Filed on behalf of the Applicants
Shane Michael Crooks
20 November 2024
"SC10"

CASE NO: CR-2023-001772

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

IN THE MATTER OF WEALTHTEK LIMITED LIABILITY PARTNERSHIP (Partnership Number OC355200)

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

TENTH WITNESS STATEMENT
OF SHANE MICHAEL CROOKS

I, SHANE MICHAEL CROOKS, a chartered accountant and licensed insolvency practitioner of BDO LLP of 55 Baker Street, London, W1U 7EU, will say as follows:

A. Introduction

1 I am an insolvency practitioner at BDO LLP (**BDO**), a professional services firm of the above address.

2 There is now shown to me a paginated bundle of copy documents, marked "**SC10**", to which I refer in this statement. References to SC10 are in the form [**SC10/tab/page number**]. I shall also refer to Crooks (2), Crooks (8) and Crooks (9), each as defined in my ninth witness statement dated 11 November 2024 (**Crooks (9)**), which, like this statement, relate to the application made by the Joint Administrators on 9 May 2024 (the **Application**) for the approval of the distribution plan for the return of Client Assets held by WealthTek prepared pursuant to Part 5 of the Rules (the **Distribution Plan**).

3 I am duly authorised to make this witness statement on behalf of the Joint Administrators. Since our appointment, I have assumed primary responsibility for the day-to-day conduct of WealthTek's special administration. Save where otherwise indicated, the contents of this statement are derived from facts and matters which are within my own knowledge and belief. These facts and matters have been learned either as a result of the work undertaken by me as

Joint Administrator or provided to me by my colleagues at BDO in connection with the appointments in respect of WealthTek, or by certain employees of WealthTek, or by the Joint Administrators' legal advisers, Norton Rose Fulbright LLP (**NRF**).

4 As in Crooks (9), where I refer in this statement to "**Client Assets**" I am referring to securities (including stocks, shares and other investments) held by WealthTek for and on behalf of clients and when I refer to "**Client Money**" I am referring to money that WealthTek received, held and/or treated as Client Money in accordance with Chapter 7 and 7A of the Financial Conduct Authority's (**FCA**'s) Client Assets Sourcebook. Where I refer in this statement to "**Regulations**", I am referring to the regulations in the Investment Bank Special Administration Regulations 2011 and when I refer to "**Rules**", I am referring to rules in the Investment Bank Special Administration (England and Wales) Rules 2011.

5 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.

6 As with Crooks (9) and previous witness statements made in relation to the Application, once this witness statement has been filed with the Court, it will be uploaded to the website (https://www.bdo.co.uk/en-gb/insights/advisory/business-restructuring/wealthtek-administration) set up by the Joint Administrators to manage client communications in the special administration (the **Website**).

7 The purpose of this statement is to address certain matters raised by the Honourable Mr Justice Rajah during and following the consequential hearing on 14 November 2024 (the **Consequential Hearing**), principally:

(a) to provide a breakdown of investigations-related costs incurred by the Joint Administrators (as contained in the table appearing at paragraph 24 below);

(b) to provide views as to the proportions of investigations-related costs which should be fairly attributed to the return of Client Assets as distinct from the potential pursuit of future litigation; and

(c) to identify arguments which a relevant stakeholder may wish to make in respect of the Joint Administrators' proposed apportionment of such costs.

8 I respectfully invite the Court to take into account the matters described in this statement.

B. Duties as insolvency office-holders

(i) General position

9 The Joint Administrators are aware of our duties as insolvency office-holders and we take them very seriously. We seek to discharge those duties not only in the case of our appointment as administrators in WealthTek's case, but in all insolvency appointments we accept.

10 As officers of the Court, the Joint Administrators are aware that we have a duty to be entirely candid with the Court and, in relation to the Application, to make full and frank disclosure to the Court. I am informed by NRF that, as solicitors and therefore officers of the Court, they have an equivalent duty to the Court. The barristers who have appeared for the Joint Administrators on the Application have also confirmed to me that are similarly aware of their duties to the Court. The Joint Administrators also understand that the performance of our duties and our compliance with the applicable guidance are especially important when our personal interests are at stake (including in relation to the incurred investigation costs which form the basis of this statement).

