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

AFFIDAVIT OF CLAIRE MCGRADE

I, **CLAIRE MCGRADE,** Head of the Resolution and Crisis Management Division, at the Central Bank of Ireland, New Wapping Street, North Wall Quay, Dublin 1, aged eighteen years and upwards MAKE OATH and say as follows:-

1. I am the Head of the Resolution and Crisis Management Division ("**RES**") of the Central Bank of Ireland (the "**Bank**"), which reports directly to the Governor of the Bank (the "**Governor**") on resolution matters. Among other things, RES undertakes the preparation and implementation of resolution actions contemplated or approved by the Governor. I make this Affidavit on behalf of the Bank, having been duly authorised to do so, from facts within my own knowledge save where so otherwise appears and where so appearing, I believe such facts to be true and accurate.

2. I make this Affidavit for the purposes of verifying the Petition presented by the Bank (the "**Petition**") in which it seeks an Order winding-up Blackbee Investments Limited (the "**Investment Firm**") pursuant to the European Union (Markets In Financial Instruments) Regulations 2017 (the "**2017 Regulations**") and the Companies Act 2014 (the "**Companies Act**") and to support the Bank's application to appoint joint provisional liquidators to the Investment Firm.

3. I beg to refer to a composite booklet of exhibits (the "**Booklet**") upon which marked "**CMG1**" I have signed my name prior to the swearing hereof. Such of the statements in the Petition intended to be issued herein now produced and shown to me and located at **Tab 1** of the Booklet as relate to the acts and deeds of the said Petitioner are true and such of the statements as relate

to the acts and deeds of any other person or persons I believe to be true.

4. I say and believe that 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.

5. I say and believe that 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. Furthermore, I say and believe that 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) apply to these proceedings because the Investment Firm is an "investment firm", and has its head office in the State, in each case within the meaning of Regulation 4 of the 2011 Regulations.

6. Accordingly, 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

   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.

A. CORPORATE STRUCTURE AND BACKGROUND

7. 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 a number of unregulated and regulated entities. 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.

8. According to the most recent annual returns filed with the Companies Registration Office with respect to the Investment Firm and Blackbee Holdings Limited, and other information provided by the Investment Firm to the Bank, the ultimate beneficial owner of the Blackbee Group is Mr David O'Shea, who is also the sole director and Chief Executive Officer ("**CEO**") of the Investment Firm. The Bank understands that Mr O'Shea is the legal and beneficial owner of the entire issued share capital of Blackbee Holdings Limited. Mr O'Shea has been the sole director of the Investment Firm since the resignation of the Chairperson, Mr James Cleary, on 8 November 2022.

9. I beg to refer to a copy of a group structure chart with respect to the Blackbee Group, which provides a diagram showing the companies that the Bank believes are members of the Blackbee Group, and which is located at **Tab 2** of the Booklet. I also beg to refer to a company printout with respect to the Investment Firm which is located at **Tab 3** of the Booklet.

B. REGULATORY AND SUPERVISORY BACKGROUND

10. The Investment Firm was initially authorised by the Bank to carry on business in Ireland as an investment firm on 3 November 2014 pursuant to the 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**").

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

11.1 core investment services to clients such as executing orders and placement of financial instruments without a "firm commitment" basis – this 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

11.2 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).

12. 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. For the reasons that are explained in greater detail below, the Bank made it a condition of the Investment Firm's Authorisation in September 2021 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.

13. 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.

14. 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.

15. 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.

16. 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:

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

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

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

16.4 c.€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.

17. 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 Probability Risk and Impact System is the Bank's risk-based framework for the supervision of regulated firms. It supports the Bank challenging firms, judging the risks they pose to the economy and the consumer and mitigating those risks the Bank judges to be unacceptable. Under PRISM the most significant firms - those with the ability to have the greatest impact on financial stability and the consumer - receive a high level of supervision under structured engagement plans, leading to early interventions to mitigate potential risks. Conversely, those firms which have the lowest potential adverse impact are supervised reactively or through thematic assessments, with the Bank taking targeted enforcement action against firms across all impact categories whose poor behaviour risks jeopardising its statutory objectives including financial stability and consumer protection. Risk-based supervision starts with the premise that not all firms are equally important to the economy and that a regulator can deliver most value through focusing its energies on the firms which are most significant and on the risks that pose the greatest threat to financial stability and consumers. A risk-based system also provides a systematic and structured means of assessing different types of risk, ensuring that idiosyncratic approaches to firm supervision are avoided and that potential risks are analysed for the higher impact firms using a common framework. This allows judgements about potential risk in different firms to be made using a common risk typology on a common scale.

