a transfer to the nominated broker). Those statements can accordingly only be distributed to clients once the Distribution Plan takes effect.

39.2 Similarly, the distribution of any client assets which will not be subject to the Transfer is subject to certain elections made by clients in a "Claimant Options Form", including as to the manner in which their assets will be returned: see paragraph 62.4.2 below. The Administrators consider it expedient for the Claimant Options Form to be made available only following approval of the Distribution Plan, since the distribution and cost-related options which it contains reflect the provisions of the Distribution Plan which, of course, remain subject to the Court's approval.

39.3 Furthermore, as described in greater detail below, the Administrators are in advanced discussions with a broker to whom the proposed transfer of most client assets (and client money) will take place in September 2018. The Administrators consider that finalising the proposed arrangements with that candidate broker will be significantly easier once the Distribution Plan has been approved.

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

The FCA and FSCS

FCA

- 41 The Administrators are subject to an ongoing duty under Regulation 10(1)(b) (Objective 2) to ensure timely engagement with, amongst others, the FCA.
- 42 Since 1 March 2018, the Administrators have been in regular communication with the FCA. This has included updating the FCA on material queries raised by clients over that period.
- 43 The FCA has also reviewed many of the client communications and documents sent to clients. In particular, as explained in more detail at paragraph 59 below, a representative from the FCA joined the sub-committee of the committee of BACSL's creditors and clients which was established to assist the Administrators in formulating the Distribution Plan.
- 44 By letter dated 12 July 2018, the FCA confirmed that if the Court approves the Distribution Plan, the FCA will remove the requirements stipulated by the FSNs dated 1 March 2018, such that BACSL is able to return both client assets and client money as necessary for the conduct of the special administration [DNR1/11/130].

FSCS

- 45 The Financial Services Compensation Scheme ("**FSCS**") is, pursuant to the Financial Services and Markets Act 2000, the statutory fund of last resort for customers of authorised financial services firms which are unable to pay customer claims.
- 46 Since BACSL was a financial services firm authorised by the FCA, certain of BACSL's clients are eligible to receive compensation from the FSCS in respect of any outstanding claims against it (the "**FSCS Protected Claimants**").
- 47 The Administrators are subject to specific duties, under Regulation 10A(1), to work with the FSCS. In particular, the Administrators are required by Regulation 10A(1) to provide any assistance identified by the FSCS as being necessary for the purpose of enabling it to administer the compensation scheme in relation to BACSL's clients.
- 48 There are two categories of claims which clients are likely to have against BACSL, in respect of which they may be eligible to receive such FSCS compensation:

- 48.1 Costs: The first constitutes the payment of the expenses of BACSL's special administration. Pursuant to Rules 135 to 137 of the IBSA Rules, expenses properly incurred by the Administrators in pursuit of Objective 1 are required to be paid out of the client assets held by BACSL (which means they will be borne by the clients). Such costs must be addressed in any distribution plan.
- 48.2 Reconciliation Shortfalls: The second may arise as a result of any shortfalls which exist in the securities held by BACSL. The Administrators are required to ensure that any such shortfall is borne pro rata by all clients for whom BACSL holds securities within the relevant account in proportion to their beneficial interest in those securities (a "**Reconciliation Shortfall**"). As explained above, the Reconciliation Shortfalls in the present case are expected to be very small by reference to the overall size of the client asset estate but they are more than *de minimis*.
- 49 Accordingly, whether the FSCS Protected Claimants will be compensated in full (given the statutory limit of £50,000 per client) is likely to turn on the amount of costs which each client is required to bear. As to this:
- 49.1 As explained in more detail at paragraphs 80 to 86 below, the Administrators have set a prudent estimated costs reserve in respect of costs which have been incurred or are anticipated to be incurred in the pursuit of Objective 1 of £55 million, with £50 million of that total being referable to the return of client assets (other than client money).
- 49.2 On the basis of that estimated costs reserve, as further explained at paragraph 74 below, the Administrators have proposed in the Distribution Plan that such costs are to be borne by each client with an Accepted Client Assets Claim paying £10,000 per account held by them (the "**Claimant's Share of Costs**"), subject to a cap by reference to the value of the assets held for the client in the relevant account.
- 50 The Administrators believe that at least 97% by number of BACSL's clients (whose claims are to approximately £350 million of client assets and £32 million of client money) are eligible to receive FSCS compensation up to the statutory limit of £50,000 per client, on the basis that they are natural persons.
- 51 Since corporates comprising certain types of small business also qualify for FSCS protection, it may be that the percentage of BACSL's clients that are eligible for compensation is even higher. The Administrators are in the process of liaising with

BACSL's corporate clients in order to elicit from them the information that is needed to ascertain whether or not they are (in each instance) eligible for FSCS compensation, and I exhibit to this witness statement a copy of a questionnaire sent to all corporate clients during the week commencing 16 July 2018 [DNR1/12/132]. Further, in some instances, corporates may have been clients of BACSL in the capacity of agents or trustees for underlying natural persons. Where that is the case the relevant natural persons may be eligible for FSCS compensation.

- 52 In light of this, and in accordance with their duties under Regulation 10A, the Administrators have worked closely with the FSCS to develop the Distribution Plan. The FSCS has approved and agreed to the terms of the Distribution Plan including those which govern the process whereby FSCS compensation will be paid to the Administrators to compensate the FSCS Protected Claimants. The Administrators are currently documenting an agreement with the FSCS as to the process by which each FSCS Protected Claimant's compensation in respect of their Claimants' Share of Costs can be paid directly to the Administrators (i.e. without requiring a claim to be submitted to the FSCS by the client). This is highly beneficial for clients, because it means that the Administrators will not be required to deduct the Claimant's Share of Costs from the client assets to be returned to FSCS Protected Claimants. The Administrators are also currently engaged in discussions with the FSCS as to the arrangements to be put in place in respect of compensation for the limited sums to be due in respect of Reconciliation Shortfalls.
- 53 The Administrators have made significant efforts to invite clients to submit their claims to client assets via an online claims "Portal", and, in doing so, to provide express agreement (where eligible) to their receiving FSCS compensation automatically. A proportion by number (approximately 4,600 clients with positive balances) of clients with client assets have failed to respond to this request.
- 54 To avoid such non-responding clients being required to pay their Claimant's Share of Costs and, if they fail to do so, from being excluded from the proposed Transfer in September 2018, the FSCS has agreed in principle the following process with the Administrators:⁴

⁴ This process has been agreed in order to reflect as closely as possible COMP Rule 11.2.3.A(2) of the Compensation Sourcebook (FCA Handbook), which requires the FSCS to pay compensation directly to the claimant.

- 54.1 The FSCS will automatically pay each FSCS Protected Claimant's compensation (whether the client has responded or not) into a single bank account opened by BACSL.
- 54.2 This bank account is to be held by BACSL on trust for the benefit of FSCS Protected Claimants, on terms which permit the Administrators to access the funds paid into it by the FSCS.
- 54.3 The FSCS will, in turn, automatically be subrogated to the FSCS Protected Claimants' claims against BACSL and any third parties in accordance with COMP Rule 7.3 of the Compensation Sourcebook (FCA Handbook). The FSCS may be able to pay over recoveries it receives under those rights to the relevant Protected Claimant pursuant to COMP 7.6 (i.e. in the present circumstances, to the extent that failure to pay any sums recovered to the claimant would leave a claimant who had promptly accepted an offer of compensation or whose rights and claims had been subrogated to the FSCS at a disadvantage relative to a claimant who had delayed accepting an offer of compensation or whose claims had not been subrogated).
- 55 Some clients (approximately 700 of them) have positively indicated, via the Portal or otherwise, that they do not wish to receive FSCS compensation. The Administrators consider that such an election is directly contrary to the interests of the relevant clients and have begun the process of contacting them in order to find out why they have given such an indication. As part of this process, the relevant clients will be afforded an opportunity to confirm that they do in fact wish to receive FSCS compensation. Insofar as any client does not wish to receive FSCS compensation in the manner described above and meets its Claimant's Share of Costs separately prior to any Transfer or other distribution, the Administrators will exclude the relevant client from the process described immediately above.

