THE HIGH COURT
FILED
08 MAY 2023
CENTRAL OFFICE

THE HIGH COURT

RECORD NO. 2023 / 77 COS

IN THE MATTER OF

BLACKBEE INVESTMENTS LIMITED

AND IN THE MATTER OF

THE EUROPEAN UNION (MARKETS IN FINANCIAL INSTRUMENTS) REGULATIONS 2017

AND IN THE MATTER OF THE COMPANIES ACT 2014

LET ALL PERSONS CONCERNED ATTEND BEFORE THE COURT (IN COURT) ON MONDAY THE 12TH DAY OF JUNE 20 23 AT 11 O'CLOCK IN THE FORENOON AND THEREOF GIVE DUE NOTICE.

REGISTRAR

PETITION

To The High Court

The Humble Petition of the Central Bank of Ireland (the "**Bank**" or your "**Petitioner**") having its principle office at New Wapping Street, North Wall Quay, Dublin 1 showeth as follows:-

1. Blackbee Investments Limited (the "**Investment Firm**") was incorporated on 14 November 2013 pursuant to the Companies Act 1963 - 2012 with company number 535412 and has its registered office and corporate headquarters at City Quarter, Lapp's Quay, Cork, Co. Cork, T12 X6NN.

2. The Investment Firm is authorised by the Bank to carry on business in Ireland as an investment firm under Regulation 8(3) of the European Union (Markets In Financial Instruments) Regulations 2017 (the "**2017 Regulations**") and deemed authorised under Regulation 5(2) of the 2017 Regulations.

3. The sole director of the Investment Firm is David O'Shea of Sheanliss, Midleton, Co Cork.

4. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings does not apply to winding up proceedings commenced with respect to investment firms.

5. The European Union (Reorganisation and Winding-up of Credit Institutions) Regulations 2011 (the "**2011 Regulations**", which transpose into Irish law the requirements of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of institutions) applies to this petition because it is an "investment firm" and has its head office in the State, within the meaning of Regulation 4 of the 2011 Regulations.

6. As a result of the applicability of the 2011 Regulations:

   6.1 pursuant to Regulation 12 of the 2011 Regulations, the Companies Act and the 2017 Regulations applies to the proceedings commenced pursuant to the Petition for the winding up of the Investment Firm; and

161137219
562781

LICENSEE 08.05.2023 S0189

A COPY WHICH I ATTEST
Rachel Mey
FOR REGISTRAR

6.2 pursuant to Regulation 17(1) of the 2011 Regulations, if this Honourable Court makes an Order for the appointment of a liquidator, including a provisional liquidator, to the Investment Firm, that Order will have the effect of revoking the authorisation of the Investment Firm, provided however that:

(a) pursuant to Regulation 17(3) of the 2011 Regulations, the revocation of the authorisation of the Investment Firm by operation of Regulation 17(1) of the 2011 Regulations does not prevent the Bank from exercising any power that it has under the applicable law to impose duties on the Investment Firm after the revocation of the authorisation and to take such measures as are necessary to ensure that any such duties are performed; and

(b) pursuant to Regulation 17(4) of the 2011 Regulations, the revocation of the authorisation of the Investment Firm by operation of Regulation 17(1) of the 2011 Regulations does not prevent any liquidator, including any provisional liquidator, from carrying on such of the Investment Firm's activities as are necessary or appropriate for winding up the Investment Firm - however, any such activities may be carried on only with the consent, and under the supervision, of the Bank.

7. All necessary inquiries having been made by your Petitioner and to the best of your Petitioner's knowledge, the Investment Firm has no obligations in relation to a bank asset that has been transferred to the National Asset Management Agency ("**NAMA**") or a NAMA group entity each within the meaning of the National Asset Management Agency Act 2009).

8. Under Regulation 148(2) of the 2017 Regulations the Bank may present a petition for the winding-up of an investment firm under any of the following four grounds:-

(a) *the investment firm or market operator is unable or, in the opinion of the Bank, may be unable to meet its obligations to its clients or creditors;*

(b) *the authorisation of the investment firm or market operator has been withdrawn or revoked and the firm or operator has ceased to carry on business as an investment firm or to operate a regulated market;*

(c) *the Bank considers that it is in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets or is necessary for the protection of investors that the investment firm or the market operator of the regulated market be wound up; and*

(d) *the investment firm or market operator has failed to comply with any direction given by the Bank under the these Regulations.*

9. The Bank in making this petition relies on the grounds set out in Regulation 148(2)(c) and Regulation 148(2)(d) of the 2017 Regulations.

BACKROUND

10. The Investment Firm was incorporated on 14 November 2013 with company number 535412 and has its registered office and corporate headquarters at City Quarter, Lapp's Quay, Cork, T12 X6NN. It is an indirect subsidiary of Blackbee Holdings Limited, the parent company of the group of companies known as the "**Blackbee Group**", which comprises of a number of unregulated entities, in addition to the Investment Firm. The Investment Firm is also under common ownership with Blackbee Funds ICAV, which is also regulated by the Bank, and is managed by its alternative investment fund manager (or "**AIFM**"), Blackbee Funds Limited,

which is also a wholly-owned subsidiary of the Investment Firm. The Petition relates solely to the Investment Firm.

11. According to the most recent annual returns filed with the Companies Registration Office with respect to the Investment Firm and Blackbee Holdings Limited, the ultimate beneficial owner of the Blackbee Group is David O'Shea, who is also the sole director and Chief Executive Officer ("**CEO**") of the Investment Firm, who holds 100% of the issued share capital of Blackbee Holdings Limited. Mr O'Shea has been the sole director of the Investment Firm since the resignation of the Chairman, Mr James Cleary, on 8 November 2022.

12. The Investment Firm was initially authorised by the Bank to carry on business in Ireland as an investment firm pursuant to European Communities (Markets in Financial Instruments) Regulations, 2007 (the "**2007 Regulations**"). Following the replacement of the 2007 Regulations with the 2017 Regulations, the Investment Firm is authorised by the Bank under Regulation 8(3) of the 2017 Regulations and deemed authorised under Regulation 5(2) of the 2017 Regulations (the "**Authorisation**").

13. Pursuant to the Authorisation, the Investment Firm is authorised by the Bank to provide:

    13.1 core investment services to clients such as executing orders and placement of financial instruments without a "firm commitment" basis which means that clients of the Investment Firm will engage it to invest client funds in assets and financial instruments such as bonds and shares and other transferable securities; and

    13.2 provide certain ancillary services to clients such as safekeeping and administration of financial instruments for the accounts of clients, and investment research and financial analysis (although the Investment Firm does not provide financial advice to clients).

14. The Investment Firm is currently in the process of winding-down its business following a decision by the board of directors of the Investment Firm (the "**Board**") in October 2020 to cease engaging new clients. In September 2021, the Bank made it a condition of the Investment Firm's Authorisation that it shall not engage in any authorised activities under the 2017 Regulations other than such authorised activities as are required to service the existing clients' investments.

15. During the initial period of trading, the Investment Firm's primary strategy involved investing client funds in standard or "vanilla" securities or financial instruments known as "Structured Retail Products" (or "**SRPs**"). These instruments typically provide a return based on the performance of an asset, for example stocks and bonds that are listed on a recognised exchange, and SRPs that are debt instruments which will usually be secured by assets of the issuer.

16. However, during the period immediately prior to the decision to wind-down operations, the Investment Firm began to invest client funds in debt instruments known and hereinafter referred to as "Alternative Investments". Those instruments were primarily issued by City Quarter Capital II plc, a company controlled by Mr O'Shea, which used the funds raised to invest in or acquire assets across the healthcare, hospitality, real estate and renewable energy sectors. Alternative Investments of this kind are generally considered to attract a greater level of risk compared with SRPs.

17. The Investment Firm distributed these Alternative Investments primarily in Ireland through a network of third party financial advisory firms who would in turn make investments with the Investment Firm on behalf of their clients. However, the Bank is aware that the Investment Firm also sold Alternative Investments directly to a small number of execution-only clients.

18. As at 28 April 2023, the Investment Firm had c.1,700 retail clients (being non-professional investors) and held client assets (comprising client funds and client financial instruments) of c.€180 million, of which:

18.1 c.€600,000 represents client funds (i.e cash) held with Citibank N.A. London Branch and Allied Irish Banks p.l.c. in the name of the Investment Firm's wholly owned subsidiary, Blackbee Investments Nominees Limited ("**BBI Nominees**");

18.2 c.€135 million represents client financial instruments in the form of Alternative Investments held in custody in a Citibank N.A. client asset account on behalf of BBI Nominees;

18.3 c.€17 million represents client financial instruments in the form of Alternative Investments held in custody in BBI Nominees;

18.4 €27 million represents client financial instruments in the form of SRPs, also held in custody in a Citibank client asset account on behalf of BBI Nominees.

19. The Investment Firm is supervised by the Bank in accordance with the Probability Risk and Impact System (or "**PRISM**") supervisory framework operated by the Bank. The PRISM is the Bank's risk-based framework for the supervision of regulated firms. It supports the Bank's challenging firms, judging the risks they pose to the economy and the consumer and mitigating those risks the Bank judges to be unacceptable.

20. Since mid-2020 the Investment Firm has been the subject of focussed and intensive regulatory and supervisory engagement, which has further intensified and escalated since early November 2022 as the Bank became increasing concerned in relation to the viability of the Investment Firm as result of the deterioration of corporate governance standards at the Investment Firm.

21. The current position of the Investment Firm can be summarised as follows:-

21.1 the Investment Firm has failed to comply with, and remains in breach of, its regulatory obligations under Regulation 17(8) of the 2017 Regulations because as matters currently stand a single person - Mr David O'Shea who is also the CEO and the ultimate sole beneficial owner – is directing the business of the Investment Firm, and it no longer has a non-executive director or Chairperson of the Board since the resignation of Mr James Cleary on 8 November 2022;

21.2 this is very concerning from a supervisory perspective because it is essential that all investment firms must at all times have a minimum of two persons directing the business of the firm, and at least one non-executive director is expected, which is critically important in order to ensure that there is effective governance, oversight and independent challenge with respect to Board decisions;

21.3 previously, three persons were either employed by or contracted with the Investment Firm to perform pre-approval controlled function ("**PCF**") roles, being:

(e) Mr O'Shea, who continues to perform the PCF roles of CEO and Executive Director;

(f) Ms Emma Ryan, who performed the PCF roles of Chief Financial Officer ("**CFO**") and Head of Client Asset Oversight ("**HCAO**"); and

(g) Mr Kevin Mc Hugh, who performed the PCF roles of Head of Compliance ("**HOC**"), Head of Anti Money Laundering and Counter Terrorist Finance Compliance (or "**MLRO**") and Chief Risk Officer,

21.4 however, over the course of November and December 2022, Mr McHugh and Ms Ryan resigned leaving a single person, Mr O'Shea, in sole control of all executive functions at the Investment Firm – this situation constituted a clear breach of the Investment Firm's regulatory obligations under the Regulation 17(8) of the 2017 Regulations and gave rise to material operational, financial and governance risks and concerns, including with respect to the safeguarding of client assets at the Investment Firm;

21.5 in emails dated 8 December 2022 and 13 December 2022, the Investment Firm confirmed that it intended to engage an external accountancy and consultancy firm to provide services with respect to the PCF roles of HCAO and HOC on a short term basis pending the completion of a proposed sale of the entire issued share capital of BBI Nominees to Aria Capital Management Europe (a Maltese MiFID entity with an Irish Tied-agent, and proposed Irish Branch, and hereinafter "**Aria**") (the "**Aria Transaction**"), which it expected would occur by not later than 20 January 2023;

21.6 however, the Investment Firm failed to engage any external firm for that purpose, and on 7 February 2023 Aria rescinded the agreement between it and the Investment Firm relating to the Aria Transaction (the "**Aria SPA**") alleging that the Investment Firm had committed various breaches of that agreement;

21.7 on 25 February 2023, the Investment Firm entered into an agreement for the sale of the entire issued share capital of the Investment Firm (the "**De Vere SPA**") to Mr Nigel Green, the founder and CEO of The De Vere Group (a financial consultancy company with its headquarters in the United Arab Emirates, and hereinafter "**De Vere**");