18. The Investment Firm holds client assets and accordingly it is subject to a more stringent supervisory regime compared with other firms of a similar size and PRISM Categorisation that do not hold client assets, and is expected to adhere to a higher standard of corporate governance and risk management.

19. The Bank operates a Fitness and Probity Regime which requires investment firms, including the Investment Firm, to seek the Bank's pre-approval for the appointment of persons to certain functions within the business, called "Pre-Approval Controlled Functions" (or "**PCFs**"). Part of the Bank's function is to specify which roles within a given firm are subject to the Fitness and Probity Regime. All client asset holding investment firms, including the Investment Firm, are required, at a minimum, to appoint the following PCFs:

19.1 a Head of Compliance (or "**HOC**"), which is a critical role because it ensures that investment firms have a permanent and effective compliance function which operates independently of management and ensures that the firm satisfies its regulatory obligations on an ongoing basis; and

19.2 a Head of Client Asset Oversight (or "**HCAO**") which is equally critical because the holder of this role has primary responsibility to oversee the safeguarding of client assets.

20. In addition, Regulation 17(8) of the 2017 Regulations requires that the business of all firms such as the Investment Firm must be directed by at least two persons who are in control of the executive functions of the firm. In practice, this also means that most if not all firms will at all times have at least two directors, one of which should be a non-executive director. The role of Board member of an investment firm is a PCF role, which means that each appointment must be approved in advance by the Bank. It is critically important that all investment firms, including the Investment Firm, have a non-executive director in order to ensure that there is effective governance, oversight and independent challenge with respect to Board decisions.

21. Furthermore, pursuant to the EU Investment Firms Directive (Directive (EU) 2019/2034) and the EU Investment Firms Regulation (Regulation (EU) No 575/2013), the Investment Firm is classified as a "Class 2 Investment Firm", and is therefore required at all times to maintain regulatory capital (or "**Minimum Regulatory Capital Requirement**") at an amount that is equal to the higher of:

21.1 the firm's permanent minimum capital requirement (which in the case of the Investment Firm is €150,000); or

21.2 a quarter of the firm's fixed overheads for the preceding year; or

21.3 a sum that is determined by legislation and is linked to risks in specific business areas of investment firms.

22. In the case of the Investment Firm, its current Minimum Regulatory Capital Requirement is €431,789. This is the firm's fixed overheard requirement and is the higher of the amounts specified at paragraphs 21.1, 21.2 and 21.3. However, for the reasons that are explained in greater detail below, on 12 November 2020 the Bank directed that the Investment Firm maintain a 50% regulatory capital buffer in excess of the Investment Firm's Minimum Regulatory Capital Requirement, with the effect that the Investment Firm is currently obliged at all times to maintain regulatory capital of at least €647,683.

23. Where the Bank identifies concerns or issues with respect to an investment firm, the Bank can avail of a number of supervisory tools and escalation measures, including:

23.1 increasing supervisory engagement with the firm (e.g. through meetings, inspections and information requests);

23.2 setting out a programme of recommended steps and actions an investment firm should take to remedy an issue or mitigate certain risks (known as "**Risk Mitigation Programmes**", or "**RMPs**");

23.3 using legal powers to issue a regulatory direction (a "**Regulatory Direction**") to an investment firm, pursuant to Section 45 of the Central Bank (Supervision and Enforcement) Act 2013 (the "**2013 Act**") to take specific actions to remedy an issue or mitigate a risk;

23.4 using legal powers to issue a regulatory requirement (a "**Regulatory Requirement**") to an investment firm pursuant to Section 22 of the 2013 Act, to provide the Bank with specific information;

23.5 using legal powers to issue a condition on the authorisation (a "**Condition on Authorisation**") to an investment firm pursuant to Regulation 8 of the European Union (Markets in Financial Instruments) Regulations 2017, to vary the conditions or requirements subsequent to granting authorisation; and

23.6 using legal powers pursuant to Section 27 of the 2013 Act to appoint persons with specialist skills to act as an "Authorised Officer" of the Bank to investigate certain issues in an investment firm.