Creditors' Committee

- 56 On 10 May 2018, the Administrators held an initial meeting of clients and creditors, at which (amongst other things) a creditors' committee was appointed.
- 57 The creditors' committee was nominated by various sub-groups of clients (allocated by reference to the size of their claim or that of the clients they represent). It is constituted by 5 client members (certain of which are corporates represented on the committee by an individual). In addition, due to the high level

of interest in membership of the committee, the Administrators have also co-opted 6 further members of the creditors' committee, including a representative of the FSCS. This has enabled the Administrators to consult with a greater number of stakeholders.

58 Between 10 May and 13 July 2018, the Administrators regularly consulted the creditors' committee and co-opted members as to the general principles of the Distribution Plan. This included four formal committee meetings, at which questions relating to the return of client assets were raised and discussed.

59 Further, the creditors' committee established a sub-committee (comprising three members and representatives from the FCA and FSCS) to work closely with the Administrators to formulate the precise terms of the Distribution Plan and accompanying documents. This process⁵ has provided a means by which clients have been able to provide input on the formulation and drafting of the Distribution Plan.

60 The creditors' committee met on 13 July 2018 to consider the Distribution Plan. At that meeting, all but one member of the creditors' committee approved the Distribution Plan, with that one other member initially abstaining pending the occurrence of a meeting between representatives of the Administrators and certain clients to discuss the costs of distributing client money and the proper interpretation of the CASS client money rules. The meeting did not, therefore, concern the Distribution Plan (which is concerned only with client assets). Once that meeting had taken place (on 17 July 2018), that member confirmed that he approved the Distribution Plan, such that as at 17 July 2018 and in accordance with Rule 145 of the IBSA Rules, the creditors' committee has unanimously approved the Distribution Plan.

D. KEY TERMS OF THE DISTRIBUTION PLAN

61 A copy of the Distribution Plan is at [DNR1/13/136]. In addition, I exhibit copies of certain explanatory documents which accompany the Distribution Plan, being: an explanatory statement (the "**Explanatory Statement**") [DNR1/14/196], a 2-page Distribution Plan guide [DNR1/15/230], a flowchart [DNR1/16/233], Distribution Plan FAQs [DNR1/17/235] and a preliminary Term Sheet [DNR1/18/236].

⁵ In particular, the sub-committee reviewed and commented on advanced drafts of the Distribution Plan and Explanatory Statement between 21 June 2018 and 13 July 2018. During that period, two meetings were held, numerous emails were exchanged and telephone calls took place. On 8 July, 10 July and 12 July 2018, more advanced drafts of the Distribution Plan, Explanatory Statement, a short 2-page Distribution Plan guide and a flowchart were sent to the full creditors' committee for their review and comment.

Key terms of the Distribution Plan

- 62 The essential scheme of the Distribution Plan is, in summary, as follows:
- 62.1 The Distribution Plan contains a procedure by which all client assets held by BACSL as at 1 March 2018 (the commencement of the special administration) will be returned to clients (Clause 3).
- 62.2 The returns are to be made in respect of all claims which are “**Accepted Client Assets Claims**”. This means that (Clause 1):
- 62.2.1 a claim has been made by a client to client assets within the meaning of Regulation 11(1) of the IBSA Regulations; and
- 62.2.2 that claim has been accepted by the Administrators following their review of BACSL’s books and records and any other relevant information available to them.
- 62.3 A key document to be used in this process is the “**Client Assets Claim Statement**” (Schedule 1). This is a personalised claim statement setting out the information relevant to each client’s claim, to be provided to all clients shortly after the Distribution Plan becomes effective.
- 62.4 There are two principal means by which client assets will be returned, being:
- 62.4.1 a Transfer under Clause 5 to a “nominated broker” selected by the Administrators (in accordance with Regulation 10B of the IBSA Regulations). Clause 5 makes provision for the precise process which will be implemented if the Administrators execute one or more Transfers to a broker; or
- 62.4.2 any other “**Distribution**” which is not a Transfer (Clause 16.1), being (each, a “**Distribution Option**”):
- (i) a transfer of some or all of a client’s assets to a custodian to be held on behalf of that client (i.e. at the client’s election) rather than to the broker identified by the Administrators;
- (ii) the liquidation of some or all of the client’s assets (as specified by the client, if it so wishes) and the payment of the proceeds to the client; or

- (iii) the return of Physically Held Securities directly to the client.

62.5 A further key document to be used in the distribution process is the “**Claimant Options Form**” (Schedule 3). This is to be provided to each client with an Accepted Client Assets Claim (save for FSCS protected clients whose assets are to be subject to a Transfer) at least 10 business days prior to any Transfer or Distribution. The principal purposes of the Claimant Options Form are to enable:

62.5.1 clients who are not the subject of a Transfer under Clause 5 to select one or more of the Distribution Options identified above;

62.5.2 all clients who are not FSCS Protected Claimants to select a means by which their share of costs will be discharged (Clause 17); and

62.5.3 clients who have liabilities secured against their client assets to select a means by which those liabilities will be discharged.

62.6 Claims to client assets are categorised according to whether they are: (i) Unencumbered Client Assets; (ii) Encumbered Client Assets; or (iii) Asserted Client Assets (Clause 3.3).

62.7 In the case of:

62.7.1 Unencumbered Client Assets:

The Distribution Plan makes provision for an “Unencumbered Distribution” of such client assets in accordance with the information contained in a client’s Client Assets Claim Statement, once and to the extent that it is an Accepted Client Assets Claim, in accordance with Rule 144(2)(b) (Clause 6).

62.7.2 Encumbered Client Assets:

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

- (i) An “Encumbered Distribution” of such assets in accordance with the information contained in a client’s Client Assets Claim Statement, once and to the extent that

it is an Accepted Client Assets Claim, in accordance with Rule 144(2)(c) (Clause 7.1).

- (ii) How the amount of Encumbered Client Assets to be returned to a particular client, known as the “Net Assets Claim”, is to be calculated and paid, in accordance with the provisions of Rules 144(2)(c) and 144(2)(d) (Clauses 7.2 to 7.14).
- (iii) A mechanism by which liabilities (if any) which the client is obliged to pay to enable the relevant security interest to be discharged, can be paid at the client’s election directly by it or recouped from the proceeds of liquidating some or all of its client assets (Clauses 17.1.5 to 17.1.7).

62.7.3 Asserted Client Assets:

Insofar as a claim is not accepted by the Administrators, no distribution will be made to that client. The Distribution Plan contains detailed provision for the resolution of disputed claims to assets, known as Asserted Client Assets (Clause 9). In particular, a client has a period of 21 days following receipt of the Administrators’ statement of reasons for rejecting their claim in which to apply to the Court for the decision to be reversed or varied (Clause 9.4).⁶

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

⁶ The Administrators have adopted a 21-day period in order to mirror the approach taken in Rule 157 of the IBSA Rules (in relation to unsecured claims). The Administrators also consider that requiring a client with a disputed claim to apply to the Court, rather than utilising an alternative dispute resolution procedure, is the most appropriate process having regard, principally, to the fact that such claims are likely to involve disputes of fact as to the entitlement to client assets.