11 In relation to this appointment, we have been, and are, particularly cognisant of the profile and demographics of WealthTek's predominantly retail client-base and the fact that many of WealthTek's clients have been impacted considerably by reason of the misfortune of the events surrounding WealthTek's failure, in some circumstances suffering severe financial hardship. Certain clients, who are facing a complicated and protracted process with which they are unfamiliar, have expressed their frustrations to the Joint Administrators and some clients have written directly to the Court to communicate their concerns. We understand the difficult and distressing situation with which these clients are faced. We have been mindful of these factors throughout the special administration, including in making the Application, and have sought to deliver outcomes which best serve the interests of clients generally and to proceed with diligence and as much speed as circumstances allow. We have also sought to ensure that clients are provided with information about the progress of the special administration and the Application by posting on the Website. We have posted all evidence and submissions filed by the Joint Administrators on the Website.

(ii) Applicable legal framework and guidance

12 In insolvency appointments – whether in ordinary insolvency proceedings or under special insolvency/administration regimes – the Joint Administrators seek to act in accordance with the applicable insolvency legislation and regulatory guidance. So far as the former is concerned, the relevant legislation is primarily the Regulations (which incorporate by reference certain provisions of the Insolvency Act 1986) and the Rules.

13 The applicable regulatory guidance includes the Statements of Insolvency Practice (**SIP**s) issued by the recognised professional bodies responsible for regulating insolvency practitioners, such as the Institute of Chartered Accountants in England and Wales.

14 I have included a summary of the relevant provisions of SIP 7 in relation to the presentation of financial information at [SC10/1/1] and the text of SIP 7 at [SC10/2/3-6]. The Joint Administrators have endeavoured to comply with this best-practice guidance throughout the special administration.

15 Throughout WealthTek's special administration, the Joint Administrators have complied with their statutory reporting requirements so far as clients and creditors are concerned – principally by making available our six-monthly progress reports and by posting regular updates on the Website.

16 In relation to the conduct of investigations, the Joint Administrators have also sought to comply with the guidance set out in SIP 2. I have included a summary of the relevant provisions of SIP 2 at [SC10/1/1-2] and the text of the relevant provisions themselves at [SC10/3/7-10].

(iii) The Joint Administrators' approach

17 The Joint Administrators have been guided throughout WealthTek's special administration by the need to appropriately allocate costs between the relevant estates. That is, in determining whether a particular item of expenditure is to be borne by WealthTek's clients or its general creditors, the Joint Administrators have been influenced by consideration of the intended purpose of the expenditure and which stakeholder group stands to benefit from such expenditure.

18 In light of the concerns expressed by the Court in the Judgment in relation to the Potential Litigation Reserve, the Joint Administrators considered it prudent, consistently with their duties to the Court (as to which see paragraphs 9 to 11 above), to seek confirmation from the Court at the Consequential Hearing as to whether or not certain costs that had been incurred in the special administration to date were properly incurred for the benefit of WealthTek's clients and, therefore, are properly recoverable as such.

C. Incurred investigations-type costs

(i) Summary of the Joint Administrators' approach to date

19 In order to place in context what follows, it is worth bearing in mind that WealthTek's special administration was commenced at short notice and the Joint Administrators were appointed in what is normally termed a "hostile appointment", in that there was very limited pre-planning for

the appointment. Immediately following their appointment, the Joint Administrators did not have access to, or cooperation from, WealthTek's former management. We were therefore faced with the difficult task of familiarising ourselves in short order with a complex business where it was readily apparent from an early stage that there would be shortfalls of Client Assets and Client Money. It was equally apparent to us – as essentially strangers to the business (barring an interim two-day period prior to our appointment when we acted as joint interim managers) – that a certain amount of enquiries and investigations on the part of the Joint Administrators and our team would be necessary in order to establish not only the extent of those shortfalls but also to ascertain the assets held and the arrangements under which they were held. From the time of our appointment, we had to undertake these tasks in challenging circumstances, given that there was only limited information available to us and the firm's books and records were in a state of disarray. In our view, it was necessary for us to take this approach in order to be in a position in which we would be able to achieve the objectives of the special administration.

20 I refer the Court to paragraphs 30 to 32 of Crooks (9) in relation to the approach that the Joint Administrators have taken in relation to investigations-type costs to date, and our belief that the purpose of incurring such costs would be to facilitate the return of Client Assets to clients of WealthTek and/or achieving recoveries in lieu of Client Assets that have been lost, for the benefit of affected clients.

21 In addition, the Administrators' view was that "client assets" for the purposes of Regulation 10B(13) extended not only to assets actually held by the firm but also to assets the firm had undertaken to hold for clients, whether or not on trust and whether or not the undertaking has been complied with. In this regard I refer the Court to paragraph 38 of the Joint Administrators' written submissions dated 30 July 2024 on the costs reserve issues. It was the Joint Administrators' belief that Client Assets return costs extended to investigating Client Assets no longer held by the firm that informed the Joint Administrators' carrying out of investigations-type work from the outset of the special administration.