24. In cases where there are serious concerns with respect to an investment firm that have not been addressed using the aforementioned tools, a final alternative, where appropriate, is to move to petition for the winding up of the firm, and to make an application to the High Court to appoint a provisional liquidator to the firm, pending a hearing of the winding up petition.

25. 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 increasingly concerned in relation to the viability of the Investment Firm as a result of the deterioration of corporate governance arrangements at the Investment Firm.

26. The extensive interaction between the Bank and the Investment Firm, and the concerns that have arisen within the Bank from a corporate governance, capital adequacy and client asset perspective, are set out in more detail in Section C below.

27. However, the Bank is of the view that the current position of the Investment Firm can be summarised as follows:-

27.1 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;

27.2 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;

27.3 previously, three persons were either employed by or contracted with the Investment Firm to perform PCF roles, being:

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

(b) Ms Emma Ryan, who performed the PCF roles of Chief Financial Officer ("**CFO**") and HCAO; and

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

27.4 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;

27.5 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 (the "**Aria Transaction**") to Aria Capital Management (Europe) Limited (a Maltese MiFID entity with an Irish Tied-Agent, and proposed Irish Branch, and hereinafter "**Aria**"), which it expected would occur by not later than 20 January 2023;

27.6 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;

27.7 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**"), and subsequently, in accordance with regulatory directions issued by the Bank on 16 March 2023 pursuant to the 2017 Regulations (which directions are more particularly described in paragraph 132, and hereinafter referred to as the "**March 2023 Regulatory Directions**"), 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 independent non-executive director ("**INED**") and HOC and MLRO;

27.8 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 of the March 2023 Regulatory Directions;

27.9 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 the constraints imposed on the Investment Firm's ability 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 – a view that appears to be shared by the Investment Firm based on comments made during a recent meeting with the CEO, where he stated that while previously three options has been considered in relation to the wind down of the Investment Firm, one of which was the wind-down to the maturity of the client assets held by BBI Nominee, that in relation to the two other options which involved either the sale of the Investment Firm or the sale of the Investment Firm's book of business that there was very little appetite on the Irish market for either type of sale at present;

27.10 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 an orderly wind-down strategy with respect to the Investment Firm, which would take a number of years to complete;

27.11 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 considers that 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;

27.12 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 - 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;

27.13 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 thereunder to BGHL) and this concern has been highlighted by the Bank to the Investment Firm; and

27.14 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.

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

28.1 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

28.2 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.

29. 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 and is now doing so. Finally, the Bank considers that it should, as soon as possible after the presentation of such a petition for the winding-up of the Investment Firm, make an application to this Honourable Court for the appointment of joint provisional liquidators to the Investment Firm in order to, *inter alia*, preserve the Investment Firm's assets and funds and other assets held by it on behalf of clients, and mitigate the risk of an unmanaged failure of the Investment Firm's business pending the hearing of the Petition, in the interests of its investors, clients, creditors and the public.

30. A memorandum dated 5 May 2023 (the "**Resolution Memorandum**") has been prepared which sets out the review with respect to the Investment Firm that has been conducted by RES. I beg to refer to a copy of the Resolution Memorandum which is located at **Tab 4** of the Booklet.

C. OVERVIEW OF SUPERVISORY ENGAGEMENT

31. The relevant regulatory engagement between the Bank and the Investment Firm, which is summarised in this Affidavit, occurred over the course of almost three years, from mid-2020 to date. During that period, the Bank has identified reoccurring material issues relating to:

31.1 the adequacy of corporate governance structures within the Investment Firm;

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

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

32. A summary of the key supervisory interactions is set out in detail below.

Initial engagement between 1 July 2020 and 31 July 2021

33. On 7 July 2020, a meeting was convened between the Bank and the Investment Firm which was prompted by an article that appeared in The Times Newspaper on 5 July 2020 which reported that there had been delays in the payment of monies owing to investors in the Investment Firm. Following that meeting, the Bank raised various queries and information requests by email and received responses from the Investment Firm during the course of July 2020.

34. Having reviewed and considered the information provided by the Investment Firm, the Bank identified various concerns with respect to the Investment Firm with regard to capital, liquidity, governance and resourcing risks. Subsequently, on 6 October 2020, the Bank issued a letter to the Investment Firm indicating, among other things, that it was minded to impose the following Regulatory Directions on the Investment Firm:

34.1 a Regulatory Direction to maintain a 50% regulatory capital buffer in excess of the Investment Firm's Minimum Regulatory Capital Requirements;

34.2 a Regulatory Direction to suspend the making of distributions or dividends to shareholders for a period of 12 months;

34.3 a Regulatory Direction to separate the roles of HCAO and CEO, and to appoint a suitably experienced HCAO within 3 months; and

34.4 a Regulatory Direction to appoint a suitably experienced CFO within 3 months.