62.9 There are three additional categories of client assets (which may to some extent overlap with the categories of assets set out above):

62.9.1 Non-Returnable Client Assets:

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

As at the date of this statement, the only client assets that have been identified as not being under the Administrators' control are those held by one custodian holding less than £500,000 of client assets, which has indicated that it will not release certain assets to the Administrators without certain pre-administration service charges being paid. The Administrators are in discussions with that custodian, with a view to resolving the issue as soon as possible.

62.9.2 Tainted Client Assets:

These are client assets which are the subject of a restraint order prohibiting their disposal or which the Administrators conclude may be tainted due to association with any actual or alleged criminal conduct. The manner in which they are to be dealt with is provided for by Clause 11 which, in summary, provides that Tainted Client Assets will not be returned until they cease to be classified as such. At present, assets held in the Restrained Accounts subject to the Restraint Orders identified at paragraph 26.3 above are the only client assets that the Administrators consider fall into this category. In addition, the Administrators are in the process of reviewing a number of accounts that require further investigation.

62.9.3 Corporate Actions Assets:

These are assets which are subject to any corporate action after 1 March 2018 (e.g. dividends, share conversions, schemes of

arrangement and exercised rights in respect of warrants, rights issues or open offers). Clause 12 provides that any client money or securities which are received by BACSL as a result of the corporate action, or any change in the nature of such client assets, will be subject to a Transfer or Distribution under the Distribution Plan.

62.10 If any client submits a claim under Regulation 11(1) after any Transfer or Distribution has taken place, that client is categorised as a “**Late Claimant**” under Regulation 11(5) and Rule 147. The basis on which a Late Claimant will be entitled to a return of its client assets, to the extent possible, is dealt with under Clause 20. In summary, pursuant to that clause: (i) there shall be no disruption to client assets that have already been returned in accordance with Regulation 11(5), (ii) if the Late Claimant’s claim is accepted and the client assets to which it claims are still available (in full or part) to be returned then they shall be returned (in full or part) to the Late Claimant subject to any share of costs, debts owed or security interests being discharged; and (iii) if the Late Claimant’s claim is submitted after the “Distribution Selection Date” or “Transfer Selection Date”, being 3 business days prior to any distribution or transfer, then it will be deemed to be submitted after the distribution or transfer to which the Distribution or Transfer Selection Date relates (Clause 20.3).⁷

63 The Distribution Plan has been drafted so as to comply with the statutory requirements under the IBSA Regulations and IBSA Rules governing the return of client assets. Clause 21 of the Distribution Plan contains a release of the Administrators and their professional advisers in respect of any claims arising from actions taken in connection with the return of BACSL’s client assets (other than for acts or omissions in implementing the Distribution Plan). Whilst the effect of this release should flow as a matter of law from the statutory distribution regime, the Administrators consider it is prudent to include such provision in the Distribution Plan. This is primarily as a safeguard against any time and costs which may be wasted in being forced to defend unmeritorious claims that client assets should be returned in a manner inconsistent with the Distribution Plan.

⁷ This cut-off date has been included in the Distribution Plan because, as a practical matter, the Administrators will need to isolate the client assets to be distributed or transferred and put into place the relevant procedural steps to facilitate the distribution or transfer e.g. send updated client statements to clients and provide custodians with the relevant instructions.

- 64 I should draw the Court's attention specifically to Rule 144(2)(a) of the IBSA Rules. That provision requires the Administrators to set out a schedule of dates on which client assets are to be returned. In accordance with Rule 144(3), the earliest date on which client assets may be returned is 10 September 2018.
- 65 If the Distribution Plan is approved by the Court, as explained above, the Administrators intend that the vast majority of client assets will be transferred to a nominated broker in accordance with Regulation 10B as soon as practicable after 10 September 2018. The Administrators believe that this will provide the best outcome for clients.
- 66 As to remaining assets not eligible or suitable for Transfer, the Administrators are unable to predict with any meaningful certainty the date of return. That is because, if they are not eligible or suitable to be transferred, it is likely that they will give rise to various issues which will need to be resolved. Accordingly, Clauses 6.1.4 and 7.1.4 of the Distribution Plan provide for distributions to be made "as soon as reasonably practicable" (after 10 September 2018). The Administrators consider that this complies as far as possible with Rule 144(2)(a).

Transfer

- 67 Since 1 March 2018, the Administrators have taken steps to identify a nominated broker to which the majority of client assets (and client money) may in due course be transferred. A large number of potential brokers were approached, and a request for information was sent to 13 brokers. Specific criteria were applied to determine each broker's suitability. The Administrators shortlisted 3 brokers who were invited to make presentations to the Administrators and representatives from the creditors' committee.
- 68 Following that process, a broker has (subject to ongoing discussions) been identified on the basis that it offered the best deal for BACSL's clients (the "**Identified Nominated Broker**"). Whilst the Administrators' aim was to use a new broker that could provide a full suite of services akin to those offered by BACSL and BSL prior to the special administration, none of the candidate brokers who were considered by the Administrators otherwise to be viable transferees (including the Identified Nominated Broker itself) is able to offer all such services.
- 69 The Administrators are now in advanced discussions with the Identified Nominated Broker, to whom it is envisaged that a Transfer of most client assets (and client money) will take place in September 2018.

- 70 The agreement is still subject to contract (and the identity of the Identified Nominated Broker is commercially sensitive at this stage). However, the parties currently intend that the agreement will include the following terms:
- 70.1 The Identified Nominated Broker will accept virtually all of the client assets belonging to BACSL's existing clients. That is subject to a few limited exceptions (i.e. client assets belonging to clients which the Identified Nominated Broker is unable to deal with e.g., the Identified Nominated Broker is unable or unwilling to take on clients in certain jurisdictions or certain types of assets), but we and the Identified Nominated Broker are seeking a solution for any such clients.
- 70.2 The terms and conditions of the Identified Nominated Broker will be substantially similar to the terms and conditions offered by BACSL. An exception is that all clients' assets will be transferred on the basis that the Identified Nominated Broker will offer its services on an execution only basis (i.e. without any additional services, such as advisory services).
- 70.3 All client contracts transferred will be treated as if they were made between clients and the Identified Nominated Broker (in accordance with Regulation 10B(5) of the IBSA Regulations).
- 70.4 The Identified Nominated Broker will be able to vary the terms of client contracts without client consent if needed to give effect to the Transfer (as permitted by Regulation 10B(6)).
- 70.5 Clients will be permitted to request free of charge that their client assets are transferred back to BACSL (as required by Regulation 10C(3)).
- 70.6 In addition, clients may, within three months of having had their client assets transferred to the Identified Nominated Broker, elect to have those assets transferred to a different third party broker of their choosing without being required to bear any charge for doing so.
- 71 In addition, the Administrators will permit any client not wishing to transfer its assets to the Identified Nominated Broker, to elect for a transfer to an alternative broker (of their selection and at no additional charge). The Administrators have, however, recommended to clients that they agree to the Transfer to the Identified Nominated Broker in the first instance, because it is likely to provide them with quicker access to their assets.