(iii) Breakdown of incurred costs

22 At paragraph 57 of Crooks (9), I included a table summarising the Joint Administrators' total incurred costs and estimated future costs. The fourth column of that table cited the amount of £1,625,460.08 as being the total incurred investigations-type costs. A footnote explained that the *"vast majority of these costs have related to the funds flow analysis and the s236 Applications"*.

23 I regret that a further breakdown of the costs was not included in Crooks (9). This decision was made due to the time constraints involved in providing such a breakdown, and for reasons of proportionality, in the interests of providing a brief witness statement to the Court which dealt with

each of the issues for determination at the Consequential Hearing in a balanced manner. I should emphasise that the costs involved in preparing the information below (and preparing this witness statement generally) will not be sought to be recouped from either the house or client estate. I am grateful for the opportunity for the Court to consider the breakdown.

24 The Joint Administrators and NRF have now prepared the below table (the **Table**) which provides additional detail in relation to the total incurred costs in relation to investigatory-type work, split according to certain workstreams and time periods. The breakdown recorded in the Table supersedes any indications provided in the course of the Consequential Hearing as to the amounts incurred in respect of constituent elements of this category of costs. The process taken to arrive at this breakdown is described in paragraph 26 below.

		Funds Flow	s236	Assistance to the FCA	Potential claims	Statutory	VAT	Total
To 5 April 2024	Joint Administrators	516,496.23	14,469.35	22,677.97	40,506.62	2,625.82	119,355.20	716,131.19
	Legal	-	128,159.75	-	84,216.83	-	42,475.32	254,851.90
6 April – 23 July 2024	Joint Administrators	12,262.22	108,638.01	97.16	2,982.70	97.16	24,815.45	148,892.69
	Legal	-	140,648.80	-	-	-	28,129.76	168,778.56
24 July 2024 – 5 October 2024	Joint Administrators	2,007.39	126,402.50	6,170.33	1,680.49	-	27,252.14	163,512.85
	Legal	-	87,668.25	56,742.50	-	-	28,882.15	173,292.90
Total		530,765.83	605,986.66	85,687.96	129,386.64	2,722.98	270,910.01	1,625,460.08

25 The three time periods covered in the Table are summarised as follows:

(a) *To 5 April 2024*: these costs were included in the "actual costs incurred" element of the Costs Contribution (as defined in the Distribution Plan) as at the time of the making of the Application, as described at paragraph 126(a) of Crooks (2), and, so far as the Joint Administrators' remuneration is concerned, have already been approved by a resolution of the Committee;[1]

(b) *6 April 2024 to 23 July 2024*: these costs were incurred following the Committee's approval referred to above, and prior to the adjourned hearing of the Application on 23 July 2024. The Joint Administrators have not yet sought approval by the Committee of any costs incurred after 5 April 2024; and

(c) *24 July 2024 to 5 October 2024*: these are the costs of investigations-related work that has been undertaken since the adjourned hearing of the Application on 23 July 2024 until 5

[1] See paragraph 34 *et. seq* in relation to the FSCS in this regard.

October 2024 (being the last day of the period covered in the Joint Administrators' most recent progress report dated 5 November 2024 and the day after the Judgment).

26 The categorisation of work and the breakdowns provided have been prepared by the Joint Administrators' team and their legal team (respectively) as follows:

(a) in the case of the Joint Administrators' team:

(i) on an ongoing basis, as the work has been completed, the Joint Administrators and the engaged BDO team members allocating time entries and accompanying narratives relating to the investigations-related work to an "investigations" cost sub-code in BDO's internal time recording system; and

(ii) the Joint Administrators reviewing the allocations for the purposes of providing the present breakdown and requesting verification from the relevant team members that the allocations accurately reflect the nature of the work in fact undertaken; and

(b) with respect to the legal team, I am advised by NRF that:

(i) on an ongoing basis, as work has been completed, the engaged NRF team members have allocated the investigations-related work to a costs sub-code entitled *"Recovery/Investigations"* under a main code entitled *"Client assets (Objective 1)"* in NRF's internal time recording system. Accordingly, it is plain on the face of the time entries and accompanying narratives what work was completed by each team member;

(ii) of the workstreams described above, the single exception to this is the work undertaken in providing assistance to the FCA. This workstream had been allocated to date by NRF team members to a costs sub-code entitled *"Return of Assets"* (under the same main code described above, i.e. *"Client assets (Objective 1)"*). Time spent by NRF team members advising the Joint Administrators in relation to assistance provided to the FCA has therefore been extracted separately by NRF to ensure an accurate figure is provided for such work in the above breakdown; and

(iii) separately, NRF has allocated costs incurred by barristers retained by them on the Joint Administrators' behalf according to the workstreams to which such costs

correspond[2] (as to which, I note that the barristers retained by NRF in relation to the s236 Applications are different to those retained in relation to the Application).