21.8 on 16 March 2023 the Bank issued regulatory directions to the Investment Firm pursuant to the 2017 Regulations ("**the March 2023 Regulations Directions**") - which are considered in more detail at paragraph 65 below - which required the Investment Firm appoint a suitably experienced and independent individual to the role of independent non-executive director ("**INED**") and Chair of the Board, appoint a suitably experienced individual to the roles of HCAO and HOF, and appoint a suitably experienced individual to the roles of HOC and MLRO;

21.9 in accordance with March 2023 Regulatory Directions , the Investment Firm submitted applications to the Bank with respect to the appointment of three individuals to the roles of CFO and HCAO, Chairperson of the Board and INED and HOC and MLRO, however, on 25 April 2023, the De Vere SPA was terminated, and the persons to be appointed as INED and Chairperson, and HOC and MLRO, respectively, withdrew those applications and vacated those roles with the result that, although one individual continues to perform the role of CFO and HCAO on a temporary basis, as at the date of the swearing of this Affidavit Mr O'Shea remains as the sole director of the Investment Firm and there is no INED, HOC or MLRO, which constitutes a clear breach the March 2023 Regulations Directions;

21.10 following the failure of the Aria Transaction and the recent termination of the De Vere SPA, the Bank does not believe that there is any reasonable prospect of a sale of the business and / or shares of the Investment Firm occurring, and accordingly the Bank is of the view that, given that the Investment Firm has ceased to engage in new client business, the only strategic option available to the Investment Firm is a wind-down to the maturity of the client assets held by BBI Nominees.;

21.11 the Bank does not have any confidence that the Investment Firm is capable of hiring, retaining and / or paying for experienced staff and / or professional firms to fill the vacant PCF roles that would be required to implement a wind-down strategy with respect to the Investment Firm, which would take a number of years to complete;

21.12 furthermore, in circumstances where, during the course its supervisory engagement with the Investment Firm, Mr O'Shea has repeatedly made, and failed to deliver upon, commitments to the Bank with respect to the appointment of suitably experienced individuals and / or professional firms to fill vacant PCF roles, the Bank considers it can no longer provide any further time to comply or place any reliance on such undertakings or commitments from Mr O'Shea as to compliance;

21.13 although the Investment Firm does not currently appear to be insolvent from a balance sheet or cash flow perspective, it is in a financially distressed position due to continued operating losses and in addition, the most recent capital and liquidity plan issued to the Bank by the Investment Firm on 6 April 2023 indicates that, following the termination of the proposed sale to De Vere, the Investment Firm will likely be in breach of its applicable regulatory capital requirements by August 2023, and the Investment Firm has been unable to provide any credible evidence to the Bank that it has access to sufficient capital that will enable it to avoid such a breach;

21.14 the solvency position of the Investment Firm is currently materially dependent on the recoverability of a substantial intercompany receivable (the "**BGHL Receivable**") owing to the Investment Firm by its immediate parent company, Blackbee Group Holdings Limited ("**BGHL**") – for the reasons explained below, the Bank has serious concerns as to the ability of BGHL to repay the BGHL Receivable (which concerns have been exacerbated following the rescission of the De Vere SPA and the potential claim by Mr Green for the repayment of the advance consideration paid to BGHL) and this concern has been highlighted by the Bank to the Investment Firm; and

21.15 the Bank's already heightened concerns with respect to the failure of corporate governance and control functions at the Investment Firm are materially exacerbated in circumstances where the Investment Firm's regulatory capital and liquidity planning is also an issue of serious concern.

22. Taking all of these factors into account, the Bank considers that:

22.1 it is in the interests of the proper and orderly regulation and supervision of investment firms or regulated markets, and is necessary for the protection of investors, that the Investment Firm be wound-up, in each case within the meaning of Regulation 148(2)(c) of the 2017 Regulations; and

22.2 the Investment Firm has failed to comply with the requirements of the March 2023 Regulatory Directions, within the meaning of Regulation 148(2)(d) of the 2017 Regulations.

23. Accordingly, the Bank also considers that it has adequate grounds under the 2017 Regulations to present a petition for the winding-up of the Investment Firm.

SUPERVISORY ENGAGEMENT

24. The relevant engagement between the Bank and the Investment Firm, outlined above, occurred over the course of almost three years from mid-2020 to date. During that period, the Bank identified reoccurring material issues relating to:

24.1 inadequate corporate governance structures within the Investment Firm;

24.2 governance and oversight arrangements with respect to client assets; and

24.3 the adequacy and quality of the Investment Firm's financial risk management and planning.

25. On 1 December 2022, having become increasingly concerned by the lack of meaningful responses from the Investment Firm, and the fact that Mr O'Shea was now effectively the only director and sole executive officer of the Investment Firm, and following a series of engagement with the Investment Firm, the Bank issued a letter to the Investment Firm, the contents of which can be summarised as follows:

25.1 the Bank reiterated its concerns with regard to:

(a) the "*deteriorating corporate governance of the firm*";

(b) that Mr Cleary had resigned as director and Chairperson on 8 November 2022;

(c) that Emma Ryan had also resigned as CFO and HCAO, effective 21 December 2022; and

(d) that Mr Kevin McHugh, HOC, had also now resigned effective 30 November 2022,

25.2 the Bank noted that these resignations "*heighten the Central Bank's concerns about the adequacy of the Firm's client asset governance and oversight arrangements*";

25.3 the Bank also noted that the Investment Firm "*now finds itself in a position whereby there is no second or third line of defence in place and no INED present on the Board*" and that this position "*raises grave concerns for the Central Bank as there is no longer any independence and/or segregation of duties within the Firm's client asset governance and oversight arrangements*"; and

25.4 the Bank explained that the "*protection of client assets is a key priority for the Central Bank*" and that the "*absolute minimum a client expects when investing with BBI is that strong safeguarding arrangements are in place at all times*" – the Bank also noted that in "*light of the wholly inadequate client asset governance arrangements currently in place, the Central Bank now considers it necessary, in the interest of safeguarding client's interests, to place a restriction on the Firm's control over the client asset account.*

26. On 1 December 2022, but effective from 2 December 2022, the Bank issued a Regulatory Direction to the Investment Firm "*not make any payments from third party client asset accounts without the prior approval of the Central Bank*" and where "*payment is requested by a client of the Firm, BBI shall submit a request for payment approval to the Central Bank*".

27. On 2 December 2022, the Bank emailed Mr O'Shea requesting an urgent meeting with him to discuss the issues raised in recent letters. No response was received from Mr O'Shea, however, subsequently the Bank continued to receive emails from the Investment Firm with daily bank account reports.

28. On 2 December 2022, the Bank issued a further letter to the Investment Firm which again drew attention to all of the Bank's concerns with respect to the deteriorating position of the Investment Firm, and in particular the letter highlighted the following issues:

28.1 the lack of a suitably experienced, independent individual in situ in the positions of Chair of the Board and Independent Non-Executive Director;

28.2 the lack of a suitably experienced, independent individual(s) *in situ* in the positions of HOC, Head of Risk and MLRO;

28.3 the lack of a suitably experienced, independent individual(s) *in situ* in the positions of Head of Finance ("**HOF**") and HCAO; and

28.4 the failure of the Investment Firm to provide an updated capital and liquidity management plan as outlined in previous correspondence, and most recently, in statutory request issued by the Bank to the Investment Firm on 25 November 2022.

29. This letter also outlined that given "*continued lack of clarity provided by the Firm throughout the Central Bank's engagement, the Firm's failure to deliver on its commitments and assurances to the Central Bank in respect of the capital and liquidity plan to date, the changing financial strategy, and the recent developments leading to a situation where there is an absence of a corporate governance system in the Firm*", the Bank had formed the view that there are "*materially heighted risks to (i) the proper and orderly regulation and supervision of the Firm and (ii) the protection of investors of the Firm*" and that as a result the Bank deems it necessary "*for the protection of investors and in the interest of proper and orderly regulation and supervision of the Firm, to consider the appointment of a provisional liquidator to the Firm*".

30. The Investment Firm was advised that if it intended to make any submissions to the Bank in relation to the contents of the letter, it should do so by 12 noon on Thursday 8 December 2022.

31. On 2 December 2022, in order to secure the Regulatory Direction issued by the Bank to the Investment Firm on 1 December 2022, the Bank:

31.1 wrote to Citibank to request that it shall not effect any payments from the Investment Firm's client asset bank account without the prior approval of the Bank; and

31.2 issued a Regulatory Direction to Ulster Bank Ireland DAC that it shall not effect any payments from the Investment Firm's client asset bank accounts without the prior approval of the Bank (the same Regulatory Direction was subsequently issued to Allied Irish Banks, p.l.c. on 6 March 2023, ahead of the migration of the client funds held with Ulster Bank Ireland DAC to newly opened client asset bank accounts held by the Investment Firm with Allied Irish Banks, p.l.c., which occurred on 9 March 2022).

32. At precisely noon on 8 December 2022, the Bank received an email from the Investment Firm which stated that "*we are finalising our response*" to the Bank's letter of 2 December 2022 which noted that the Bank was considering the appointment of a provisional liquidator to the Investment Firm, and that the Investment Firm is "*awaiting a final legal point to be cleared but I wanted to let you know we are treating this extremely seriously and will have our response over to you shortly*". The Bank responded to this email at 12.55pm on 8 December 2022 to acknowledge receipt of the Investment Firm's email and also stated that the Bank's letter of 2 December 2022 "*set out a number of significant concerns*" and that "*your response below does not provide a substantive response to those concerns within the timelines stipulated*". The email then advised that this "*is a serious matter for the Central Bank and if there are substantive submissions you wish to make in response to my letter, such submissions must be made prior to 5pm today. The position of the Central Bank set out in my letter of 2 December 2022 remains the same*".

33. At 7:24pm on 8 December 2022, the Bank received an email from Mr O'Shea, the contents of which can be summarised as follows:

33.1 in the summer of 2021 the Investment Firm had submitted "*a wind down plan to the Central Bank setting out 3 scenarios: (i) sale of the company; (ii) transfer of assets; (iii) continuation of business until final maturity in 2029*";

33.2 Mr O'Shea asserted that because "*the Central Bank had imposed certain directions on the Firm, specifically the ceasing of new business and restricted dividend payments, it meant the possibility of achieving option (iii) was remote*";

33.3 the Investment Firm was unable to complete a sale to Aria (i.e. option (i) as described above) in early 2022 because Aria "*needed greater assurances as to any liabilities that could emerge in the future*" and the Aria Transaction was rearranged as an "*asset transfer in Autumn 2023*";

33.4 Mr O'Shea confirmed that the Investment Firm is in the process of implementing a communications plan with is clients with regard to the Aria Transaction, and that 36% of the clients had provided their consent to that transaction;

33.5 Mr O'Shea also confirmed that BGHL "*remains committed to supporting the Firm and will commit capital as required – this is clearly evidenced in the loan arrangement put in place by BBGH*" and that accordingly the "*Firm therefore remains suitably capitalised and has evidenced to the Central Bank the underlying agreements its shareholder has in place to continue to support it*";

33.6 the Investment Firm confirmed that contact had been made with Grant Thornton with a view to appointing them as advisers and for the purposes of providing resources to the Investment Firm for its orderly wind down; and

33.7 although acknowledging its need to improve its communication with the Bank, the Investment Firm was of the view that "*there is no basis to appoint a liquidator*", was treating the correspondence received from the Bank "*with the utmost seriousness*" and had briefed counsel "*as the threat of a liquidator could immediately damage investor value and worse*".