72 In addition, in 2015, BSL purchased from WHI Stockbrokers Ltd the assets of a separate stockbroking business run out of Colwyn Bay. The Firms retained the original owners and employees of WHI Stockbrokers Ltd as employees together with approximately 584 clients on whose behalf approximately £84 million of client assets and/or client money is held. As at the commencement of the special administration, the business had not been not fully integrated within BACSL's own business and the clients, who largely reside within a 25-mile radius of Colwyn Bay, continued to be looked after by the same individuals. Since the publication of the Distribution Plan on the Website on 13 July 2018 (see paragraph 116 below), an offer has been received for the Colwyn Bay client base by an FCA authorised financial services firm (the "**Offering Firm**") which has recruited the Firms' former employees who serviced the Colwyn Bay clients. This proposal is currently under discussion with the relevant party and the Administrators are considering whether it is in the best interests of affected clients. In the event that they conclude that it is, and satisfactory terms can be agreed, then in accordance with Regulation 10 of the IBSA Regulations, the Administrators will transfer this small portfolio of clients in or around September 2018, by designating the Offering Firm as the nominated broker for the purposes of a separate Transfer pursuant to Clause 5 of the Distribution Plan. Again, and subject to the terms of the Distribution Plan generally, the Administrators will permit any client not wishing to transfer its assets to the Offering Firm to elect for a transfer to an alternative broker (of their selection and at no additional charge).

E. COSTS

Costs allocation under the Distribution Plan

73 As explained above, Rules 135 to 137 of the IBSA Rules require expenses properly incurred in the special administration in pursuit of Objective 1 to be paid out of the client assets held by BACSL and for the costs allocation as between clients to be set out in the distribution plan.

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

74.1 First, such costs are to be allocated by the sum of £10,000 being charged on each account held by a client with an Accepted Client Assets Claim (Clause 13.1). This is subject to a cap where the value of the client assets held in the relevant account is less than £10,000. In such circumstances the costs are capped at an amount equal to the value of those assets.

74.2 Secondly, detailed provision is made requiring the Administrators to determine, at quarterly or other selected recalculation dates, whether each client's share of costs should be reduced, if (amongst other reasons) the previous estimated costs reserve has proved to be greater than the amount of costs then determined and estimated (Clause 13.2). In such a case, further provision is made for the notification, calculation and payment of "Costs Reserve Rebates" to clients (or the FSCS) in reduction of their costs share (Clauses 13.3, 13.4 and 14).

75 As to the mechanisms by which each Claimant's Share of Costs is to be paid:

75.1 As explained above, in respect of FSCS Protected Claimants, the FSCS and the Administrators have reached agreement for the FSCS to pay each client's costs (up to the statutory limit of £50,000) directly to BACSL, such that those clients are not required to take any action in relation to their costs (to the extent that the statutory limit is not exceeded). This is reflected in Clauses 17.1.4 and 17.1.5 of the Distribution Plan.

75.2 For all other clients, the Distribution Plan requires them to select one of three options in their Claimant Options Form: (i) the "Cash Option"; (ii) the "Client Money Option"; and (iii) the "Liquidation Option". These options are described in detail at Clauses 17.1.5 to 17.1.7 of the Distribution Plan. In short, they are aimed at enabling a client, insofar as possible, to have its client assets transferred under Clause 5 or otherwise distributed *in specie*, by discharging its costs share by other means (i.e. thereby avoiding the need to liquidate its asset positions solely to defray its costs share). The two means of doing this are (i) by payment of cash or (ii) by utilising a client's client money entitlement (if any). Alternatively, a client can elect for some or all of its client assets to be liquidated, the proceeds of which can be used to recoup that client's share of costs.

75.3 Whilst entirely distinct from the payment of a client's share of costs, selection between the same options in the Claimant Options Form can also be used by a client as the means of discharging any liabilities secured on their Encumbered Client Assets (Clauses 17.1.5 to 17.1.7).

75.4 Provision is made for the amount of costs borne by each client to rank as an unsecured claim in the special administration (under Rule 152 of the IBSA Rules) (Clause 18). However, it is not presently envisaged that there will be any dividends to unsecured creditors of BACSL.

- 76 The Administrators have spent significant time working with the creditors' committee and FSCS to develop the cost allocation methodology. The Administrators consider that, as a matter of principle, it is fair to allocate the costs of pursuing Objective 1 in the manner provided for. That is because:
- 76.1 The costs are to a large extent driven by the number of client accounts required to be administered, not the value of the respective positions in the accounts. Accordingly, it was not considered fair to allocate costs in proportion to the value of assets held in each account.
- 76.2 To adopt a valuation-based methodology for sharing costs would lead to delay and further costs being incurred (especially due to the likelihood of valuation disputes).
- 76.3 It is likely to lead to a larger proportion of the overall costs of returning client assets being compensated by the FSCS, as compared with alternative costs allocation methodologies such as, for instance, one whereby costs are allocated rateably to the value of clients' securities, which would lead to the allocation of a greater proportion of the costs to clients whose share would exceed the £50,000 statutory maximum FSCS compensation. This part of the reasoning for selecting the method of costs allocation referred to above has been explained to the FSCS and it has confirmed that it does not object.
- 77 The creditors' committee supports this approach.
- 78 As explained above, at least 97% of the clients (by number) are FSCS Protected Claimants and nearly all BACSL clients will be compensated in full in respect of their share of the costs.
- 79 The Administrators recognise that a small minority of clients will be required personally to bear some or all of their share of costs. Those clients comprise:
- 79.1 First, less than approximately 3% in number of clients who are not eligible to be paid FSCS compensation.
- 79.2 Secondly, those FSCS-eligible clients whose share of costs under the Distribution Plan, together with their client money costs and/or any reconciliation shortfalls, exceed the compensation statutory limit of £50,000. The Administrators expectation is that the number of such clients will not exceed 10.

Calculation of Estimated Costs Reserve

80 The Administrators consider that the estimated costs reserve of £55 million is a prudent estimate of the total expenses to be incurred in pursuit of Objective 1.

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

82 The £55 million costs reserve has been split as between the costs associated with client assets (£50 million) and costs associated with client money (£5 million). In addition, the £55m million comprises:

82.1 actual costs incurred in the sum of £10.8 million⁸. This comprises: (i) PwC’s incurred expenses and remuneration in the sum of £5.1 million; (ii) legal fees in the sum of £1.4 million; (iii) operational costs in the sum of £2.4 million; (iv) costs in the sum of £0.3 million associated with a funding loan secured by the Administrators to maintain BACSL’s critical operations; and (v) £1.6 million for VAT; and

82.2 estimated future costs to March 2020 in the sum of £44.2 million.

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

84 Further, the calculation of the estimated future costs has included a “prudent extra” costs allocation and an “additional contingency” fund. These elements of the costs reserve have been calculated as follows:

	PwC	Linklaters	Operations	Loan	VAT	Total
Estimate ⁹	18.3	6.0	12.9	0.9	6.8	44.9
Extra	2.9	1.8	0	0	0.9	5.6
Contingency	1.9	0.8	1.3	0	0.6	4.6
Total	23.1	8.6	14.2	0.9	8.3	55.1

⁸ As at 31 May 2018.

⁹ Including costs incurred to date.