35. In the same letter, the Bank also indicated that it was minded to:

35.1 impose a Condition on Authorisation requiring the Investment Firm to maintain a 50% regulatory capital buffer in excess of the Investment Firm's Minimum Regulatory Capital Requirements; and

35.2 impose a Regulatory Requirement that the Investment Firm must submit to the Bank a Board-approved one-year strategic plan and associated resourcing strategy for the risk, compliance, client asset oversight and finance functions at the Investment Firm.

36. In a separate letter of the same date, in light of supervisory concerns about the client asset governance and operational arrangements in place in the Investment Firm, the Bank's Client Asset Specialist Team (or "**CAST**") issued a letter indicating that it was minded to impose a Regulatory Requirement upon the Investment Firm to undertake enhanced client asset reporting as follows:

36.1 a Regulatory Requirement to submit signed monthly client asset reconciliations along with an attestation from the Chairperson of the Investment Firm confirming the accuracy and completeness of the return; and,

36.2 a Regulatory Requirement to provide ten days' notice of any planned launch of new investment products which take the form of client financial instruments.

37. These enhanced reporting requirements were subsequently imposed on the firm by way of a further letter on 21 October 2020.

38. On 27 October 2020, the Investment Firm responded to the Bank's letter of 6 October 2020 as follows:

38.1 the Investment Firm acknowledged the Bank's concerns as expressed in its letter of 6 October 2020;

38.2 confirmed that the Investment Firm intended to comply with the Regulatory Directions, Regulatory Requirements and other regulatory measures proposed by the Bank, albeit that it also sought some clarification with respect to the Regulatory Direction and Condition on Authorisation, both imposing an additional regulatory capital buffer; and

38.3 explained that the Board had approved a proposal to commence an orderly wind-down of its activities, and the establishment of an operational plan with respect thereto.

39. Subsequently, the Bank issued a letter to the Investment Firm on 12 November 2020 imposing the Condition on Authorisation, Regulatory Directions, Regulatory Requirements and other regulatory measures proposed in its letters to the Investment Firm dated 6 October 2020.

40. On 30 November 2020, the Investment Firm submitted a first draft operation plan to the Bank with respect to the orderly wind-down of the business of the Investment Firm which identified two options, being (a) the transfer of the Investment Firm's regulated functions to another

investment firm or (b) the sale of the Investment Firm to a third party.

41. Having considered the wind-down plan, the Bank issued a letter to the Investment Firm on 22 December 2020 (a slightly revised version of which was issued on 24 December 2020) in which it expressed concerns with respect to the level of detail set forth therein. The Bank also requested that the Investment Firm engage a third-party firm to assist it in developing a more detailed wind-down plan, and that a project manager should be appointed to oversee the wind-down process. On 29 January 2021, the Investment Firm submitted a revised wind-down plan to the Bank. Subsequently, on 8 February 2021, a meeting was convened between the Bank and the Investment Firm during which the Bank outlined its continuing concerns about the lack of detail with respect to various aspects of the wind-down plan. The Bank and the Investment Firm continued to have bi-weekly meetings throughout February 2021 and March 2021 in order to track progress with respect to the proposed sale of the Investment Firm to a third party.

42. On 24 March 2021, one of the Investment Firm's two independent non-executive directors, Ms Veronica Morrissey, resigned as a director of the Investment Firm, and was not replaced with another appointee. Subsequently, on 16 April 2021, Ms Kathryn Prendergast resigned from her PCF roles as HOC and Chief Risk Officer.

43. Following further engagement with the Bank in relation to the wind-down plan, on 4 May 2021, the Investment Firm submitted a memorandum (dated 30 April 2021) to the Bank identifying three primary scenarios:

    43.1 Scenario A: a wind-down of the Investment Firm's activities until its final investment product matures in 2029;

    43.2 Scenario B: a transfer of custody of the Investment Firm's client assets and associated administration responsibilities to a third party, followed by a wind-down of the Investment Firm; and

    43.3 Scenario C: a sale of the shares of the Investment Firm to a third party and the continued operation of the Investment Firm's regulated activities under new ownership.