34. At 7.28p.m. on 8 December 2022, the Bank received an email from the Investment Firm concerning the correspondence that it issued to Citibank and Ulster Bank Ireland DAC on 2 December 2022 in order to secure the Regulatory Direction issued by the Bank to the Investment Firm on 1 December 2022. In that email, the Investment Firm asserted that as a result of this action by the Bank "*you have critically damaged our reputation*", that the Investment Firm is now "*on a watch list*", which is "*extremely serious and there could be serious contagion on the matter*". The Investment Firm also alleged that the actions taken by the Bank "*have hugely damaged the Firm's relationship with Citi, this by direct extension will jeopardise the entire Aria asset transfer of which you are fully aware*" and "*mean that the calc and rec won't get done and investors have been made worse of*". Finally, the Investment Firm stated that "*over 8 years of engagement with the Central Bank we have only seen a bias against the firm, a tendency to disproportionate actions and in certain cases it would seem, a subordination of investor interests*" and that it intended to "*refer this issue to our lawyers and counsel*". At 5.41p.m. on 9 December 2022, the Bank responded to this email to explain (a) that the reasons for the actions taken by the Bank are set out in the letter to the Investment Firm dated 1 December 2022, and (b) where the Bank issues a direction pursuant to Section 45(1) of the 2013 Act to an institution, the Bank is entitled, where it considers it necessary for the purpose of securing compliance with that direction, to give a direction to any regulated financial service provider at which the institution holds an account of any description to cease making payments from, or entering into or performing other transactions in respect of, such account without the prior authorisation of the Bank. Finally, the response explained that the Bank considered it necessary to issue such a direction to Ulster Bank Ireland DAC in this instance, and to make a similar request of Citi.

35. On 9 December 2022, the Bank separately sent an email to Mr O'Shea acknowledging his email received at 7:24pm on 8 December 2022 and indicating that it was considering its response. In that email, the Bank again reiterated its concerns about the deteriorating corporate governance

and capital and liquidity position of the Investment Firm and indicated that a minimum of at least two sufficiently experienced partners from a professional services firm would be required to take on the following roles: (a) the role of INED at board level; and (b) the HCAO and HOC roles. The Bank asked that the Investment Firm respond outlining details of any third party support by 5pm on 12 December 2022.

36. On 13 December 2022 at 12:03pm, by email to the Bank, the Investment Firm confirmed it "*will appoint 2 INEDs from a professional firm (partner level) and additionally put in place supports from a professionally firm to cover the roles of HCAO and Head of Compliance*". It further confirmed that it expected to finalise its negotiation with Grant Thornton in the coming days, indicating that an update with confirmation on their appointment would follow in the next few days.

37. On 14 December 2022, the Bank acknowledged Mr O'Shea's email of 13 December 2022 and indicated that it expected that the arrangements with Grant Thornton would be put in place by no later than 9am on 21 December 2022. The Bank indicated that it also expected a detailed resourcing proposal including:

    37.1 the *curriculum vitaes* of the two partners to be appointed to the corporate governance roles in the Investment Firm;

    37.2 an outline of their proposed duties;

    37.3 confirmation on the proposed period of their appointment; and

    37.4 details on the source of funds to support the proposed engagement, would be submitted to the Bank no later than 12pm on 16 December 2022.

38. The Bank noted that the strength and quality of the arrangements and the efficiency in which they could be implemented would inform the Bank's consideration as whether the Regulatory Direction which was imposed on 1 December 2022 could be removed.

39. On 16 December 2022 at 12:05pm, Mr O'Shea emailed the Bank seeking more time pending a response from Grant Thornton later that day and the Bank responded agreeing to extend the deadline to 5pm at the latest. At 5:07pm, Mr O'Shea emailed the Bank informed the Bank that the Investment Firm had spoken with two advisory firms: Grant Thornton and Moore. The plan was that Moore would take over the finance function and provide services to the Investment Firm. Grant Thornton were to respond on whether they could fill the independent non-executive director role and were working on a proposal with respect to the HCAO and HOC roles but further engagement was required before this could be finalised. Mr O'Shea would continue to work with Grant Thornton and provide updates over the next week and that copy contracts would follow when signed.

40. On 16 December 2022, by letter, the Bank responded in full to Mr O'Shea's email of 8 December 2022. The Bank's response is summarised below as follows:

    40.1 the Bank reiterated that until such time as two non-executive directors are appointed to the Board, it would continue to have serious concerns that the Investment Firm is unable to implement effective governance, oversight and independent challenge at board level;

    40.2 the Bank explained that the suggested approach whereby Grant Thornton would provide support by performing the HCAO and HOC roles would not alleviate its concerns - two sufficiently experienced partners from a professional services firm would need to take on the non-executive director role and the HCAO and HOC roles;

40.3 the Bank expressed its concerns with the targeted date of 20 January 2023 for the completion of the Aria Transaction in circumstances where Aria had not yet made an application to establish a branch in Ireland and the time involved to complete this process can take up to two months – the Bank also expressed its concerns that the Aria SPA did not identify the parties responsible for the following functions post-completion: (i) client complaints/errors; (ii) the provision of information to clients; (iii) redemptions and early client encashment requests (iv) holding the books and records and (v) disruption events prior to the transfer of the book of business, and the Bank requested a response to these queries by 3 January 2023;

40.4 the Bank explained that the outstanding information previously requested with respect to the three capital injections to the Investment Firm in November and December 2022, had not been provided, and it requested that this information be provided together with an updated capital plan spanning the period to the end of May 2023; and

40.5 the Bank requested that the Investment Firm submit a detailed liquidity management plan spanning the period to the end of May 2023 by not later than 21 December 2022.

41. On 19 December 2022, by email to the Investment Firm, the Bank noted its failure to submit detailed proposals to rectify its corporate governance structure and reminded the Investment Firm that it expected the resourcing arrangements to be in place no later than on Wednesday 21 December 2022. The Bank confirmed that unless the Investment Firm could demonstrate that the appropriate resourcing arrangements were in place, the Bank would not be in a position to consider lifting the Regulatory Directions imposed on 1 December 2022. The Bank requested a meeting with Mr O'Shea and during a telephone call with the Bank that afternoon, Mr O'Shea committed to submitting a detailed response to the Bank on its corporate structure going forward.

42. In an email to the Bank on the morning of 20 December 2022, Mr O'Shea confirmed that the wind down of the Investment Firm remained on track for 20 January 2023 and that discussions were continuing with Grant Thornton with respect to the HCAO role. He confirmed that he had also reached out to O'Connor Sheedy and had considered approaching a former HCAO to provide the services required of a HCAO. Mr O'Shea indicated that the departure of Ms Ryan would only effect two and a half weeks of activity in January pending the completion of the Aria Transaction and contended that the risk to client assets during that period was low.

43. By separate email dated 20 December 2022, the Bank was provided with copy board minutes from BGHL approving the two capital contributions to the Investment Firm in November and December 2022. The Investment Firm explained that the remaining payment was a receivable from the Italian Revenue Authority.

44. Later that day on 20 December 2022, the Bank responded to Mr O'Shea indicating that "*You have failed to provide any evidence of your ability to address the serious issues that currently exist across the firm's governance and operation arrangements and the increased operational, financial, client asset and conduct risks within the firm.*" The Bank also stated that "*To date no substantive proposal of third party professional service supports has been provided to the Central Bank as requested*" and "*In addition there is no evidence provided of any substantive outcomes from any discussions with third party professional services firms to date including contractual engagement agreements*". The Bank noted that the Investment Firm continued to have no effective governance structures in place and indicated that it could not allow this situation to persist in this manner. It confirmed that in the absence of suitable client asset oversight support being implemented by 9am the following day, it would not be in a position to consider removing existing directions on client asset bank accounts. The Bank separately noted that in its view the purported completion date for the Aria Transaction was wholly inaccurate as a branch application from Aria had yet to be filed with the Bank.

45. On 21 December 2022 at 9:32am the Investment Firm confirmed to the Bank that it was unable to meet the prescribed deadline noting that "*we have tried to engage the required professional firms but the CBI direction has effectively caused them to 'shy' away from providing support*". The Investment Firm confirmed that Aria had made an application with the Maltese Financial Services Authority ("**MFSA**") and that the application and branch notification was with MFSA since November. It also indicated that it had received advice to provide that any ex parte actions by the Bank would be without any basis given the ongoing engagement with them to date.

46. On 21 December 2022 the Bank wrote to the Investment Firm with respect to its explanations on the three capital payments in November and December 2022. The Bank confirmed that it accepted the capital contributions from BGHL as eligible CET 1 payments, however the Bank required further explanation as to how the remaining payment, which had been explained as a receivable from Italian Revenue Authority, would qualify as CET 1.

47. On 22 December 2022, the Bank sought details from the Investment Firm with respect to the dates for any expected capital and liquidity breaches by the Investment Firm as well as updated financial projections. The following day, the Investment Firm confirmed its anticipated date for breach of the "Total Own Fund" requirement on 7 February 2023 and if no future cash injections are made to the Investment Firm, it expected that it would be in breach of its liquidity requirement on 9 January 2023.

48. On 4 January 2023, the Bank followed up with the Investment Firm noting that it had yet to receive the following:

    48.1 the detailed capital and liquidity management plans, which were requested to be provided by 21 December 2022; and

    48.2 detailed information in respect of the Aria SPA, which was requested to be provided by 3 January 2023.

49. On 5 January 2023, the Bank sought details on the Investment Firm proposed measures to mitigate the projected liquidity and capital breaches as well as further information on any projected capital injections and intercompany payments. On 8 January 2023, Mr O'Shea confirmed that BGHL had made a capital contribution of €9,000 to the Investment Firm on 6 January 2023 and confirmed that an updated submission concerning capital and liquidation would be made later in the week. Mr O'Shea also confirmed that final operational details for the Aria Transaction were being worked upon with a view to firming up a date for execution shortly.

50. On 10 January 2023, the Investment Firm responded to the Bank's letter of 16 December 2022 and more recent correspondence, summarised as follows:

    50.1 the Investment Firm asserted that the "*Firm has in place robust frameworks governing its activity and the Firm continues to comply with all its regulatory obligations*" and that no "*risk arises to clients as a result of the departure of the HCAO*";

    50.2 the Investment Firm indicated that it holds weekly conference calls with Aria to work through the conditions for the Aria SPA and would be having its next call on Thursday 12 January 2023; and

    50.3 with respect to the specific queries raised by the Bank, it confirmed that Aria will be responsible for: (i) handling all complaints with respect to all products / services provided to investors both before and after the transfer of the book of business is complete; (ii) the provision of information to clients; (iii) processing any redemptions and early client encashment requests; and (iv) retaining all files and records.

51. On 18 January 2023, by email, the Bank sought a further update from the Investment Firm on the Aria Transaction and whether it was still expected that completion would occur by 20 January 2023, noting that the Bank had yet to receive any communication from MFSA with respect to the branch application. The Bank requested that the Investment Firm revert by close of business on 19 January 2023. The Investment Bank failed to respond by the prescribed deadline, and on 23 January 2023, the Bank issued a letter to the Investment Firm, the contents of which can be summarised as follows:

51.1 the Bank reiterated its ongoing concerns relating to the inability of the Investment Firm to implement effective governance, oversight and independent challenge at board level and failure to address the Bank's concerns or respond to its requests within the prescribed timelines – the email also indicated that, in light of inadequate governance arrangements, it deemed it necessary to maintain the Regulatory Directions which were imposed in early December 2022;

51.2 the Bank noted that the Aria Transaction had not been achieved by 20 January 2023, and in light of the fact that no branch application had yet been made to the Bank it would likely take a number of months for the Aria Transaction to complete;

51.3 the Bank pointed to the failure of the Investment Firm to provide it with its capital and liquidity plans and to resubmit its regulatory Investment Firms Reporting (or "**IFREP**") return for November due to a change in the Own Funds figure;

51.4 the Bank noted that the Investment Firm had failed to deliver on its commitments / assurances to the Bank in respect of governance, client asset oversight and financial matters and continues to fail to provide appropriate clarity on matters of the utmost importance in its engagement with the Bank; and

51.5 in light of the above, the Bank confirmed that it was of the view that there were materially heightened risks to (a) the proper and orderly regulation and supervision of the Investment Firm and (b) the protection of investors of the Investment Firm and as a result of this, the Bank deemed it necessary for the protection of investors and in the interests of proper and orderly regulation and supervision of the Investment Firm, to consider applying to the High Court to seek the winding-up of the Investment Firm and the appointment of a provisional liquidator to the Investment Firm pending the hearing of the winding-up application – the Bank invited submissions from the Investment Firm by 5pm on Thursday 26 January 2023.

52. On 25 January 2023 at 1:06pm, Mr O'Shea emailed the Bank confirming that he was working on a detailed response which he believed "*will address the issues raised and provide greater clarity on the Aria transaction*".