- 85 The Administrators hope that they will be in a position to reduce the £55 million reserve either shortly after, or possibly even before, the initial Transfer in September 2018. As explained above, the Distribution Plan requires the Administrators to consider and revise, where appropriate, the estimated costs reserve on at least a quarterly basis, leading to rebates being paid as appropriate.
- 86 Conversely, the Administrators have had to ensure that the costs reserve is sufficient to satisfy the future expenses of BACSL's special administration, such that there is no real prospect of the costs ultimately exceeding the reserve. If the reserve were, in due course, to be insufficient, the Administrators would be at risk of suffering a shortfall, given that, by the time the inadequacy of the reserve became apparent, it is possible that all client assets would have been returned. It is also possible, if the reserve were to be insufficient, that there might be insufficient funds available to cover the costs of returning any remaining client assets, placing such clients at risk of paying costs which are greater than the costs charged to clients to whom client assets were returned earlier.
- 87 The proportion of expenses and remuneration incurred by the Administrators since 1 March 2018 relates to the very considerable work undertaken to date. In summary:
- 87.1 Upon appointment, the Administrators had to obtain control of client assets and client money. This necessitated engaging with custodians and depositories to gain access to and control of the accounts of BACSL, BSL and the Nominee Companies, in which client assets and client money were held.
- 87.2 It also necessitated obtaining access (from 7:30am on 2 March 2018) to the Beaufort offices to safeguard the assets, client portfolios and information technology/data systems. On that date, the Administrators met with BACSL's and BSL's directors to obtain information to help them gain control of the business and assets.
- 87.3 The Administrators immediately took steps to analyse and reconcile BACSL and BSL's books and records. These include the accounts of approximately 29,000 clients, comprising approximately 4,200 stock-lines, as well as client money balances held for approximately 13,000 clients.
- 87.4 This reconciliation process was complicated by the fact that:

87.4.1 in late 2017, BACSL and BSL had transitioned to a new third-party data management system to operate their business and act as an interface, such that clients could access their holdings and provide investment instructions; however,

87.4.2 a number of operational problems had arisen out of incompatibilities between the pre-existing and new system, with the consequence that aspects of the data produced were missing and potentially unreliable. Prior to BACSL's special administration, the third-party system provider had provided a daily snapshot of system data enabling BACSL to generate the management information ("MI") which was unavailable from the system. The structure of the snapshot was undocumented bringing in to question the reliability of the MI generated from its data and, following the commencement of the special administration, the provision of this daily snapshot was terminated by the system provider. This resulted in a loss of access to the underlying data and the updated MI produced from it. The Administrators engaged in an extensive dialogue with the system provider, and have since been able to obtain the required information in a documented and reliable format.

87.5 The Administrators also identified and negotiated with other critical third-party suppliers, whose services were essential to ascertaining and safeguarding client assets and client money. Loan funding of up to £10 million was secured to ensure that all critical operations could be maintained to reconcile, administer and return client assets and client money.

87.6 Steps were taken to reduce BACSL and BSL's operating costs, by closing and vacating their regional offices in Colwyn Bay and Bristol. By 31 March 2018, BACSL's staff had been reduced to 37 employees working in the London office.

87.7 The Administrators have been engaged in a significant programme to contact BACSL's approximately 29,000 clients and to answer their queries and invite their claims. This is summarised in Annex A to this witness statement. Most obviously, as explained below, the Administrators have been engaged in reviewing claims submitted by approximately 9,210

clients in response to the Soft Bar Date and, where applicable, updating reconciliations by reference to those claims.

87.8 The Administrators have developed, in consultation with the FCA and the Creditors' Committee, a "Corporate Actions Policy" (a copy of which is at [DNR1/19/239]). The policy was published on 24 July 2018 with immediate effect. This policy sets out the circumstances in (and basis upon) which the Administrators may be in a position to assist clients in respect of post-administration corporate actions, requiring some form of decision by clients, where the period for the making of such a decision ends before the relevant assets are expected to be returned by the Administrators to the relevant clients. Given that clients have not been able to access and provide instructions in relation to their investment portfolios since 1 March 2018, the formulation of this policy was a matter of some concern for clients, many of whom requested the Administrators' assistance to exercise pending corporate actions.

87.9 Most recently, the Administrators have been heavily engaged in the preparation of the Distribution Plan, and the identification of the most suitable and expedient approach to returning client assets pursuant to it. As noted in this statement, this has required, amongst other things, close liaison with the FCA, the FSCS and the creditors' committee.

87.10 In that connection, the Administrators have undertaken considerable work in identifying a nominated broker to whom Transfers may be effected, as explained at paragraphs 67 to 71 above.

88 In addition, the Administrators have been required to devote a certain amount of time to liaising with criminal and regulatory authorities in the UK (primarily the NCA and the Crown Prosecution Service ("CPS")) and the US (primarily the DOJ and SEC) and anticipate that this may continue. This is to try to ensure that the process of returning client assets will not be disrupted by ongoing investigations or criminal or regulatory enforcement proceedings (including the US Proceedings). As to this:

88.1 On 1 May 2018, the Administrators of BSL waived the requirement that the SEC Complaint be formally served on BSL. An extension having been agreed with the SEC (and approved by the US court), BSL is required to file a response by 16 October 2018. By that time, the Administrators hope that it might be possible to negotiate a consensual resolution to the SEC

Complaint, if a significant proportion of client assets and client money has been returned to clients. In particular, once it can be demonstrated to the SEC that the client assets and client money held by BACSL have been returned to clients and that the process of winding up the business with a view to BACSL's dissolution is relatively advanced, I understand that the SEC is more likely to be comfortable that there is no real prospect of the offending activity being repeated and therefore is more likely to be willing to agree to a consensual resolution of the matter.

88.2 By email dated 27 April 2018, the NCA notified the Administrators (by means of attached correspondence from the CPS) that an application to register the Forfeiture Order and appoint the DPP as the relevant enforcement authority was to be made on 3 May 2018. The Administrators liaised urgently with the CPS with a view to vacating and re-listing the hearing to later in 2018, until such time as the Distribution Plan has been approved and distributions may have commenced; otherwise, the Administrators would have been required immediately to deliver up the assets located in the Restrained Accounts, outside of the Distribution Plan. On 3 May 2018, HHJ Lodder QC (Kingston Crown Court) adjourned the hearing until 26 October 2018. The Administrators continue to update the NCA as to the progress of the Distribution Plan for this purpose.

88.3 In early May 2018, Linklaters on behalf of the Administrators orally updated representatives of the DOJ and SEC as to the proposed distribution plan process (including how the process would impact on the Restrained Accounts subject to Restraint Orders). The DOJ and SEC confirmed that, subject to the FCA and FSCS being involved and content with the process adopted, they did not require on-going updates in respect of the Distribution Plan.

89 I should make clear that the £5 million portion of the £55 million costs reserve which relates to client money is not relevant to the calculation of the £10,000 individual costs levy under the Distribution Plan. Client money is required to be

distributed in accordance with CASS Chapter 7A (pursuant to Regulation 12A(3)), and therefore falls outside the ambit of the Distribution Plan.¹⁰

90 To date, the Administrators have not drawn any remuneration from the estate.

Fee assessor

91 The Administrators appointed a fee assessor (Mr Jamie Smith, who was proposed by the FSCS and whose appointment was supported by the creditors' committee) to assist in determining in due course (i) the ultimate quantum of the Administrators' and their advisers' fees; and (ii) the ultimate allocation of costs as between, on the one hand, client assets and, on the other hand, the firm assets of BACSL and BSL.

F. RULE 144(2)(b)

92 The Administrators intend today to publish on the Website an addendum to the Distribution Plan, setting out the unencumbered assets to be returned under the Distribution Plan and to whom, in accordance with Rule 144(2)(b) (the addendum if printed would run to many hundreds of pages, so a sample only is exhibited to this statement at **[DNR1/56/696]**). In addition, the addendum also sets out and identifies the encumbered assets to be returned.