(iv) Detail of incurred costs workstreams and proposed allocations

27 Below I set out the workstreams in which these costs have been incurred and how the Joint Administrators view the incidence of the above costs should fairly be allocated between estates. In undertaking this allocation exercise, the Joint Administrators have sought to adopt an objective approach based on the exercise of our professional judgement, focusing in the case of each workstream or category on the intended purpose or benefit which was obtained, or stood to be obtained, in future as a result of the work conducted for particular stakeholder groups.

28 In expressing views below, I would like to record that I am doing so with a view to making fair suggestions intended to assist the Court in reaching appropriate determinations, including in light of the Court's views expressed at the Consequential Hearing in relation to the allocation of certain categories of the costs incurred. The allocations proposed are approximations and do not represent an "exact science"; they are not underpinned by detailed workings or apportionments of time-entries, which, in any event, would be near-impossible to achieve in light of what was often the multi-purpose nature of the work undertaken across different time periods when the overall landscape might be said to have shifted in light of developments in the Application and the special administration at large.

29 ***Funds flow*:**

(a) This workstream was described in paragraphs 27 and 28 of Crooks (9). It involved the analysis, principally during the first year of the special administration, of approximately 52,000 payments and receipts from WealthTek's accounts in order to ascertain what payments were made to and from third parties (including connected parties) from WealthTek's client and house accounts, and also as between such accounts. Completion of this analysis allowed the Joint Administrators to gain an in-depth understanding of client balances, i.e. Client Assets and Client Money held, as well the Client Money and proceeds of Client Assets that had apparently been misappropriated. It enabled the Joint Administrators to complete required reconciliations of Client Assets (and Client Money) which included identifying and understanding the issues involved in calculating client entitlements (for example, as a result of the shortfalls and difficulties encountered with WealthTek's books and records) and it was a necessary step for the return of Client Assets.

[2] Barristers' costs appear as disbursements on NRF's monthly invoices; the usual practice is for the underlying fee notes to be paid upon payment of NRF's invoices.

(b) It will be apparent from the Table that certain funds flow-related costs continued to be incurred after April 2024. In large part, these costs are attributable to certain additional work being required as information came to light in the course of interactions between the Joint Administrators and clients during the claims agreement process following the issuance of Client Assets Statements to clients, which then warranted further investigation (for example, as to circumstances of particular transactions involving specific Client Assets).

(c) On the basis that it would not have been possible to return Client Assets without this analysis having been completed, the Joint Administrators consider it to be fair and reasonable that all of the costs be regarded as referrable to the return of Client Assets (and payable from clients' Costs Contributions). The Joint Administrators nonetheless accept that the work-product resulting from the funds flow analysis performed is likely to remain relevant, and to have utility, in any future litigation for the purpose of recovering Client Assets.

30 ***s236 Applications*:**

(a) I have described this work at paragraphs 39 to 44 of Crooks (9). The principal benefits of the work undertaken were twofold:

(i) It enabled the Joint Administrators to "join the dots" from the funds flow analysis they had conducted. Specifically, the orders made by ICC Judge Greenwood on 1 July 2024 (the **s236 Orders**) required the respondents to produce bank statements and certain related information. This allowed the Joint Administrators to match debits from WealthTek client accounts to credits to other accounts and therefore follow misappropriated Client Money and the proceeds of Client Assets and verify the genuine nature of particular payments and what our team had been able provisionally to establish based on WealthTek's own records. Related perceived benefits at the time were that the s236 Orders would enable the Joint Administrators to both identify and safeguard funds representing the proceeds of clients' property to the extent it was not already under the Joint Administrators' or WealthTek's control and also to ascertain if such property was being deployed by or at the instance of WealthTek's former management for the carrying on of business outside of WealthTek. We regarded this as necessary in seeking to get in Client Assets and Client Money for the benefit of the client estate.

(ii) It has enabled the Joint Administrators to identify potential claims and additional lines of enquiry for any future investigations and following or tracing of particular

payments. The s236 Orders contain timetables for the provision of required information. Since the Judgment, and the Court's determination with respect to the Potential Litigation Reserve, the Joint Administrators have not sought to progress these matters further. Specifically, certain additional information requests that would otherwise have been made by the Joint Administrators of the respondents pursuant to a sequencing of events under the s236 Orders, according to a prioritisation of information required by the Joint Administrators, have not been made.