53. On 25 January 2023 at 5:53pm, the Bank responded to Mr O'Shea confirming receipt of his email and that:

53.1 it had been in contact with the MFSA in respect of the Aria's application to establish a branch in Ireland;

53.2 the MFSA had informed the Bank that:

(a) it had received a notification from Aria on 3 October 2022 that it proposed to establish a branch in Ireland;

(b) they are engaging with Aria and its advisors with respect to various aspects of the proposal, and that certain questions in that regard remained unanswered; and

(c) the notification submitted cannot be considered as complete in terms of Article 35 of Directive 2014/65/EU of The European Parliament and of The Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) ("**MiFID II**") and the three-month timeline contained in the said Article has not yet commenced; and

53.3 in light of the information shared by the MFSA, the Bank was of the view that there was no realistic prospect of the Aria Transaction completing in the immediate term, and the Investment Firm was invited to respond to such observations by 5pm the following day, 26 January 2023.

54. At approximately 4:56pm on 26 January 2023, Mr O'Shea emailed the Bank indicating that the Investment Firm was addressing the matters raised with Aria and working with its legal advisers to finalise its response which would be submitted later that evening. On 27 January 2023 at approximately 2:14am Mr O'Shea responded to the Bank's letter dated 23 January 2023, which can be summarised as follows:

54.1 Mr O'Shea expressed his disappointment and frustration that the Aria Transaction had not completed on 20 January 2023 and he indicated that various steps in the "*Board approved Communication Plan*" had been taken to progress the Aria Transaction including issuing notifications as prescribed by the Transfer of Undertakings (Protection of Employment) Regulations ("**TUPE**") to employees of the Investment Firm who would be transferring to Aria on 13 January 2023;

54.2 Mr O'Shea indicated that since receiving the Bank's letter, the Investment Firm's legal advisers would be engaging with Aria's legal advisers to establish a clearer timeline for completion and this would be communicated to the Bank as soon as possible;

54.3 Mr O'Shea committed to "*now however, take appropriate action in response to the information provided by the Central Bank last night and to alleviate concerns as outlined in your letter of 23rd January and previous letters*", and more specifically, Mr O'Shea confirmed that the Investment Firm would:

(a) "*in consultation with the Central Bank, immediately endeavour to take the corporate governance actions set out below, enhancing the Firm's corporate governance structures immediately.*

(b) *continue to make efforts to achieve a completion of the Aria transactions and deliver the best outcome for its clients.*

(c) *carry out a brief and focused assessment with its advisers as to other options available to the Firm to take steps to procure the orderly winding up of the Firm and swift revocation of its authorisation.*

(d) *continue to review and manage the current liquidity and capital positions of the Firm, taking into account the fact that the Aria transaction did not complete on 20 January.*

(e) *improve communication to the Central Bank, which the Firm acknowledges could be better, through the scheduling of a weekly call that includes the broader team and additional resources at the Firm*";

54.4 Mr O'Shea stated that "*in general the serious restrictions imposed on the Firm have been entirely unhelpful in allowing the Firm to establish the optimal governance arrangements for optimal client outcomes*", but that, notwithstanding this:

(a) the Investment Firm had engaged with a former INED with a view to that individual returning to the Investment Firm – the individual concerned needed time to consider the matter but expected to be in a position to revert by close of business on Friday;

(b) the Investment Firm had received a verbal commitment from Yvonne O'Connor of O'Connor Sheedy that she and her firm will assume an advisory role to cover HCAO and compliance requirements; and

(c) the Investment Firm requested a commitment period of six months from the proposed appointees to allow the Aria Transaction to complete and to deliver the best outcome from its clients;

54.5 Mr O'Shea confirmed that the IFREP return was provided to the Bank in excel format but the Investment Firm had difficulty uploading it to the Bank's online reporting system ("**ONR**") via XBRL and that it was working with O'Connor Sheedy to format the file using the new taxonomy requirement so that it could be uploaded;

54.6 Mr O'Shea suggested that there was no present requirement for the Bank to petition to wind up the Investment Firm and it did not accept any basis upon which the Court would be entitled to do so under the 2017 Regulations;

54.7 Mr O'Shea stated that "*given the consequences of a winding up order for the Firm, its clients, creditors and shareholders, a petition would, in light of the above, constitute a disproportionate response to the Central Bank's stated concerns*", and that "*a winding up order would be destructive of shareholder value, given the likely liquidation costs and the fact that a substantial portion would be likely to be levied upon client funds held by the Firm*";

54.8 Mr O'Shea further stated that a winding up order would be "*entirely inappropriate*" as the principal reason for the appointment of a provisional liquidator would be to ensure that assets of a company are preserved and in this case it was not possible for a director or employee of the Investment Firm to take any steps to prejudice client assets; and

54.9 finally, Mr O'Shea also contended that "*irredeemable damage would be caused by the appointment of a provisional liquidator*" and that the "*Firm and its strategy remain the best path to deliver the best outcome for clients and the Firm encourages the Central Bank to continue working with the Firm to achieve that outcome*" and that any application for the appointment of a provisional liquidator should be on notice to the Investment Firm.

55. On 27 January 2023, various representatives from the Bank convened a telephone call with Mr O'Shea and the Investment Firm's legal advisers. Arising from the said call, it was agreed that Mr O'Shea would attend to the following action points:

55.1 revert with a copy of the correspondence from Aria confirming the status of its branch application through MFSA; and

55.2 confirm if the proposed INED, Mr Pat McArdle, and the proposed PCF, Ms Yvonne O'Connor, are available to meet with the Bank on 30 January 2023.

56. On 30 January 2023 at approximately 9:32am, Mr O'Shea emailed the Bank informing it that Mr McArdle was further considering the INED position and that a call with Ms O'Connor would not likely take place that day and attaching a copy of the correspondence from Aria confirming the status of its branch application through MFSA. Later that afternoon, the Bank responded to Mr O'Shea informing him that "*Mr McArdle is an investor in more than one Blackbee products and therefore it is likely that he would not be considered to be independent*". The Bank also sought clarity on whether Mr O'Shea had spoken to Ms O'Connor noting that it was critical that they speak with her as soon as possible.

57. The next day, on 31 January 2023, Mr O'Shea responded confirming that he would communicate the Bank's concerns to Mr McArdle with respect to his independence in taking an appointment as an INED in the Investment Firm, and that Ms O'Connor had asked if she could speak with him that day. On 1 February 2023, Mr O'Shea confirmed that he would be having a call with Ms O'Connor the next morning and hoped he could revert to the Bank after the call. Mr O'Shea also stated that he believed that Mr McArdle was considered an INED in the past but he would consider an alternative.

58. On 2 February 2023, the Bank wrote to Mr O'Shea in response to his letter dated 26 January 2023. The response can be summarised as follows:

58.1 the Bank reiterated its grave concerns with respect to the timing of the completion of and the viability of the proposed Aria Transaction, and explained that it remained of the view that the proposed Aria Transaction would not be completed in the short term and there was a significant risk that it would not be possible for this transaction to complete at all;

58.2 the Bank noted that, notwithstanding the various commitments and proposals made to it by the Investment Firm, as at the date of that letter the Investment Firm remained in breach of its obligations pursuant to the 2017 Regulations and the Fitness and Probity Regime operated by the Bank:

(a) contrary to the requirements of Regulation 17(8) of the 2017 Regulations, only one person is in a position to effectively direct the business of the Investment Firm;

(b) contrary to the requirements of Paragraph 6, Schedule 3 of the 2017 Regulations, the Investment Firm failed to appoint a single officer appointed with specific responsibility for matters relating to the compliance by the Investment Firm with its obligations regard the safeguarding of client financial instruments and funds; and

(c) contrary to the requirements of the Fitness and Probity Regime, the Investment Firm had failed to appoint suitably qualified persons to the following roles which is the minimum expectation for all client asset holding investment firms:

(i) a HOC and a MLRO– these are critical roles because they ensure that investment firms have a permanent and effective compliance function which operates independently of management and ensures that the Investment Firm satisfies its regulatory obligations on an ongoing basis;

(ii) a HCAO – the holder of this role has primary responsibility to oversee the safeguarding of client assets;

(iii) a HOF – the holder of this role has primary responsibility to oversee the finance function, submission of prudential financial returns and financial strategy and planning;

(iv) a suitably experienced INED – to provide oversight and challenge on the Investment Firm's Board and to undertake the role of Chair of the Board;

58.3 with respect to Mr O'Shea's assertion in his letter of 26 January 2023 that the Bank was responsible for the failure of the Investment Firm to comply with its own regulatory obligations, the Bank confirmed that it is solely the responsibility of the Investment Firm to ensure that it complies with its regulatory obligations, and that the Investment Firm's failure to comply with its regulatory obligations was compounded by its failure to communicate or engage appropriately with the Bank with respect to these matters;

58.4 the Bank also referenced the Investment Firm's track record of repeatedly making commitments to it and then failing to action them resulting in the Bank no longer having any confidence that it can rely on any representations, undertakings or commitments made to it by the Investment Firm;

58.5 the Bank noted that while the Investment Firm had stated repeatedly that it was suitably capitalised and had sufficient liquidity in place, it had failed to provide credible capital and liquidity management plans in support of this assertion;

58.6 the Bank noted that "*as ongoing monthly operating losses continue to erode the Firm's financial position, the Firm's approach has been to maintain regulatory capital and liquidity requirements by ad hoc, drip feed cash injections*";

58.7 the Bank explained that:

(a) it believes that the appointment of a provisional liquidator would have a crucial role in mitigating any risk to an uncontrolled and disorderly collapse of the Investment Firm on the presentation of a petition to wind up the Investment Firm and in reassuring clients and the market generally that the affairs of the Investment Firm would be wound up in an orderly manner;

(b) Mr O'Shea's assertion in his letter of 26 January 2023 that the Bank has full control over client assets is incorrect as the Bank only has oversight of payments in respect of client funds;

(c) an independent experienced Court appointed practitioner would be in a position to immediately take steps to manage the cessation of the Investment Firm's remaining business and activities in an orderly, planned and controlled manner;

(d) a provisional liquidator would have the ability to safeguard, secure and preserve the Investment Firm's own assets and its books and records pending the hearing of the petition and would be able to make the appropriate applications to the Court where necessary to achieve this objective; and

(e) a provisional liquidator would be able to take steps to obtain control of client asset accounts and full access to client asset books and records and immediately begin work on investigating the status of those assets with a view to ensuring an efficient and orderly winding up;

58.8 the Bank further explained that the Investment Firm's proposals with regard to governance issues within the Investment Firm were significantly below the minimum governance standard required and the Bank provided a list of the measures that it required to be put in place by no later than 5pm on 8 February 2023:

(a) a suitably experienced and independent individual must be appointed to the role of INED and Chair of the Board;

(b) a suitably experienced individual must be appointed to the roles of HCAO and HOF;

(c) a suitably experienced individual must be appointed to the roles of HOC and MLRO;

58.9 the Bank indicated that it required at least two separate individuals be appointed to undertake the roles referenced above at paragraphs 58.8(b) and 58.8(c) above and that appropriate segregation of duties in regard to the first and second lines of defence be implemented as is required by the minimum standard of a corporate governance framework; and

58.10 finally, the Bank confirmed that, if the Investment Firm failed to comply with the above requirements by 5pm on Wednesday 8 February 2023, the Bank would consider immediately presenting a petition to wind up to the Investment Firm and bringing an application for the appointment of a provisional liquidator.

59. At 1:24pm on 8 February 2023, Mr O'Shea emailed the Bank confirming that the Investment Firm had received correspondence from Aria's lawyers confirming that Aria would not be proceeding with the Aria Transaction. Mr O'Shea also confirmed that the Investment Firm had been in discussions with De Vere for about a year with respect to the purchase of the Investment Firm and they had agreed in principle to progress the purchase of the shares of the Investment Firm. Mr O'Shea further indicated that they were able to upload an application for the appointment of an INED and a Chair. The Bank responded at 3:11pm noting that the Bank required the PCF documentation to be uploaded via the ONR by 5pm that day. At approximately 5:01pm on 8 February 2023, Mr O'Shea informed the Bank that the Investment Firm would not make the 5pm deadline.