93 The addendum sets out, for each client, which stock lines the books and records indicate that BACSL had undertaken to hold and in what quantity. This information was contained in the individual client asset statements that were sent to all clients in early May 2018, when the Soft Bar Date was set and advertised. Clients have accordingly seen this information before (to the extent that it relates to their own client asset claims).

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

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

¹⁰ There is one exception to this. Clause 12 of the Distribution Plan makes provision in respect of client money received by BACSL after 1 March 2018 as a result of a Corporate Action, which is referable to and/or derives from existing client assets (for e.g., dividends). However, such client money will still be distributed in accordance with CASS Chapter 7A.

be returned and to whom. The data contained in the addendum is, however, subject to various caveats, namely that:

- 95.1 since it pre-dates the setting of the Soft Bar Date, it does not reflect any amendments required to be made in order to reflect claims received from clients but not previously included in BACSL's books and records (albeit, having reviewed the claims received to date, the Administrators do not anticipate that material updates, whether in number or amount, will need to be made for this reason);
 - 95.2 it does not reflect post-administration corporate actions;
 - 95.3 it does not reflect the fact that, in a small number of cases (constituting instances where the failure of BACSL was causing particular hardship to impacted clients), the FSCS has already made compensation payments direct to clients and has therefore been subrogated to such clients' rights in respect of client assets;
 - 95.4 because it constitutes a snap shot as at 1 March 2018, the data does not reflect any trades (whether sales or purchases of securities) that may have been instructed prior to the commencement of the special administration, but settled since (the Administrators are aware of a number of such trades and are currently in the process of updating BACSL's books and records in order to reflect their occurrence);
 - 95.5 the reconciliation exercise being carried out by the Administrators in order to identify and quantify Reconciliation Shortfall is still ongoing; and
 - 95.6 the data as to encumbrances does not reflect any payments that may have been made by clients, since the commencement of the special administration, in order to discharge such encumbrances.
- 96 For security and data protection reasons, the names of clients have been replaced in the addendum with anonymised unique identifiers. The notice under cover of which the addendum will be published indicates that any client wishing to know its unique identifier for the purposes of inspecting and reviewing the addendum should contact the Administrators, whereupon such information will be made available.
- 97 For all of the above reasons, however, the more authoritative and up-to-date source of information for clients, regarding the client assets that will in due course be returned to them, are their Client Assets Claim Statements referred to above

and expected to be disseminated to clients (pursuant to the Distribution Plan, if approved) in the course of August 2018.

G. REGULATION 11(4A) RETURNS

98 The Administrators have already distributed certain client assets, the return of which did not require the approval of the Court under Regulation 11(4).

99 By Regulation 11(4A), the Administrators may, at any time after setting a bar date but prior to making an application for approval to return client assets, return client assets: (i) in respect of which the person who is beneficially or otherwise entitled to the assets has been identified; and (ii) which are not held in a client omnibus account (within the meaning of Regulation 12(9)).

100 As explained above, a small proportion of BACSL's client assets comprise physically held certificates which are held by BACSL at BACSL's head office in London in respect of registered securities registered in the name of BACSL's clients. Legal title to such securities accordingly rests with the underlying client, with the asset held by BACSL comprising merely the physical certificate evidencing the client's ownership of the underlying security. I am advised that there is scope for doubt as to whether these are in fact properly characterised as "*client assets*" under the IBSA Regulations, given that the securities themselves are registered with (and therefore held by) the relevant clients, but out of an abundance of caution the Administrators have been proceeding on the basis that they may be.

101 As also explained above, the Administrators understand BACSL (for the most part) came to hold such physical certificates for clients who transferred them into its custody with the intention that it would (as and when the FCA permitted this) transfer the securities into CREST to be held in dematerialised form, subject to the Beaufort ToB, through BNL as nominee.

102 The ownership of such certificates is clear on the face of them and they accordingly, at present, meet the requirements of Regulation 11(4A) (insofar as applicable in view of the above). In those instances where the Administrators have managed to carry out the requisite due diligence to put them in a position to return these certificates to their owners, the certificates have accordingly already been returned to the relevant clients (and no costs have been charged to the clients in connection with the returns).

- 103 Insofar as the Administrators are still holding any such physical certificates by the time they begin to effect returns of client assets pursuant to the Distribution Plan in September 2018, the terms of the Distribution Plan provide for such certificates to be returned to relevant clients without any charge. There may be isolated instances where the Administrators do not complete the requisite due diligence before 10 September 2018 and where the relevant physical certificates accordingly need to be dealt with in this manner.
- 104 In most instances, however, the Administrators anticipate that they will be ready to return the relevant physical certificates to their owners in short order and in any event prior to September 2018. However, the Administrators' power to return client assets outside of the Distribution Plan pursuant to Regulation 11(4A) (insofar as applicable in view of the above) subsists only until an application to approve a distribution plan (i.e. the Application) is made. It follows that, absent the Court's permission, the Administrators will (assuming these certificates are properly characterised as client assets) have to cease returning physical certificates to clients, even where the relevant owners have been identified, from now until 10 September 2018, absent an Order of the Court.
- 105 The Administrators accordingly seek such an Order in respect of these physical certificates as part of the Application.

H. CLIENT CONSULTATION

- 106 In addition to the detailed consultation with the FCA, the FSCS and the creditors' committee explained above, the Administrators have communicated extensively with BACSL's client base since 1 March 2018 to provide information and guidance in relation to the special administration process and to invite BACSL's clients to submit their claims to client assets and client money.
- 107 The extensive efforts which the Administrators have made to assist, notify and consult with clients and invite their claims are summarised in Annex A to this witness statement.
- 108 This client communication exercise has facilitated the Administrators' ability to respond to concerns expressed directly to them by certain clients. These concerns have been varied: primarily, enquiries, concerns and requests for further information about the process being adopted, enquiries as to the status and return of client assets, and, in a small number of cases, challenges to the manner in which the Administrators are conducting the special administration. In relation to costs, there have been specific complaints as to the projected level of the

(original) estimated costs reserve of £100 million, which has, since 24 May 2018, been reduced to £55 million. The Administrators (in various instances through Linklaters) have addressed and responded to all such correspondence.

- 109 In particular, the client communication exercise has included the process by which clients have been notified of the Soft Bar Date and invited to submit claims in the special administration to client assets (and client money). The Administrators' efforts to invite claims and consult with clients are as summarised in Annex A to this statement.
- 110 The principal means by which clients have been invited to submit claims has been via the Portal. The Administrators have closely monitored client activity on the Portal since 9 May 2018. At the date of this Application, more than 9,804 clients have logged on to the Portal.
- 111 As at the immediate expiry of the Soft Bar Date on 8 June 2018, the Administrators had received 7,983 client asset claims of which:
- 111.1 7,315 claims matched their individual client asset statements; and
- 111.2 668 did not match their individual client asset statements.
- 112 Since the Soft Bar Date (8 June 2018), considerable efforts have been undertaken by the Administrators to engage with clients who have failed to submit claims or who disagreed with their individual client asset and client money statements. As a result, at the time of making this Application:
- 112.1 The Administrators have now received a total of 9,210 claims, constituting 65% (by number) of anticipated client asset claims and 92.3% (in value) of the total client assets undertaken to be held by BACSL.
- 112.2 In respect of those claims:
- 112.2.1 8,623 claimants, representing 87.7% (in value) of the total client assets undertaken to be held by BACSL, now agree with their individual client asset statements; and
- 112.2.2 587 claimants, representing 4.6% (in value) of the total client assets undertaken to be held by BACSL, still do not agree with their individual client asset statements. The Administrators are in the process of liaising with those clients with a view to resolving, where possible, the positions.