(b) The Joint Administrators' strategy in making the s236 Applications was "holistic" from the outset, in the sense that the s236 Applications were intended to be made in the interests of clients generally, such that we did not contemporaneously make distinctions between verifying the existing funds flow analysis and the furtherance of any potential future litigation strategy. As such, we did not prior to the Judgment consider any need to arrive at an apportionment of costs as between the different purposes.

(c) I would note also that the s236 Applications and the information provided in response has helped inform the Joint Administrators' approach in the assistance we have provided to the FCA (as to which, see paragraph 31 below).

(d) In the Joint Administrators' view, an objective assessment of the recoverability of the costs involved in making the s236 Applications might reasonably conclude that:

(i) such costs are properly recoverable up to 23 July 2024 (when the Court raised concerns in relation to the costs of potential litigation-related work), on the basis that, up to that point, the Joint Administrators had pursued this strategy in good faith, in the interests of clients and in our then-belief that this was a Client Asset return cost properly so-called; and

(ii) in light of the concerns expressed by the Court at the Consequential Hearing, all costs after the hearing on 23 July 2024 should not be capable of being recouped from clients' Costs Contributions.

31 ***Assistance to the FCA*:**

(a) I have explained the content of this work at paragraphs 35 to 38 of Crooks (9). As explained at paragraph 38 of Crooks (9), the Joint Administrators have been of the view that any assistance that we have been providing to the FCA throughout is ultimately for the benefit of WealthTek's clients (as to which, see paragraph 31(b) below). This is what the Joint Administrators had contemplated in incorporating clause 21 of the Distribution Plan which provides a means by which (subject to any contrary court order) the Joint Administrators

can channel future recoveries (such as from the FCA) for the benefit of clients to those clients, under the Distribution Plan.

(b) The Joint Administrators are subject to a statutory duty to engage with the FCA pursuant to Objective 2 (in Regulation 10(1)(b)),and have done so throughout the special administration. However, the work undertaken by us and NRF which falls within the workstream here described occurred mainly (i) in the period up to 19 July 2023, when the Joint Administrators presented their initial funds flow analysis to the FCA and (ii) in the period July to October 2024, when the FCA requested the Joint Administrators' assistance on aspects of its criminal investigation, both of which, ultimately, are intended to lead to the making of recoveries for the benefit of clients to help reduce the significant shortfalls of Client Assets and Client Money that they have suffered.

(c) As explained in paragraphs 35 to 38 of Crooks (9), the Joint Administrators consider that this work was undertaken for the purpose of achieving Objective 1. The sole purpose of this work, from the Joint Administrators' perspective, has been taking the steps available to them to ensure that recoveries are made for WealthTek's clients.

(d) The Joint Administrators consider that the purpose of this workstream is to achieve recoveries for clients in lieu of the Client Assets shortfalls they have suffered. Admittedly, however, and in light of comments made by the Court at the Consequential Hearing, the Joint Administrators acknowledge that any assistance provided by us which helps contribute to successful recoveries for clients will not amount to the return of Client Assets strictly so-called. On this basis, we would propose that none of our total costs incurred on this workstream are recovered from clients' Costs Contributions.

32 ***Potential Claims*:**

(a) This relates to work undertaken by the Joint Administrators so far in identifying potential claims available to the Joint Administrators, WealthTek and/or beneficiaries of the trust property held by it (i.e. clients or the FSCS).

(b) The Joint Administrators wish to emphasise that the work which has been undertaken on this workstream has been limited, preliminary and high-level in nature. This is particularly so given the priority to date has been returning Client Assets and Client Money, and the approach to investigations has been informed by avoiding duplication with the FCA's investigations and proposed recovery efforts. Whilst some legal analysis has been undertaken on possible claims, the work of the Joint Administrators has primarily been limited to corresponding with individuals who wished to provide information to the Joint

Administrators regarding their dealings with Mr Dance and identifying potential causes of action and respondents thereto, with a view to being revisited in due course if there is occasion to do so. As to the former, the Joint Administrators have encouraged such parties to come forward in this way in each of our progress reports to date, where they have concerns in relation to WealthTek's officers' conduct (as is customary in insolvency cases).

(c) The Joint Administrators also wish to emphasise that they have not sought to conceal from the Court the analysis which has been conducted. The overall activity and work undertaken on this workstream has been distilled into a high-level table which is a 12-page document summarising potential claims that might be available to the Joint Administrators and/or WealthTek. The Joint Administrators were not confident of the weight that could be attached by the Court to such a nascent work-product, without additional underlying work being undertaken (clearly, at additional expense) to refine it and make out required elements of the causes of action described. In addition, it would in the Joint Administrators' respectful opinion have been necessary to ask the Court to sit in private in order to consider any such analysis, in light of its confidential nature. This has to date generally been considered by the Joint Administrators to be undesirable given the importance we have attached to clients being as informed as possible throughout the process (as evidenced by our having posted all court filings by the Joint Administrators on the Website).