60. At 8:38am on 9 February 2023, Mr O'Shea informed the Bank that he was unable the previous evening to upload the application with respect to the appointment of the proposed INED / Chair but he would try to do so again that morning. Mr O'Shea attached the curriculum vitae for Mr Neville Carabott, who he stated "*is a deVere nomination in advance of completing the deal and to provide oversight on their capital injection*". Mr O'Shea indicated that "*regarding the other required PCFs, I have requests with an accountancy firm for a partner to fill HOF and HCAO immediately. On HOC we are in discussions with some candidates but the uncertainty post Aria etc is delaying everything*". Mr O'Shea stated that "*regarding this new deal – reverting to the original wind down plan a sale was always considered optimal for all stakeholders*". He welcomed a call with the Bank to discuss the proposed sale of the business to De Vere. Mr O'Shea again stated that "*we remain suitably capitalised and the firm is operating as normal – we just need a short period to get those times filled*".

61. On 15 February 2023, the Investment Firm provided the Bank with a letter that it had received from Clerkin Lynch LLP, solicitors for Aria, on 7 February 2023 which explained the basis and reasoning for Aria's decision to rescind the Aria SPA, which can be summarised as follows:

61.1 Aria stated that, notwithstanding that it had complied with its obligations with respect to the satisfaction of certain regulatory conditions specified in the Aria SPA, it now believed that those conditions were incapable of being satisfied; and

61.2 Aria asserted that it had a right to rescind the Aria SPA because, amongst other things:

(a) the departure of a key employee of the Investment Firm which meant that such employee could not transfer to Aria on completion as required by the Aria SPA, and that Aria had been unable to identify a suitable replacement candidate;

(b) BGHL had allegedly breached various warranties contained in the Aria SPA;

(c) BGHL had allegedly failed to carry on its business in the ordinary and usual course; and

(d) BGHL had allegedly failed to (i) consult with Aria with respect to communications with investors and (ii) respond to investor requests for information relating to their investments with the Investment Firm

62. On the same date, the Bank issued an email to the Investment Firm noting that:

62.1 the Investment Firm had failed to submit applications for suitable candidates to certain of the vacant PCF roles by 8 February 2023, as required by the Bank in its letter dated 2 February 2023;

62.2 the only submission that had been made relates to the role of INED and Chairperson of the Board, for which the Investment Firm proposed Mr Neville Carabott, who is an in-house legal counsel with De Vere; and

62.3 the Investment Firm will need to explain how it has determined that Mr Carabott is considered sufficiently independent to fulfil the role of INED and Chairperson of the Board, given that he is an officer of the proposed purchaser of the Investment Firm.

63. On 20 February 2023, the Investment Firm issued an email to Bank as follows:

63.1 that the commercial terms of the sale of the Investment Firm to De Vere had been agreed, and that the parties expected to sign a binding agreement that week;

63.2 De Vere intended to contribute capital towards BGHL in order to "*cover costs associated with the preparation of the acquiring transaction notice, business plans etc*" in addition to "*the recruitment of additional resources and other ongoing business needs*";

63.3 the Investment Firm had been conducting interviews with candidates for the various open PCF roles last week, which were now sought on a "*longer-term basis and not just over a shorter term horizon to facilitate a wind-down*" and that the proposed sale to De Vere would "*help to attract candidates of sufficient calibre to the roles on a longer-term basis*"; and

63.4 the Investment Firm considered Mr Carabott to be independent because "*there is presently no relationship between the Firms*" but that acknowledging that once De Vere's acquisition of the Investment Firm has completed "*the two entities/ Groups will no longer be considered independent of one another and hence Mr Carabott may no longer be considered independent in future*".

64. Subsequently, on 21 February 2023, the Investment Firm provided the Bank with a copy of a signed heads of terms between the Investment Firm and De Vere (the "**HOTs**"), the terms of which can be summarised as follows:

64.1 the HOTs were entered into between the Investment Firm and Mr Nigel Green in his personal capacity as "*founder and CEO of the deVere Group*", which is described as

"*a large, independent financial consultancy group with a global presence, headquartered in the UAE*";

64.2 the HOTs were described as summarising "*the principal terms and key milestones for the proposed sale of 100% of the issued share capital of BlackBee Investments Limited to Nigel Green of the deVere Group*";

64.3 the HOTs envisaged that Mr Green would personally make a payment of €350,000 to BBGH on the entry into of a binding legal agreement for the sale of the Investment Firm, which will be used to "*ensure that BBI maintains its regulatory capital and liquidity requirements at all times until the proposed transaction completes*" and that based on "*anticipated completion date of end August, approximately 50% of the monies will cover BBI's ongoing business running costs and 50% will be allocated to the costs of the new PCF appointments and any other new costs arising in order to meet BBI's ongoing regulatory obligations*";

64.4 the HOTs set out a steps plan for the implementation of the sale to De Vere, which included the following:

(a) the parties were to reach agreement on the approach to "*interim regulatory arrangements required by the CBI*" in relation to corporate governance arrangements and the Investment Firm's capital and liquidity plan for 2023, before communicating such agreement to the Bank – the work on this is described as "*ongoing and for completion at earliest opportunity*";

(b) the Investment Firm was to "*engage with its supervisory team at Central Bank regarding their expectations for preparation and submission of acquiring transaction notification form and business plan (Programme of Operations) and any other supplementary information*" – such engagement was required by the HOTs to occur by the end of February 2023;

(c) the Investment Firm was to provide "*support to Mr Green in completing the Acquiring Transaction Notification Firm for submission to the Central Bank*", with a view to such form being completed and submitted within 4 weeks of the date of the HOTs (being end March 2023); and

(d) the Investment Firm was obliged to "*support Mr Green and deVere in completing a Programme of Operations for submission to Central Bank*" with a view to such documents being completed and submitted within 7 weeks of the date of the HOTs; and

64.5 finally, the HOTs provided that the parties would use "*reasonable endeavours to secure all regulatory approvals for the acquiring transaction and business plans by end August 2023*", with the completion of the sale of the Investment Firm occurring "*quickly following the receipt of regulatory approvals for the acquiring transaction*".

65. The Regulatory Business Services Division of the Bank subsequently informed the Investment Firm on 1 March 2023 that it had rejected Mr Carabott's application to the role of INED and Chairperson of the Board on the basis that the Bank had been provided with insufficient information with respect to the independence of Mr Carabott.

66. On 2 March 2023, the Bank received a copy of the De Vere SPA.

67. Following the entry into of the De Vere SPA, on 8 March 2023 the Bank wrote to the Investment Firm notifying it that the Bank was minded to impose certain regulatory directions upon the Investment Firm pursuant to Regulation 111 of the 2017 Regulations to address the continuing

failure to comply with the Bank's requirements with respect to corporate governance and capital and liquidity planning. That letter provided that if the Investment Firm wished to make submissions to the Bank with respect to the proposed directions, they were invited to do so by not later than 15 March 2023. No such submissions were received from the Investment Firm and, accordingly, on 16 March 2023 the Bank issued the March 2023 Regulatory Directions. Although the sub-heading of Regulation 111 of the 2017 Regulations refers to the power of Bank to issue directions to non-regulated financial service providers, Regulation 111(1) makes it clear the Bank can issue a direction in accordance with Regulation 111 to any person. The regulatory directions issued by the Bank were the following:

67.1 that the Investment Firm must take the following measures that must persist for the duration of the Investment Firm's proposed sale or wind-down and revocation strategy:

(a) the Investment Firm must appoint a suitably experienced and independent individual to the role of INED and Chair of the Board. The Investment Firm must submit an Individual Questionnaire ("**IQ**") to the Bank's ONR seeking Bank approval for the appointment of the individual as a PCF-02B and PCF-03 respectively. Such appointment is to be effective by not later than 5pm on Wednesday, 5 April 2023 on a temporary officer basis until the Bank's assessment of the IQ applications is concluded;

(b) the Investment Firm must appoint a suitably experienced individual to the roles of HCAO and HOF, for a minimum time commitment of three days per week. The Investment Firm must submit an IQ to the Bank's ONR seeking Central Bank approval for the appointment of the individual as a PCF-45 and PCF-11 respectively. Such appointment is to be effective by not later than 5pm on Wednesday, 5 April 2023, on a temporary officer basis until the Bank's assessment of the IQ applications is concluded;

(c) the Investment Firm must appoint a suitably experienced individual to the roles of HOC and MLRO for a minimum time commitment of three days per week. The Investment Firm must submit an IQ to the Bank's ONR seeking Bank approval for the appointment of the individual as a PCF-12 and PCF-52 respectively. Such appointment is to be effective by not later than 5pm on Wednesday, 5 April 2023 on a temporary officer basis until the Bank's assessment of the IQ applications is concluded.

67.2 the Bank required that at least two separate individuals are appointed to undertake the roles referred to at paragraphs 67.1(b) and 67.1(c)above, and that appropriate segregation of duties in regard to the first and second lines of defence are implemented as is required by the minimum standard of a corporate governance framework; and

67.3 the Bank also directed the Investment Firm to prepare and submit to the Bank, by not later than 5pm on Wednesday 5 April 2023, a capital and liquidity plan spanning 12-months from March 2023 to end of March 2024 to include:

(a) Monthly Profit and Loss;

(b) Monthly Balance Sheet;

(c) Monthly Cashflow statement;

(d) Monthly Capital Ratio Forecasts;

(e) Monthly Liquidity Forecasts; and

(f) Detailed notes/assumptions,

such projections to be prepared on at least the following basis: (i) the base case scenario that the Investment Firm winds down to investment maturity in 2029, and (ii) the Investment Firm's current proposal to sell the business.

68. Subsequently, on 20 March 2023 the Investment Firm emailed the Bank to inform it that the Investment Firm had recruited Mr David Nolan as the new CEO and Executive Director (to replace Mr O'Shea), that the relevant PCF application would be submitted later that day, and that Mr Nolan was due to commence work with the Investment Firm on 10 April 2023. Later that day the Bank received the said application from Mr Nolan.

69. On 28 March 2023, the Bank received an email from the Investment Firm providing the following updates with respect to the other vacant PCF roles:

69.1 Mr John Madigan had been appointed as the new INED and Chairperson of the Board;

69.2 Mr Laurence Morrissey had been appointed as HOC and MLRO and would commence on 25 August 2023, with Mr Neville Carabott of De Vere's carrying out those roles in the interim period; and

69.3 that agreement in principle had been reached with candidates for the roles of HOF and HCAO on both an interim and long-term basis, with further details to follow.

70. On the same day the Bank issued an email to the Investment Firm in relation to the application submitted to the Central Bank with respect to the proposed appointment of Mr Neville Carabott as a director of the Investment Firm, and requesting clarity as to whether the Investment Firm envisages that he will join the Board in advance of the submission of the acquiring transaction notification form relating to the proposed sale to De Vere.

71. On 3 April 2023, the Bank received a response to its email of 28 March 2023 in which the Investment Firm confirmed that it was its intention that Mr Neville Carabott will join the Board following his approval by the Bank, irrespective of whether this occurs before or after the submission of the acquiring transaction notification form.

72. On 5 April 2023, the Bank received submissions with respect to the following appointments on an interim basis, pending the approval of the Bank, as required by the March 2023 Regulatory Directions:

72.1 Mr John Madigan as the new INED and Chairperson of the Board;

72.2 Mr David Nolan as HOC and MLRO; and

72.3 Mr Carl Dillon as HOF and HCAO.

73. At 7.20am on 6 April 2023, the Bank received a capital and liquidity plan from the Investment Firm, as also required by the March 2023 Regulatory Directions.

74. Subsequently, on 14 April 2023, the Bank received notice that Mr Nolan's appointment as CEO and Executive Director was being withdrawn as the Investment Firm had decided that Mr O'Shea would remain in those positions, with Mr Nolan taking up the positions of HOC and MLRO.

75. On 25 April 2023, the Bank received an email from Nigel Green of De Vere confirming that he was withdrawing from the acquisition of the Investment Firm because "*the information we have acquired during the 'purchasing stage' has shown that BlackBee is not, in our opinion, as it was described*". On the same date the Bank received an email from the Investment Firm

confirming that De Vere "*were no longer pursuing the acquisition of Blackbee Investments, following consideration of their own strategic objectives*" and requesting a meeting with the Bank later that week.