- 113 Consequently, the current position is that a total of 4,960 clients, constituting 35% (by number) of anticipated claims and 7.7% (in value) of the total client assets undertaken to be held by BACSL, have failed to submit a claim. They are therefore currently categorised as Potential Claimants under Rule 143 of the IBSA Rules (to be dealt with in accordance with Clauses 8.1 to 8.3 of the Distribution Plan, as mentioned at paragraph 62.8 above).
- 114 As to the Administrators' proposed approach to Potential Claimants:
- 114.1 It is currently envisaged that client assets which the Administrators have identified as belonging to Potential Claimants will be subject to a Transfer to the Identified Nominated Broker in September 2018, where they meet the eligibility criteria.
- 114.2 As regards the remaining client assets identified as belonging to Potential Claimants (which are limited), the Administrators will continue their substantial efforts to contact those clients.
- 115 Notwithstanding such steps, it is possible that the Administrators will be unable to contact certain Potential Claimants. In such circumstances:
- 115.1 Regulation 12B of the IBSA Regulations provides for the setting of a "hard bar date" with the approval of the Court. In short, it enables the Administrators to dispose of all client assets which BACSL still holds after the hard bar date (i.e. to which eligible claimants have not made a claim by that date).
- 115.2 By Regulation 12B(1), the Administrators may include in a distribution plan provision for the option of setting a hard bar date. By Regulation 12B(3), once the Administrators have determined that it is necessary to set a hard bar date in order to expedite the return of client assets, they may apply for the approval of the Court to do so.
- 115.3 Consequently, the Administrators have reserved at Clause 3.4 of the Distribution Plan the power to make an application for permission to set a hard bar date under Regulation 12B(3). The Administrators consider it would be premature to apply to set a hard bar date at this stage, in light of their continuing attempts to contact the remaining Potential Claimants.

I. NOTICE OF DISTRIBUTION PLAN AND THE HEARING

116 On 13 July 2018, in accordance with Rule 146(3), the Administrators published the Distribution Plan and Explanatory Statement on the Website.

117 Prior to this:

117.1 On 29 June 2018, a high-level term sheet outlining to clients the key terms of the Distribution Plan was uploaded to the Website (and clients were provided with contact details for addressing queries or comments) [DNR1/18/236].

117.2 On 10 July 2018, the Administrators published very advanced drafts of the Distribution Plan [DNR1/20/246] and Explanatory Statement [DNR1/21/306] on the Website.

117.3 Also on 10 July 2018, a notice was sent to all clients (by email and post) informing them of what had been posted on the Website and that, on 13 July 2018, the final Distribution Plan (in the form approved by the creditors' committee) would be published on the Website. This notice also informed clients that a hearing of the application to approve the Distribution Plan would take place on either 26 or 27 July 2018 [DNR1/22/339].

117.4 On 13 July 2018, updated versions of the Distribution Plan [DNR1/23/343] and Explanatory Statement [DNR1/24/463] and the Distribution Plan guide [DNR1/25/231] (in clean copy and also blacklined with the changes highlighted) were uploaded on the Website, reflecting minor revisions to those documents that had been made since 10 July 2018.

117.5 The Administrators intend to post a copy of this witness statement on the Website as soon as it has been filed. The Administrators have also posted a further updated version of the Distribution Plan, reflecting a technical drafting correction to Clause 20.3 (as explained at paragraph 62.10 above). That correction has been unanimously approved by the creditors' committee.

118 At the time of issuing the Application, no objections have been raised by clients to the Distribution Plan since its publication on the Website.

J. ARJENT CLIENTS

- 119 There is one issue which remains to be resolved, as to the proper treatment of certain clients for whom BACSL undertook to hold assets following its entry (with BSL) into an asset sale agreement with a brokerage firm known as Arjent Limited (“Arjent”) on 5 September 2016. The subject of that agreement included Arjent’s entire client book.
- 120 As at its entry into special administration, BACSL was yet to complete the process of acquiring Arjent’s client book. This was complicated by the fact that Arjent itself entered administration on 9 March 2016.
- 121 The Administrators’ present understanding is that prior to 1 March 2018:
- 121.1 Certain Arjent clients completed the client registration process with BACSL, whose client assets and/or client money was transferred to BNL (on behalf of BACSL). Accordingly, such clients will be subject to the Distribution Plan.
- 121.2 Certain other Arjent clients did not complete the client registration process, and their client assets and client money continue to be held by Arjent. As a result, such clients are not clients of BACSL for the purpose of the Distribution Plan.
- 121.3 However, in respect of certain Arjent clients, there is currently some uncertainty as to whether or not they completed the Beaufort client registration process: as to whether or not BACSL undertook to hold assets for them; and as to the extent to which their client assets and client money (in whole or in part) were in fact transferred to BACSL. The Administrators are continuing to investigate the factual position in this regard.
- 122 Insofar as returns of client assets occur before a final resolution of this issue is reached, the Administrators will make prudent reserves for any impacted stock lines, so as to ensure that no clients’ interests are prejudiced.

K. CONCLUSION

- 123 The Administrators consider that the Distribution Plan meets the requirements set out in the IBSA Rules, will ensure the return of BACSL’s client assets as soon as is reasonably practicable, is fair in its terms generally and, in particular, provides for an appropriate basis on which the costs of the Administrators’ pursuit of Objective 1 may be allocated amongst BACSL’s clients.

for an appropriate basis on which the costs of the Administrators' pursuit of Objective 1 may be allocated amongst BACSL's clients.

124 The Administrators respectfully invite the Court to approve the Distribution Plan.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: 

DOUGLAS NIGEL RACKHAM

25 July 2018

Annex A

Client Communication Summary

- 1 Upon appointment (on or around 1 March 2018), the Administrators set up a dedicated client communications team (the “**Client Team**”) with a telephone helpline and Website: <https://www.pwc.co.uk/beaufort>.
- 2 To date, the Client Team has assisted and responded to an approximate total of 25,726 client queries (approximately 10,826 by email and approximately 14,900 by telephone). The Website has had over 54,155 total visits.
- 3 In addition, the Administrators have communicated extensively with BACSL’s clients by correspondence. Those direct communications have been sent:
 - 3.1 where BACSL or BSL hold email addresses for clients (being approximately 23,598), directly by email; and
 - 3.2 where no email addresses are available, directly by post (being approximately 5,484 in the UK and 308 internationally).
- 4 In response to date, a total of 9,210 claims have been submitted to the Administrators amounting to approximately 92.3% (in value) of the total client assets.
- 5 Where clients failed to respond to the Administrators’ direct communications (or they were returned), steps have been taken to (i) send hard copy communications to all clients for whom the Administrators received email delivery failure notifications; and (ii) obtain alternative postal addresses for those clients for whom the Administrators have received returned postal communications by engaging an external tracing company. In addition, all correspondence (excluding enclosures) has been re-sent to clients for whom alternative postal addresses have been obtained, with a request for them to contact the Administrators immediately.¹¹
- 6 The suite of communications to date comprise, in summary:
 - 6.1 A press release issued on 2 March 2018 [**DNR1/27/538**] confirming, among other things: (i) the Administrators’ appointment; (ii) that they were

¹¹ 264 letters have been returned to the Administrators and 171 new postal addresses sourced. 37 responses have been received in respect of the reposted letters.

prioritising the identification, protection and return of client money and client assets; (iii) the immediate suspension of business of BACSL and BSL; and (iv) details of the client helpline.