(d) In terms of timeframe, much of this work was undertaken in the early months of the special administration around the time of the first clients' and creditors' meeting which took place in June 2023. The analysis was then substantially revisited in March 2024, following a Committee meeting held on 27 February 2024, at which certain of the Committee members raised concerns about whether or not particular types of claim would be available to the Joint Administrators and would be progressed by them in due course. Very little meaningful work has been undertaken on this workstream since 6 April 2024.

(e) The Joint Administrators consider that whether or not this work would ultimately benefit WealthTek's clients or WealthTek itself – in terms of laying the foundations for any subsequent meaningful recoveries – would depend on the nature of the claim, the proper claimant and the relief sought in any related proceedings. Nonetheless, the fact that the victims of WealthTek's failure are its clients – overwhelmingly so – and the losses occasioned suffered primarily by them, the Joint Administrators consider that the clients would have been the main constituency that stood to benefit from any later development of the preliminary analysis undertaken on potential claims.

(f) In light of the concerns expressed by the Court, since all of the work involved in this respect concerns potential future litigation, the nature of which remains unknown, the Joint

Administrators accept that the costs involved should not be capable of being allocated to the client estate, even though the work was undertaken by us in good faith and for what we considered at the time to be proper purposes. Accordingly, we propose that the costs involved in undertaking this analysis are not recoverable from clients' Costs Contributions.

33 ***Statutory:***

(a) This relates to the Joint Administrators' statutory reporting on the conduct of WealthTek's officers and reflects an apportionment of the relevant time spent by the Joint Administrators' team as between the client and house estates, including filing mandatory so-called "D reports" on officers' conduct with the Insolvency Service. For good order, I note that this item of cost was not separately identified in the table at paragraph 57 of Crooks (9) or the accompanying commentary therein.

(b) The Joint Administrators acknowledge that the amount apportioned to compliance with our statutory reporting obligations is both modest and, properly considered, is attributable primarily more to the public duties of insolvency office-holders rather than having as its focus the interests of WealthTek's clients as such. For these reasons, we acknowledge that this category of costs is not properly recoverable from clients' Costs Contributions.

(iv) FSCS's comment on incurred investigations costs

34 The Joint Administrators have had sight of the FSCS's letter to the Court dated 18 November 2024.

35 At paragraph 16 of that letter, the FSCS state as follows:

> The JSAs have not to date sought or obtained FSCS approval to deduct the £1.6 million incurred investigation costs (or any element of them) from FSCS compensation. The £1.6 million figure itself was unknown to FSCS, although FSCS was aware through our position on the creditors' committee that the JSAs had carried out investigations as part of their work on returning client assets, and understood that they were in the early stages of investigating claims that may be brought.

36 I note that:

(a) the Committee is required only to approve the Joint Administrators' remuneration and not legal costs. It follows, therefore, that the Committee has not been called upon to approve the legal costs forming part of the £1,625,460.08 cited at paragraph 57 of Crooks (9);

(b) as noted previously, the Joint Administrators have to date only sought approval for costs accrued to 5 April 2024. On 22 May 2024, the FSCS (as a member of the Committee) agreed a resolution of the Committee approving the Joint Administrators' remuneration in the amount of £3,201,937.40 (excluding VAT), which was the Objective 1 costs figure provided in our progress report dated 3 May 2024 (at paragraph 5.2.2 (*JSAs' time costs*));

(c) the amount approved in May 2024 included £596,775.99 of investigations-related costs (i.e. the amount (rounded up) cited in Crooks (9) at paragraph 45(a) as being £596,776 (exclusive of VAT) of the Joint Administrators' pre-6 April 2024 time costs);

(d) as explained in paragraph 16 of Crooks (9), the amount drawn down by the Joint Administrators from the FSCS funding arrangement to date includes approximately £600K of costs already approved by the Committee (which corresponds to the £596,775.99 amount provided in paragraph 36(c)); and

(e) further, the Joint Administrators' progress report dated 5 November 2024 includes the Joint Administrators' time costs for "investigations" in the amount of £260,337.95 (i.e. the amount at paragraph 45(b) of Crooks (9), as being the Joint Administrators' time costs in the period 6 April 2024 to 5 October 2024).