76. Subsequent to the receipt of the above-mentioned email from De Vere, the Bank received confirmation that the applications made by Mr John Madigan as the new INED and Chairperson of the Board, and Mr David Nolan as HOC and MLRO, had each been withdrawn, effective immediately.

77. On 27 April 2023, the Bank received an email from Brokers Ireland, a representative body for investment brokers in Ireland, indicating that it had "*received an unusual number of queries from our members about the lack of performance updates on a number of Blackbee Real Asset Investments*", that the "*maturity dates on some products in the Real Asset Investment Product Performance Update document, that is available on the Blackbee website (https://blackbee.ie/important-information/), have long passed*" and that recent "*enquiries from our broker members to Blackbee Investments about those products have, we understand, gone unanswered*".

78. Later that day on 27 April 2023, the Bank arranged a meeting with the Investment Firm attended by Mr O'Shea and certain employees of the Bank. At that meeting:

78.1 Mr. O'Shea explained that the Investment Firm had previously considered three strategic options, being (a) a sale of the Investment Firm, (b) a sale of the Investment Firm's book of business and (c) wind down to maturity, and he noted that there are now limited options in the Irish market for a sale or transfer with respect to the Investment Firm;

78.2 Mr O'Shea did not propose any strategic solutions to the situation faced by the Investment Firm at this stage, however, he noted that he considered he should not be the individual to propose options and that it was his preference to appoint a Chair and have a Board discussion to develop a strategy;

78.3 Mr. O'Shea confirmed that Mr David Nolan (proposed HOC and MLRO) and Mr John Madigan (proposed Chair/INED), both having been introduced by De Vere, had withdrawn from consideration for those PCF roles;

78.4 Mr O'Shea confirmed that Mr Carl Dillon (HOF/ HOCA) was currently a consultant with Moore Stephens Accountancy practice (the Investment Firm's former auditors) and was initially proposed as an interim solution pending the appointment of a third party on a permanent basis - however that third party, who was also introduced by De Vere, had terminated discussions on taking up that role – Mr O'Shea also indicated that he intended to propose that Mr Dillon join the Board as a director of the Investment Firm on a permanent basis, but had not received any verbal or formal commitment from Mr Dillon in that regard;

78.5 Mr. O'Shea confirmed that he did not yet have an individual to propose as Chair/INED or for the role of HOC / MLRO;

78.6 with respect to the financial position of the Investment Firm, Mr O'Shea confirmed that:

(a) that the Investment Firm is currently sufficiently capitalised but will need further funding within the coming months, as per the capital and liquidity plan submitted to the Bank pursuant to the March 2023 Regulatory Directions;

(b) the loan agreement between BGHL, which had been due to be repaid in March 2023, had been extended for six months, but he otherwise acknowledged that there were no other viable sources of capital available to the Investment Firm in terms of external investors and that he, as the shareholder of BGHL, is responsible for further capital injections, however this will not be sustainable in the long term given that the Investment Firm is loss making;

(c) the terms of the De Vere SPA were "*left loose*" with regard to the obligation, or otherwise, to repay the €350,000 advance consideration paid by De Vere on the signing of that agreement – he also noted that the majority of those funds had already been spent on legal fees, hiring costs and other expenses – Mr O'Shea noted that Mr Green of De Vere had suggested that he would like to discuss the transfer of the IT system owned by BGHL, and used by the Investment Firm, in lieu of repayment of the advance consideration, but that BGHL does not intend to sell these assets to Mr Green; and

(d) the Investment Firm will "*become tight on funds*", but that it would have to "*make it work*" in terms of employing new individuals to the vacant PCF roles, but that it was "*unclear where the funds will come from to pay new hires in the future*"; and

78.7 finally, Mr O'Shea confirmed that the Investment Firm had not informed its clients that De Vere was a potential acquirer of the Investment Firm and / or that they had withdrawn from the proposed acquisition of the Investment Firm.

79. Subsequently, on 28 April 2023 the Bank issued a letter to the Investment Firm, the key terms of which can be summarised as follows:

79.1 the Bank noted that, as a result of the withdrawal of Mr Madigan and Mr Nolan from the roles of INED and Chair of the Board, and HOC and MLRO, respectively, the Investment Firm is now in a position whereby:

(a) contrary to the requirements of Regulation 17(8) of the 2017 Regulations and the Regulatory Directions issued in March 2023, only one person is in a position to effectively direct the business of the Investment Firm – namely Mr David O'Shea, who is also the sole indirect shareholder and CEO of the Investment Firm; and

(b) contrary to the requirements of the Fitness and Probity Regime operated by the Bank, to which the Investment Firm is subject, and the Regulatory Directions issued in March 2023, the Investment Firm has failed to appoint and retain a suitably qualified persons to the roles of HOC,MLRO, Chair and INED which is a fundamental requirement for all client asset holding investment firms such as the Investment Firm;

79.2 the Bank is of the view that the Investment Firm has failed to comply with the March 2023 Regulatory Directions, which constitutes adequate grounds for the Bank to present a petition for the winding up of the Investment Firm pursuant to Regulation 148(2)(d) of the 2017 Regulations;

79.3 with respect to the capital and liquidity plan submitted by the Investment Firm to the Bank on 6 April 2023, the Bank is very concerned that the Investment Firm forecasts that, unless the Investment Firm obtains urgent funding, it will be in breach of its regulatory capital and liquidity obligations by the end of August 2023 and September 2023 respectively;

79.4 having regard to all of the information made available to the Bank during the course of more than two years of intensive supervisory engagement, and in particular the current financial and regulatory position of the Investment Firm, the Bank is of the view that:

(a) the Investment Firm has failed to comply with the March 2023 Regulatory Directions insofar as it has failed to appoint and retain suitably qualified persons to the roles of HOC, MLRO, Chair and INED;

(b) the Investment Firm is in breach of the requirements of Regulation 17(8) of the 2017 Regulations because only one person is in a position to effectively direct the business of the Investment Firm – namely Mr David O'Shea, who is also the sole indirect shareholder and CEO of the Investment Firm;

(c) contrary to the requirements of the Fitness and Probity Regime operated by the Bank, and to which the Investment Firm is subject, the Investment Firm has failed to appoint suitably qualified persons to the roles of HOC and MLRO and INED, which is the minimum expectation for all client asset holding investment firms such as the Investment Firm;

(d) the Investment Firm has been given repeated opportunities and adequate time to address the above-mentioned regulatory breaches, and there is no reasonable prospect of the Investment Firm will be able to rectify the above-mentioned regulatory breaches within a reasonable timeframe;

(e) it is not in the interests of the proper and orderly regulation and supervision of investment firms or regulated markets and the clients of the Investment Firm that it should be given any further time to rectify these regulatory breaches;

(f) the forecasts contained within the capital and liquidity plan submitted by the Investment Firm to the Bank indicates that, unless additional capital is urgently made available to the Investment Firm, it will, in the coming months, fail to comply with the minimum capital and liquidity requirements imposed by law;

(g) the Investment Firm is not currently in a position to satisfy the Bank that it will be able to source the additional capital that will be required to enable the Investment Firm to avoid a breach of the minimum capital and liquidity requirements imposed by law within the timeframe forecast by the Investment Firm's capital and liquidity plan,

79.5 For all of these reasons the Bank considers it is in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets and is necessary for the protection of investors that the Investment Firm be wound up.

80. In its letter dated 28 April 2023, the Bank gave the Investment Firm until 12 noon on Thursday 4 May 2023 to furnish any further submission sand confirmed it would give due consideration to those submissions before making a final decision as to whether or not to present a petition to wind up the Investment Firm.

81. On 4 May 2023, at 5.45pm, the Bank received a letter from the Investment Firm by way of response to its letter dated 28 April 2023. That letter contains various assertions by the Investment Firm as follows:

81.1 that it wishes to seek "*a solution to the issues you raised, clearly focused on the best interests of investors*" and that the Investment Firm "*is of the absolute opinion that investor interests are best served by a substitute custodian (i.e. transfer of assets as the*

Firm set out in its original plan) and not a provisional liquidator" and that "we must work together to deliver that outcome";

81.2 that "*a sale cannot be achieved if the CBI continues to impose restrictions on the Firm's authorisations*";

81.3 that "*the appointment of a provisional liquidator does not protect investors, instead it will definitively destroy their value without any guarantee that this provisional liquidator can operate to the standards required and/or source a replacement custodian*";

81.4 that "*the Firm continues to operate within the regulatory requirements and only requires the typical time granted to source replacement PCFs*" and that it is "*already advanced on that process and will continue to progress appointments on that front*";

81.5 that "*there is no present requirement for the CBI to petition to wind up the Firm*", that "*a petition would, in light of the above, constitute a disproportionate response to the CBI stated concerns*" and would be "*be destructive of shareholder value, given the likely liquidation costs and the fact that a substantial portion would be likely to be levied upon client funds held by the Firm" and that "a winding up order would also be extremely detrimental to clients' interests*";

81.6 that "*the appointment of a provisional liquidator would be entirely inappropriate*" because the "*principal reason for the appointment of a provisional liquidator would be, in order to ensure that the assets of the company were preserved in circumstances where the directors of the company were unable or unwilling to protect them*";

81.7 that "*it is accepted that any genuine risk that the directors of the Firm would allow client assets to be compromised in any way would probably constitute a good basis upon which to appoint a provisional liquidator*" however, "*the Firm has taken all reasonable steps to protect the business of the Firm and client assets and would not contemplate exposing client assets to risk" and that "the CBI has full control over client assets and it is not possible for a director or employee of the Firm to take any steps to prejudice them even if they wanted to*"; and

81.8 that "*the Firm does not disagree with the CBI contention that a longer-term solution is required*" and "*wishes to engage to that end as it clearly helps protect investors*".

82. The letter also states that if the Bank is "*insistent on petitioning and applying for the appointment of a provisional liquidator, the Firm understands that such application should be on notice to the Firm*".

83. At 5.30p.m. on Saturday 6 May 2023, the Bank arranged and attended a meeting with the Investment Firm. The Investment Firm was represented solely by Mr O'Shea at the meeting.

84. At the commencement of that meeting, the Bank explained that:

84.1 it had carefully considered the contents of the Investment Firm's letter to the Bank dated 4 May 2023 and that the contents thereof did not address the Bank's concerns as set out in its letter of 28 April 2023 and previous correspondence issued by the Bank to the Investment Firm; and

84.2 accordingly, the Bank had decided to present a petition for the winding up of the Investment Firm, and to make an application on an *ex parte* basis for the appointment of a provisional liquidator to the Investment Firm, as soon as possible.

85. Following those introductory remarks from the Bank, Mr O'Shea made the following statements:

85.1 he noted that the Investment Firm had outlined to the Bank its wind-down strategy which comprised of three options: (a) a sale of the Investment Firm, (b) a transfer of the Investment Firm's assets, or (c) a wind-down of the Investment Firm;

85.2 he does not believe that the best option for the Investment Firm is the appointment of a provisional liquidator or a liquidator by the Bank as proposed;

85.3 he noted that the Investment Firm will oppose the application in Court as it is not in the interests of clients;

85.4 he will take advice on the Bank's decision to assist in determining his response;

85.5 he stated that the proposed action by the Bank could cause contagion in the market;

85.6 he further stated that the sale of the Investment Firm is now unlikely to happen but that a transfer of the Investment Firm's assets could be possible;

85.7 he noted that while client assets are held legally by BBI Nominees, the beneficial owners are the investors and that there is currently no threat to investors;

85.8 he noted that the Investment Firm has been unable to find a custodian that would take over the assets of the Investment Firm or invest in the Investment Firm;

85.9 he believes that the cost of a liquidation will be borne by the Investment Firm's clients;

85.10 he had outlined to the Bank on the most recent call with the Bank that while there are currently gaps in the governance of the Investment Firm that it is working to resolve same, and in particular, he noted that he could have a new Chair and consultant (to cover the PCF roles of HOC and MLRO) in place at the Bank by the end of next week;

85.11 he stated that his main concern is now the stabilisation of the Investment Firm and that he is concerned as to what might happen if a provisional liquidator and / or a liquidator is appointed to the Investment Firm – he also stated that he does not believe that such an action would be in the best interest of the Investment Firm's clients;

85.12 he noted that the Investment Firm is meeting its regulatory obligations, in particular as regards reporting, and that he is seeking a co-operative solution for the Investment Firm preferably by way of forcing another firm to take on the Investment Firm's assets; and

85.13 finally, he noted that he believes that the appointment of a provisional liquidator / liquidator to the Investment Firm is over the top.