- 6.2 A press release issued by the FCA on 2 March 2018 [DNR1/3/19].
- 6.3 A press release issued on 6 March 2018, providing an update as to the immediate progress of the special administration [DNR1/28/539].
- 6.4 On 8 March 2018, publication of the Administrators' notice of appointment in the London Gazette (Rule 51(1) of the IBSA Rules) [DNR1/29/541].
- 6.5 On 15 March 2018, a letter to BACSL's clients explaining the background to the Administrators' appointment, their objective of facilitating an orderly and coordinated return of client money and client assets and the steps undertaken at that date [DNR1/30/543].
- 6.6 On 12 April 2018, a letter to BACSL's clients providing a summary of the Administrators' actions to date and notifying clients that a Soft Bar Date would be set and distribution plan adopted [DNR1/31/545].
- 6.7 On 20 April 2018, a letter to BACSL's clients notifying them that the Administrators' proposals (the "**Proposals**") would be available from 9:00am on 25 April 2018 and of the initial meeting of clients and creditors to be held on 10 May 2018 [DNR1/32/552].
- 6.8 On 25 April 2018, the Proposals, which set out the information required by Rule 59 of the IBSA Rules, were uploaded on the Website [DNR1/33/570].
- 6.9 On 26 April 2018, notice of the initial meeting of clients and creditors was published in the London Gazette (Rule 61 of the IBSA Rules) [DNR1/34/626]. The meeting was held on 10 May 2018.
- 6.10 On 1 May 2018, a notice about clients being contacted by third-party claims managements companies was uploaded on the Website [DNR1/35/628].
- 6.11 On 9 May 2018:
 - 6.11.1 A letter to BACSL's clients inviting them to submit claims to client assets (and client money) pursuant to Regulation 11(1) of the IBSA Regulations [DNR1/36/629].

- 6.11.2 The Client Assets Claim Statements (and similar statements in respect of client money), setting out each client's client asset position and client money balance. Where possible, the statements were enclosed with the above letter. The statements were also made available via the Portal.
- 6.11.3 Notice of the Soft Bar Date of 8 June 2018 for client assets (as well as a corresponding notice of a bar date which was being set in respect of client money) (Regulations 11(3), 12A(1) and 12E of the IBSA Regulations and Rule 138 of the IBSA Rules) was appended to the letter described at paragraph 6.11.1 above **[DNR1/36/629]**. Such notices were also published in The London Gazette on 9 May 2018 **[DNR1/37/644]** and The Times **[DNR1/38/649]** and the internationally distributed edition of The Times **[DNR1/39/651]** on 10 May 2018 (Rule 138(4)).
- 6.12 Following the initial meeting of clients and creditors held on 10 May 2018, the minutes were uploaded on the Website **[DNR1/40/653]**, as well as a set of questions and answers (summarising over 100 questions submitted in writing by clients via an online Q&A system) **[DNR1/41/662]** (Rule 67 of the IBSA Rules).
- 6.13 The results of the initial meeting were subsequently uploaded on the Website, confirming that over 80% (in value) of clients voted in favour of the Proposals without modification and over 95% (in value) of clients voted in favour of appointing a creditors' committee **[DNR1/42/670]**.
- 6.14 On 14 May 2018, a general update to clients following the creditors' meeting was uploaded on the Website **[DNR1/43/674]**.
- 6.15 On 23 May 2018, the first creditors' committee meeting was held.
- 6.16 On 24 May 2018, a general update to clients explaining the estimated costs reserve of £55 million was uploaded on the website **[DNR1/44/674]**.
- 6.17 On 25 May 2018, a reminder email to all clients with email addresses yet to confirm their client asset statements or client money statements. The Administrators also attempted to telephone any clients over the age of 65 and those with high-value portfolios.
- 6.18 On 6 June 2018, the second creditors' committee meeting was held.

- 6.19 On 8 June 2018 a general update to clients addressing the proposed costs allocation method was uploaded on the Website [DNR1/45/676].
- 6.20 Between 8 June 2018 (the Soft Bar Date) and to date:
- 6.20.1 direct contact with those clients who indicated a disagreement with their client assets statement or client money statement; and
- 6.20.2 direct telephone contact (or attempted telephone contact) with certain clients who failed to submit claims prior to the Soft Bar Date under Regulation 11(1) of the IBSA Regulations, but for whom BACSL's books and records indicate that they had client assets and/or client money are held for them (being, "**Potential Claimants**"). In total, attempts have been made to contact 1,092 clients resulting in 389 clients having the claims process explained to them.
- 6.21 On 13 June 2018, a second notice of the Soft Bar Date and inviting claims was sent to Potential Claimants (as well as an explanatory communication) in accordance with the requirements of: Rule 143 of the IBSA Rules CASS Rules 6.7.2R and 6.7.4E (client assets); CASS Rules 7A.2.6AR and 7A.2.6CE (client money) [DNR1/46/678]. Such notice was also published on 14 June 2018 in The London Gazette [DNR1/47/681], The Times [DNR1/48/683] and the internationally distributed edition of The Times [DNR1/49/684] (Rule 138(4)).
- 6.22 On 21 June 2018, the third creditors' committee meeting was held.
- 6.23 On 29 June 2018:
- 6.23.1 A high-level term sheet outlining to clients the key terms of the Distribution Plan was uploaded to the Website [DNR1/18/236].
- 6.23.2 A general update to clients providing further detail about the costs allocation method and role of the FSCS was uploaded on the Website [DNR1/50/685].
- 6.24 On 10 July 2018:
- 6.24.1 Advanced drafts of the Distribution Plan and Explanatory Statement were uploaded on the Website.
- 6.24.2 A notice was sent to all clients (by email and post) informing them of this, and that on 13 July 2018 the final Distribution Plan (in the

form approved by the creditors' committee) would be published on the Website. This notice also informed clients that a hearing of the application to approve the Distribution Plan would take place on either 26 or 27 July 2018.

6.24.3 A further notice about clients being contacted by third-party claims managements companies was uploaded on the Website **[DNR1/51/687]**.

6.25 On 13 July 2018, the fourth creditors' committee meeting was held.

6.26 Also on 13 July 2018:

6.26.1 A third notice of the Soft Bar Date and inviting claims was sent to Potential Claimants **[DNR1/52/689]**. This communication formed the third CASS notification. Such notice was also published in The London Gazette **[DNR1/53/692]** on 13 July 2018 and The Times **[DNR1/54/694]** and the internationally distributed edition of The Times on 17 July 2018 **[DNR1/55/695]**. This third notice explained that a failure to submit a claim prior to the distributions will result in the Administrators calculating a client's client asset return and client money entitlement in accordance with the information available to them.

6.26.2 The final form Distribution Plan and Explanatory Statement (in the form approved by the creditors' committee) was uploaded on the Website.

On behalf of the Applicants

D N Rackham

First statement

Exhibit: DNR1

25 July 2018

CR-2018-001745

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

IN THE MATTER OF THE INVESTMENT
BANK SPECIAL ADMINISTRATION
REGULATIONS 2011

FIRST WITNESS STATEMENT
OF DOUGLAS NIGEL RACKHAM

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