37 The Joint Administrators have raised this issue with the FSCS and provided them with an explanation along the lines of the above. I understand that the FSCS may wish to revisit the apportionment of time costs previously recorded by the Joint Administrators and our legal team as Objective 1 costs following hand-down of the Court's supplemental judgment, and with the benefit of the Court's determination of costs which are properly recoverable from the compensation made available by the FSCS in respect of clients' costs contributions. It appears that this is why, in its letter to the Court, the FSCS has suggested that a fee assessor might be appropriate for consideration (although the FSCS stated that this itself will be a further Objective 1 cost that would need to be met from compensation paid by the FSCS). The Joint Administrators will work with the FSCS and the Committee following the Court's supplemental judgment to ensure any concerns are appropriately dealt with.

D. Affected clients

38 I have been asked by the Court to raise arguments which the relevant stakeholders may wish to make. Before doing so, I wish to highlight who these relevant stakeholders are:

(a) I addressed in Crooks (9) the issue of relevant stakeholders in the context of the parties with an interest in any new proposals that the Court might have invited the Joint

Administrators to present with respect to future litigation (at paragraphs 63 to 72). This explanation is equally relevant so far as the recoverability of incurred costs from the Costs Contribution reserve is concerned. The clients who are impacted are what are termed the Higher Claim Clients (as defined in paragraph 68 of Crooks (9), being approximately 200 in number) and the Intermediate Claim Clients (as defined in paragraph 69 of Crooks (9), being approximately 8 in number).

(b) In addition, based on the information currently available (and subject to final determinations by the FSCS as to individual clients' eligibility), the Joint Administrators understand that approximately 5 clients are not eligible for FSCS compensation and therefore their claims will not be subrogated to the FSCS.

(c) The FSCS is affected in respect of all clients who have received compensation and, in respect of the Costs Contributions of Lower Claim Clients (as defined in Crooks(9)), is the sole party affected.

39 In response to the Court's indications the Joint Administrators have sought to identify the main arguments which they reasonably consider a relevant stakeholder may wish to make. They have done so on the basis of what they know and have learned in the course of the special administration. The Joint Administrators are not able to pre-empt or predict with certainty all conceivable arguments that are capable of being raised by clients in this regard

40 Those arguments are as follows:

(a) ***The funds flow/reconciliation exercise was not necessary***

(i) As explained at paragraph 29 above, the Joint Administrators could not have returned Client Assets without undertaking this work.

(b) ***No element of the potential litigation costs should be recouped because the Court has declined to approve a reserve for such costs***

(i) As submitted during the Consequential Hearing, the Joint Administrators needed to conduct investigations-type work to determine whether there should be a potential litigation reserve and to identify what claims (if any) would be available and the nature of such claims, for the benefit of clients.

(ii) As explained at paragraph 32 of Crooks (9), the Joint Administrators had proceeded from the outset on the understanding that, as insolvency office-holders, we are duty-

bound to investigate the causes of failure of WealthTek and to investigate the conduct of its officers which might have contributed to the failure.

(iii) As stated at paragraph 62 of Crooks (8), a number of letters were sent to the Court by clients and on clients' behalf prior to the Judgment, and a point common to several of the letters received is that clients are naturally concerned to ensure that appropriate steps are being taken to investigate the reasons for WealthTek's failure and ensure that appropriate recoveries can be made in light of the significant shortfalls in Client Assets and Client Money that have been suffered. Admittedly, though, clients' views differ on that party which should bear the burden of the costs involved (as to which, see further paragraph (f) below).

(c) ***If Objective 1 is limited to the return of Client Assets in the possession or under the control of the failed firm, none of the Joint Administrators' costs incurred in connection with investigating apparently misappropriated assets should be recoverable***

(i) See the response to (b) above.

(d) ***Potential litigation costs should not be recouped after 24 July 2024 at the latest given the court's reservations expressed in relation to such costs at the hearing on 23 July 2024***

(i) The Joint Administrators accept the gravamen of this argument.

(ii) The bulk of the costs incurred after this date relate to the s236 Applications. As explained in paragraph 44 of Crooks (9) and paragraph 30(a)(ii) above, there is an in-built timetable for the taking of prescribed steps within the s236 Orders, as such the Joint Administrators considered it was necessary – at least prior to the Judgment – for the Joint Administrators and our legal team to continue to carry out the required actions at the appropriate stages, in order to ensure adherence to the terms of the s236 Orders.

(iii) The response to this argument will depend on the view taken by the Court on whether or not the allocation of s236 Application costs incurred after 24 July 2024 posited at paragraph 30(d)(ii) is the appropriate outcome.