86. The Bank responded to these comments to note that:

86.1 there has been a protracted and unprecedented level of engagement with the Investment Firm;

86.2 the Investment Firm is not in fact in compliance with its regulatory obligations at the moment as has been set out in correspondence from the Bank to the Investment Firm;

86.3 the Bank has made it clear in correspondence what the Bank's concerns are and the Investment Firm has not been able to meet the Bank's expectations; and

86.4 the Investment Firm intended to oppose the application for the appointment of a provisional liquidator / liquidator and asked if the Investment Firm has solicitors upon whom papers may be served.

87. Mr O'Shea noted in response that:

87.1 he would take advices and revert in relation to his legal advisors;

87.2 he continues to engage on the appointment of a new Chair and a new consultant to cover the role of HOC to the Investment Firm;

87.3 the Investment Firm would be back in compliance with its governance requirements and the Bank's governance directions within a week or two;

87.4 all the Investment Firm's reporting is in line with legal requirements;

87.5 he wished to bring all of this before a Court for consideration, and he queried what will happen to investors in a liquidation – he also expressed concerns as to how it would be possible for a liquidator to manage the Investment Firm's client assets;

87.6 the Investment Firm will oppose the action on the basis that it is not in the interests of investors and that it will lead to contagion in the market; and

87.7 finally, that the proposed action by the Bank is a continuation of disproportionate actions against the Investment Firm by the Bank and that he will challenge any application to appoint a provisional liquidator / liquidator to the Investment Firm by any means possible.

88. In its closing remarks, the Bank noted that it had carefully considered the impact of the appointment of a liquidator to the Investment Firm on its investors and had concluded that this action was in the best interest of those investors. The Bank then noted Mr O'Shea's comments, thanked him for his engagement and closed the meeting.

CURRENT POSITION

89. Following the Regulatory Directions issued by the Bank in early December 2022, the Bank has, for more than five months, been effectively operating in a partial oversight role in respect of the client funds deposited in the accounts held in the name of BBI Nominees with Citibank and Allied Irish Banks p.l.c. (the "**Relevant Accounts**"). This highly unusual step was taken by the Bank in response to the serious concerns of the Bank arising as a result of the deteriorating corporate governance and other critical control functions at the Investment Firm, and in order to safeguard client assets. However, this step was taken as an emergency and temporary measure, and it would not normally be sustainable for the Bank to have to perform such a partial oversight role in respect of client funds for more than a very short period of a few days.

90. The Investment Firm is in a financially distressed position and its solvency is entirely dependent on recovering the full amount of the BGHL Receivable. Following the resignations of to certain functions within the business, called PCFs, and the withdrawal of the persons nominated by De Vere to the roles of INED / Chair and HOC / MLRO, the Investment Firm is being managed and controlled solely by Mr O'Shea, who is also the sole director and ultimate sole beneficial shareholder of the Investment Firm. There is a clear absence of any independent oversight of key business processes and risk within the Investment Firm, which is serious concern to the Bank in circumstances where the Investment Firm has, on 5 April 2023, delivered an updated capital and liquidity management plan to the Bank which indicates that the Investment Firm will cease to hold the required level of regulatory capital by August 2023. Moreover, the Investment Firm has been unable to provide any credible evidence that it will be able to source

the required additional capital within that short period. Furthermore, during the meeting convened with the Investment Firm on 6 May 2023, Mr O'Shea offered the view that if the Investment Firm is wound up now, the cost of the liquidation will be borne by the clients of the Investment Firm (in other words, that the cost of liquidation will exceed the value of its assets, excluding client assets, resulting in the costs of the liquidation being partially paid from client assets). Given that, according to the most recent capital and liquidity plan submitted by the Investment Firm confirms that it is complying with the applicable minimum capital requirements, it is concerning that Mr O'Shea would make this statement, which suggests that he believes that the Investment Firm is insolvent and / or that part of its capital that represents non-cash assets (such as the BGHL Receivable) may not be fully recoverable in a liquidation. This is particularly concerning bearing in mind that Mr O'Shea is a director and the sole indirect shareholder of BGHL and, given that BGHL has not produced or filed audited accounts for a number of years, he may have information relating to solvency or otherwise of BGHL that has not been disclosed to the Bank or to the public, as required by law.

91. The Investment Firm has now attempted to complete two transactions to avoid the consequences of its failure to comply with its corporate governance obligations. First, it attempted to sell its business to Aria, but that transaction collapsed due to the alleged failure of the Investment Firm to comply with the terms of the Aria SPA. Second, BHGL attempted to sell the shares of the Investment Firm to De Vere, but again that transaction failed, apparently following an initial due diligence exercise carried out by De Vere with respect to the business of the Investment Firm.

92. The sole remaining director and CEO of the Investment Firm, Mr O'Shea has acknowledged to the Bank that, following these failed transactions, there is now no reasonable prospect of any sale of the business or shares of the Investment Firm within the Irish market, and that the only remaining strategic option open to the Investment Firm is a wind-down to the maturity of client assets. On the other hand, during a meeting with the Bank convened on 27 April 2023, Mr O'Shea confirmed to the Bank that he does not wish to take any further decisions with respect to the future strategy of the Investment Firm and prefers that any such decision should be made by a properly constituted Board. However, Mr O'Shea has been unable to identify any suitably qualified individuals that are prepared to accept an appointment to the Board.

93. Following the failure of the Aria Transaction and the recent termination of the De Vere SPA, the Bank does not believe that there is any reasonable prospect of a sale of the business and / or shares of the Investment Firm occurring and, accordingly, the Bank agrees with the view expressed by Mr O'Shea that, given that the Investment Firm has ceased to engage in new client business, the only strategic option that is in theory available to the Investment Firm is a wind-down to the maturity of the client assets held in the name of BBI Nominees. However, the Bank does not believe that there is any reasonable prospect of the Investment Firm implementing this remaining strategic option. That is because, in order to implement that strategy, which would take a number of years to complete, the Investment Firm would need to hire and retain a suitably experienced team of officers holding PCF roles for the duration of that period, as required by the 2017 Regulations and the March 2023 Regulatory Directions.

94. The Bank does not have any confidence that the Investment Firm is capable of hiring, retaining and / or paying for experienced staff and / or professional firms to fill the PCF roles that have now been vacant for almost six months. Furthermore, in circumstances where, during the course of its supervisory engagement with the Investment Firm, Mr O'Shea has repeatedly made, and failed to deliver upon, commitments to the Bank with respect to the appointment of suitably experienced individuals and / or professional firms to fill vacant PCF roles, the Bank is no longer prepared to provide further time to comply or place any reliance on such undertakings or commitments from Mr O'Shea.

95. The Bank notes that, during his recent meeting with the Bank on 27 April 2022, Mr O'Shea confirmed to the Bank that he did not consider it appropriate that he would decide what the strategy of the Investment Firm should be, following the termination of the De Vere SPA, and that such matters should be decided following a discussion with the Board. However, Mr O'Shea is the only director of the Investment Firm, and has been unable to identify any other person that would be willing to become a director. It would appear, therefore, that there is no-one at the Investment Firm that is willing to take responsibility and take steps to deal with the serious situation faced by the Investment Firm. This reinforces the Bank in its view that the only viable option remaining is for the Bank to action by exercising its powers pursuant to the 2017 Regulations to immediately present the Petition to wind up the Investment Firm, and to apply for the appointment of a provisional liquidator to the Investment Firm, in order that an experienced and properly resourced liquidator can oversee and implement the winding-up of the Investment Firm in the best interests of all stakeholders, especially those of the Investment Firm's clients.

BANK'S ASSESSMENT OF CURRENT POSITION OF THE INVESTMENT FIRM

96. The Investment Firm's difficulties were identified through supervisory / regulatory interactions and are summarised below.

Failure of Corporate Governance

97. From the outset of its engagement with the Investment Firm in July 2020, the Bank had serious concerns with respect to the corporate governance arrangements at the Investment Firm. However, those concerns have become heightened in recent months to the extent that the Bank considers, at this point, that the corporate governance arrangements at the Investment Firm are now effectively non-existent.

98. Since 2020, the Investment Firm has seen resignations from key PCF holders (at a minimum):

98.1 the Chairperson;

98.2 two non-executive directors;

98.3 four Heads of Compliance;

98.4 two Chief Risk Officers;

98.5 two Chief Financial Officers; and

98.6 two Heads of Client Asset Oversight.

99. To mitigate risks associated with the high level of turnover in PCF roles, the Bank has issued several Risk Mitigation Programmes "**RMPs**" and two sets of Regulatory Directions requiring the Investment Firm to take action to remediate the resourcing deficiencies over the period since 2020 to date.

100. The immediate departure of the Chairperson on 8 November 2022, the only remaining director other than Mr O'Shea, has resulted in the board of directors of the Investment Firm becoming completely ineffective. There can be no effective challenge and oversight of management decisions and the Investment Firm is unable to comply with corporate governance requirements. The 2017 Regulations require that at least two persons meeting the requirements specified in Regulations 76 and 79 of the European Union (Capital Requirements) Regulations 2014 effectively direct the business of the investment firm, and the Investment Firm is no longer in compliance with this requirement.

101. The fact is that, as matters currently stand, there is no functioning board *in situ* and the CEO is now in full, sole and unfettered control of the business of the Investment Firm. In the absence of PCF holders with responsibility for the compliance, risk and client asset oversight functions, there is no independent oversight of key business processes and risk. This is particularly concerning given it comes at a time when the Investment Firm which holds considerable client assets on behalf of Irish domiciled retail (or non-professional) clients is projecting a breach of its prudential requirements, and there have been numerous maturity deferrals and delayed coupon payments in respect of the Alternative Investments arranged by the Investment Firm and issued by City Quarter Capital II plc, a company controlled by Mr O'Shea. Furthermore, the Bank has received correspondence from Brokers Ireland, being an industry body representing a number of third party financial advisory firms through whom the Investment Firm distributed these Alternative Investments to clients, bringing to the Bank's attention the fact that its members have been unable to obtain information from the Investment Firm in relation to the performance of products with long deferred maturity dates.

102. The Bank considers that the level of expertise in the control environment relating to the production of regulatory financial projections and financial risk management to be deficient if not absent. On 18 November 2022, the Investment Firm's CFO and HCAO informed the Bank of her resignation from both roles. Ms Ryan has since departed from the Investment Firm and, although Mr Carl Dillon has recently taken up those roles on an interim basis, following the collapse of the proposed sale to De Vere, a permanent replacement has yet to be identified or confirmed to the Bank. This is an issue of acute concern to the Bank given the increasing risk of a prudential breach, the heightened risks to client assets and the ongoing deferrals of product maturities.

103. The protection of client assets is a key priority for the Bank and as such the Bank requires firms, such as the Investment Firm, to adhere at all times to the high standards with respect to the safeguarding of client assets. Independence and segregation of duties are critical in respect of client asset operational and governance arrangements in owner managed investment firms as is the case with the Investment Firm. When a client asset holding firm that is loss making, has investment products in difficulty, and is facing regulatory challenges, there is a heightened risk that client assets will be used for purposes other than what they were intended for.

104. The Investment Firm has repeatedly made commitments to the Bank in relation to filling these roles but has failed to action them and the Bank no longer has any confidence that it can rely on representations, undertakings and commitments made to it by the Investment Firm.

Failure of Business Strategy

105. Over the last two years of supervisory and regulatory engagement, the Investment Firm has repeatedly changed its strategic direction. The frequency and materiality of the strategic changes are, in the Bank's view, indicative of organisational disarray with regard to the Investment Firm and its board of directors. Due to serious concerns regarding the Investment Firm's strategic risk management, the Bank imposed on the Investment Firm a condition on the Authorisation to cease taking on new business in September 2021.