(e) ***Any potential litigation costs should be borne by WealthTek/the house estate rather than the client estate***

(i) No litigation costs as such have yet been incurred. Any investigations work undertaken so far as potential claims are concerned has not progressed beyond a preliminary stage, as described in paragraph 32 above.

(ii) The proper incidence of litigation costs would depend on the nature of the claim and the party/ies for whose benefit it is brought, which is not yet known (as to which, see paragraph 32(e) above). Only preliminary investigatory work has been undertaken.

(iii) It is in the best interests of clients for the Joint Administrators to identify any claims available to be brought by WealthTek as trustee on behalf of the clients, as any claims brought by the Joint Administrators as office-holders would be for the benefit of the general estate, whereas any successful recoveries in claims brought by WealthTek on behalf of affected clients would only be available for those clients.

(f) ***It is appropriate for the Joint Administrators to incur the costs involved in investigating and bringing potential future litigation but clients should not bear the financial burden of such costs, which should instead be borne solely by the FCA and/or the FSCS***

(i) The Joint Administrators' understanding to date has been that FSCS compensation is available only to the extent that particular costs qualify as categories of expenditure capable of being drawn from the Costs Contribution reserve. As matters stand, the Joint Administrators do not have the ability to obtain FSCS funding of the costs described outside the Distribution Plan, which is a matter for the FSCS.

(ii) There is no basis known to the Joint Administrators on which, having successfully applied to Court to place WealthTek into special administration, the FCA would then fund aspects of the special administration from its own resources.

(iii) The Joint Administrators must work within the framework of the investment bank special administration regime under the Regulations and the Rules and the scope of their duties, as determined by the Court on the Application.

(g) ***Any party who subsequently places reliance on the investigations work undertaken by the Joint Administrators for the purposes of claims they wish to bring should subsequently bear the costs of such work***

(i) As matters stand, there is no certainty as to whether any such future claims might be made (including in light of any recovery actions being taken by the FCA).

(ii) In any event, even if such claims were to be brought, there would be complex issues to address in terms of the divisibility or otherwise of the Joint Administrators' own records and the books and records, on the one hand, and the fruits of any investigations in which other parties might have an interest; and any costs-sharing arrangements would, in that event, likely be a matter of private contract the details of which would be a matter for subsequent negotiation. As such, the Joint Administrators have no certainty that the costs incurred would be capable of being met in this way.

(h) ***The Joint Administrators should have waited until the Court gave Judgment in relation to the Application/the approval of the Distribution Plan before incurring any costs in relation to the s236 Applications***

(i) This is addressed in paragraph 30 above.

(ii) Prior to the making of the s236 Applications and at all times prior to the adjourned hearing of the Application on 23 July 2024, the Joint Administrators did not know that there might be any issue with exercising their rights in this regard.

(iii) Following such hearing and the reservations expressed by the Court in relation to the extent of the Costs Contribution reserve, work undertaken following the obtaining of the s236 Orders was allowed to continue in accordance with the terms of the s236 Orders and then stopped following the Judgment.

(i) ***The costs of providing assistance to the FCA are not an Objective 1 cost***

(i) This is addressed in paragraph 31(c) above.

(j) ***The FCA should pay the costs of assistance provided to it by the Joint Administrators***

(i) Since the Joint Administrators are assisting the FCA on issues concerning victim impact and with a view to recoveries being made by the FCA for the benefit of WealthTek's clients (as distinct from ordinary-course, day-to-day engagements falling within Objective 2), the Joint Administrators consider that the relevant costs are properly chargeable as Objective 1 costs.

(ii) In order for WealthTek's clients to have the opportunity of recovering their monies within the FCA process, the FCA have requested assistance from the Joint

Administrators, for which there is no mechanism for our costs of assistance to be met.

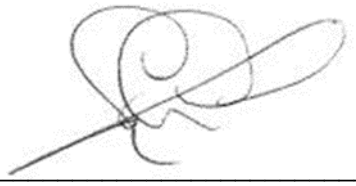
(iii) See further paragraph 31 above.

(k) ***Statutory costs are not an Objective 1 cost***

(i) This is addressed in paragraph 33 above.

41 STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed: 

SHANE MICHAEL CROOKS

Date: 20 November 2024

Filed on behalf of the Applicants

Shane Michael Crooks

20 November 2024

"SC10"

CR-2023-001772

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY & COMPANIES LIST (CH.D.)

IN THE MATTER OF WEALTHTEK LIMITED LIABILITY PARTNERSHIP

IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011

TENTH WITNESS STATEMENT OF SHANE MICHAEL CROOKS

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