106. By way of illustration:

106.1 in October 2020, the Investment Firm made a decision to exit the market in an orderly manner, ceased the take-on of any new business and commenced the process of either selling the business or seeking to transfer the book of business to a third party;

106.2 in August 2021, the Investment Firm reversed its strategic direction from the market exit strategy to an "invest and grow" strategy – this prompted concerns on the part of the Bank regarding the lack of clarity around the business strategy as well as concerns

that insufficient governance, control frameworks and financial resources were available to support the proposed growth strategy;

106.3 to mitigate the risk that the Investment Firm would engage in new business without the necessary governance and financial arrangements, the Bank considered it necessary to impose a condition on authorisation not to engage in any new regulated business other than authorised activities required to service the existing clients' maturities; and

106.4 then, in November 2021, the Investment Firm again reversed its strategy and advised that an "invest and grow" strategy was not commercially viable, and therefore the Investment Firm would revert to a strategy of executing an orderly wind-down of the business via a sale or a transfer of business.

107. The Investment Firm subsequently proposed that its shares in BBI Nominees would be acquired by Aria. On the basis of correspondence/engagement with the Investment Firm on 24 July 2022, it appeared that negotiations collapsed in July 2022, however, on 29 September 2022, the Investment Firm advised the Bank that it had entered into an agreement for the sale and transfer of the Investment Firm's book of business, to be executed through the purchase of BBI Nominees by Aria.

108. Notwithstanding the inability of the parties to complete the Aria Transaction in the absence of the establishment of a branch in Ireland by Aria, the Investment Firm repeatedly confirmed to the Bank that the completion date would be 20 January 2023, and that a third-party professional services firm would be retained to perform critical corporate governance functions at the Investment Firm pending completion. However, no such professional firm was retained, and the Bank was subsequently informed that the Aria Transaction would not be proceeding.

109. The Investment Firm then proposed a sale of its shares to De Vere and, following the imposition of the March 2023 Regulatory Directions on 16 March 2023, three individuals were proposed to fill the vacant PCF roles as required thereby. However, the proposed sale to De Vere has now also collapsed, and two of those three individuals have withdrawn from the Investment Firm. As a result, the Investment Firm effectively has no remaining strategy and is now in breach of its obligations under the March 2023 Regulatory Directions and is unable to provide the Bank with any confirmation as to how it proposes to comply with such obligations.

Failure of Client Asset Oversight Function within the Investment Firm

110. Where a firm is experiencing sustained losses for a prolonged period of time, as in the case of the Investment Firm, and where simultaneously there are serious concerns around viability, the capital/liquidity positions and governance, there are heightened client asset risk exposures.

111. In light of these broader supervisory concerns, the Bank's focus has been on minimising any potential future harm to client assets held by the Investment Firm. Over the past three years, the Bank has undertaken multiple supervisory actions vis-à-vis the Investment Firm with a view to strengthening the client asset protections in place. These actions included:

111.1 in October 2020, requiring the Investment Firm to submit signed monthly client asset reconciliations accompanied by an attestation of accuracy from the Chairperson;

111.2 also in October 2020, requiring the Investment Firm to provide ten days' notice to the Bank of any planned launch of new investment products (i.e. client financial instruments);

111.3 in November 2020, directing the Investment Firm to separate the joint roles of HCAO and CEO;

111.4 in March 2021, overseeing the migration of the custody of the majority of client financial instruments to a third party, Citibank;

111.5 from November 2021 to date, undertaking daily monitoring of the client asset bank accounts following issuance of a regulatory letter which required the Investment Firm to submit daily client asset reporting, including client asset bank account statements;

111.6 in September 2022, requesting that a renewed effort be made by the Investment Firm to return to clients any client funds that would not be reinvested;

111.7 in December 2022, directing the Investment Firm not to make any payments from third party client asset accounts without the prior approval of the Bank; and

111.8 in March 2023, directing the Investment Firm to retain suitably experienced persons to the key PCF roles for the duration of any sale or wind down strategy.

112. The resignations, and subsequent departures of the Chairperson of the Board, the HCAO and the HOC, and the Investment Firm's failure to comply with the March 2023 Regulatory Directions, have significantly elevated client asset risk within the Investment Firm. These events served to heighten the Bank's concerns about the Investment Firm's client asset governance and oversight arrangements and in some instances undermined the mitigating controls implemented by the Bank.

Absence of effective financial risk management

113. Since 2020, the Bank has had escalating concerns regarding the adequacy and quality of the Investment Firm's financial planning and projections. The Bank also had concerns that the Investment Firm's regulatory and strategic capital planning was not sufficiently robust to enable the Investment Firm to maintain financial resilience to future shocks. The Bank, following significant engagement with the Investment Firm on these concerns, imposed a Regulatory Direction on the Firm in November 2020 and again in September 2022 to suspend the making of distributions or dividends to shareholders for a period of 12 months. The Bank has engaged in iterative queries and discussions with the finance team at the Investment Firm seeking to understand the financial projections provided by them. The financial projections continued to be inadequate, lacking clarity, cohesion and comprehensiveness to support the Investment Firm in executing its exit strategy.

114. The Investment Firm has been unable to adhere to the commitments it had set out on numerous occasions over the past two months to source funds to ensure that the capital and liquidity position remain in compliance with regulations, and that it continues to be able to meet its liabilities as they fall due. Despite repeated commitments from the Investment Firm, and numerous extensions of time for responses the Investment Firm has not to date demonstrated that there are available funds to make a capital injection in order to maintain compliance with requirements in the short term.

115. The most recent quarterly regulatory returns provided by the Investment Firm to the Bank confirms that it owes c.€582,000 to Revenue in respect of warehoused PAYE, PRSI and VAT and c. €120,000 to other creditors. The main asset in the Investment Firm's balance sheet is the BGHL Receivable for c. €762,000. The Investment Firm has repeatedly failed to demonstrate to the Bank that this BGHL Receivable is recoverable in full. The Investment Firm has also repeatedly made commitments to the Bank that this BGHL Receivable will be repaid in stages, but those commitments have not been adhered to. From the management accounts provided for the 5-month period January 2022 to May 2022 (which were provided by the Investment Firm to the Bank on 9 October 2022), it appears that BGHL does not have sufficient liquid assets to repay the BGHL Receivable in any material capacity and the liabilities owing by BGHL to its creditors exceed the value of its assets, and that it may be unable to pay

its debts, including the BGHL Receivable. The Bank's concerns with respect to the solvency of BGHL, and by implication the recoverability of the BGHL Receivable, are exacerbated by the potential for a claim to be made of the Firm for the repayment of the advance consideration paid to BGHL pursuant to De Vere SPA.

116. In recent years, BGHL has been the only source of capital for the Investment Firm, but it appears to be unable to support the Investment Firm from a financial perspective. To date, BGHL has filed only one annual return and set of financial statements with the Companies Registration Office for the financial period commencing on incorporation and ending on 31 December 2019. BGHL has not filed any annual returns or financial statements with respect to the financial periods ending on 31 December 2020 and 31 December 2021. The Bank is therefore concerned that there is a material risk that BGHL may be involuntarily struck-off the Register of Companies for failure to make such returns as are required by law.

117. The Investment Firm's financial position has deteriorated over the past two years due to ongoing operating losses, with approximately €1.43m in losses incurred since 2020 (as per the most recent return submitted to the Bank). The Investment Firm does not have any apparent new source of revenue available, and is subject to a Condition on Authorisation not to issue any new regulated business since September 2021. The Investment Firm does not have a capital or liquidity plan in place that demonstrates a clear ability to adhere, on a sustainable and long-term basis, to its capital and liquidity requirements, and in the absence of a CFO the Bank does not have confidence that the Investment Firm will be able to provide and execute any such plan. The most recent capital and liquidity plan submitted by Investment Firm to the Bank on 5 April 2023 forecasts that the Investment Firm will cease to hold the required level of regulatory capital by August 2023, and the Investment Firm has not been able to provide any credible evidence to the Bank as to its ability to source the additional capital that will soon be required in order to avoid a regulatory capital breach at that time.

118. A memorandum dated 4 May 2023 (the "**Resolution Memorandum**") setting out in detail the review with respect to the Investment Firm conducted by the Resolution and Crisis Management Division of the Bank ("**RES**") and was provided to the Governor by RES which contained a detailed analysis of the Investment Firm's background and the outcome of the review carried out by RES. The Resolution Memorandum sets out the grounds for liquidation and how, in the opinion of RES, the grounds for liquidation were met in the circumstances of the case. On 5 May 2023, a revised Resolution Memorandum was provided to the Governor to reflect a small change in the identity of one person who referred the matter on behalf of the Consumer Protection Investment Firms and Client Assets ("**CPIC**"), namely the Head of CPIC as opposed to the Director of Consumer Protection

GROUNDS FOR WINDING UP

119. Regulation 148 of the 2017 Regulations provides the Bank with powers to present a petition for the winding-up of an investment firm under any of the four grounds specified in Regulation 148 of the 2017 Regulations, being that:

    119.1 the investment firm or market operator is unable or, in the opinion of the Bank, may be unable to meet its obligations to its clients or creditors;

    119.2 the authorisation of the investment firm or market operator has been withdrawn or revoked and the firm or operator has ceased to carry on business as an investment firm or to operate a regulated market;

    119.3 the Bank considers that it is in the interest of the proper and orderly regulation and supervision of investment firms or regulated markets or is necessary for the protection of investors that the investment firm or the market operator of the regulated market be wound-up; and

119.4 the investment firm or market operator has failed to comply with any direction given by the Bank under the 2017 Regulations.

120. Having carefully considered:

120.1 the collapse of the Investment Firm's corporate governance and key control functions;

120.2 the regulatory and supervisory engagement that occurred between the Bank and the Investment Firm during period of more than two years;

120.3 the persistent failure on the part of the Investment Firm to comply with its regulatory and prudential obligations to the Bank and to clients and investors;

120.4 the failure on the part of the Investment Firm to address the Bank's longstanding concerns with respect to the Investment Firm's ability to satisfy its regulatory capital requirements in the short to medium term;

120.5 the failure on the part of Investment Firm to appoint and retain suitably qualified persons to the roles of INED / Chair and HOC and MLRO for the duration of any sale or wind-down strategy; and

120.6 all of the reasons for the failure of the Investment Firm as specified above [at paragraphs 80 – 100],

the Bank is of the view that (a) the presentation of a Petition for the winding-up of the Investment Firm is (i) in the interests of the proper and orderly regulation and supervision of investment firms (ii) necessary for the protection of investors of the Investment Firm and (ii) is the most appropriate course of action for the Bank to take in all of the circumstances and (b) the Investment Firm has failed to comply with the March 2023 Regulatory Directions.

121. Accordingly, for the reasons set out above, the Bank believes that it has grounds pursuant to Regulation 148(2)(c) and Regulation 148(2)(d) of the 2017 Regulations to petition this Honourable Court for the winding-up of the Investment Firm.

Your petitioner therefore prays:

1. That Blackbee Investments Limited may be wound up by the Court under pursuant to Regulation 148(2) of the 2017 Regulations and Chapter 2 of Part 11 of the Companies Act 2014

2. That Luke Charleton and Colin Farquharson both of EY, Harcourt Centre, EY Building, Harcourt St, Dublin 2 be appointed as joint liquidators of the Blackbee Investments Limited.

3. Such further or other order as shall be just.

NOTE: - It is intended to serve this petition on Blackbee Investments Limited at its registered address at City Quarter, Lapp's Quay, Cork, Co. Cork, T12 X6NN.

Dated this 8th May 2023

Signed: Arthur Cox

ARTHUR COX LLP

This Petition is presented in the Central Office of the High Court, by Arthur Cox LLP, solicitors for the Central Bank of Ireland.

THE HIGH COURT

RECORD NO. 2023 / COS

IN THE MATTER OF

BLACKBEE INVESTMENTS LIMITED

AND IN THE MATTER OF

THE EUROPEAN UNION (MARKETS IN FINANCIAL INSTRUMENTS)

REGULATIONS 2017

AND IN THE MATTER OF THE COMPANIES ACT 2014

PETITION