44. Subsequently, the Bank issued a letter to the Investment Firm on 2 June 2021 expressing its continuing concerns with respect to ongoing losses at the Investment Firm and imposing a RMP requiring it to submit monthly financial reporting to the Bank (instead of quarterly which is the usual requirement).

45. On 27 July 2021, the Investment Firm submitted a report to the Bank that had been prepared by PWC which provided its assessment of the scenarios identified in the Investment Firm's wind-

down operational plan submitted on 4 May 2021. The PWC report identified a fourth scenario, that had not been identified in the memorandum submitted to the Bank on 4 May 2021, and which outlined a strategy for continued investment and growth of the business of the Investment Firm.

46. I beg to refer to copies of the said correspondence from 1 July 2020 to 30 July 2021 at **Tab 5** of the Booklet.

Engagement between 1 August 2021 and 30 August 2022

47. On 4 August 2021 the Chairperson of the Investment Firm, Mr James Cleary, wrote to the Bank to confirm the decision of the Board to proceed with a strategy for continued investment and growth of the business of the Investment Firm, and indicated that PWC had been engaged to prepare a three year business plan which would be completed by "*late September*".

48. On 12 August 2021, the Bank convened a routine meeting with Mr Eugene O'Callaghan, the HCAO at the Investment Firm, during which it was disclosed to the Bank that there were additional deferred investment product maturities affecting the Investment Firm which had not previously been disclosed to the Bank. The HCAO subsequently confirmed that the maturity dates of seven additional Alternative Investment Products distributed by the Investment Firm had been extended since the beginning of 2021.

49. In light of the decision of the Board to reverse-course and adopt a "growth" strategy, having previously recommended a wind-down strategy, on 27 August 2021, the Bank issued the following letters to the Investment Firm:

49.1 the first letter informed the Investment Firm that the Bank was minded to impose a Condition on Authorisation that would require the Investment Firm to cease:

(a) issuing financial instruments to any clients in pursuit of its authorised activities;

(b) engaging in authorised activities in respect of clients or financial instruments issued by BGHL, further to any transfer of business from BGHL to the Investment Firm; or

(c) engaging in any investment services or ancillary services for which it is authorised in respect of persons who were not clients of the Investment Firm as at date that the condition is imposed

and which in effect would require the Investment Firm to cease writing new business or provide any investment services to new clients; and

49.2 the second letter of the same date informed the Investment Firm that the Bank was minded to issue a Regulatory Requirement that the Investment Firm prepare and deliver to the Bank:

(a) a key facts document containing certain information specified in the letter;

(b) a three-year business plan containing certain information specified in the letter; and

(c) a revised client asset management plan and projected client asset holdings for the next three years containing the information and such plan being in the form specified in the letter.

50. The Bank did not receive any response from the Investment Firm to its letters dated 27 August 2021. Subsequently, on 14 September 2021, the Bank issued a letter to the Investment Firm imposing the Regulatory Requirement proposed in its letter of 27 August 2021. On the same date, the Bank was informed by the HCAO at the Investment Firm that Citibank had notified the Investment Firm of its intention to terminate the Custodial Services Agreement in place with BBI Nominees, which is a wholly-owned subsidiary of the Investment Firm that holds legal title to client assets that are the subject of the custody arrangement with Citibank.

51. On 16 September 2021, the Bank was informed that the HOC at the Investment Firm, Mr Justin McCarthy, had resigned and shortly thereafter the Bank was informed by Mr O'Shea that the Investment Firm's contract for services with Mr Will Hogan, the CFO at the Investment Firm, was due to expire at year end and would not be renewed (as is detailed further below, it was in fact subsequently renewed).

52. On 20 September 2021, the Bank issued a letter to the Investment Firm imposing the Condition on Authorisation proposed in its letter of 27 August 2021.

53. Subsequently, on 19 October 2021, the Bank issued a letter to the Investment Firm setting out its concerns regarding the high level of turnover with respect to persons with PCFs at the Investment Firm, following the resignation of the HOC and the CFO. The letter outlined a proposed RMP recommending that the Investment Firm (a) appoint a suitably senior and experienced HOC, (b) submit an application for the proposed replacement CFO, and (c) confirm that adequate compliance and risk resources are available to enable the Investment Firm to fulfil

its obligations under the RMP. This RMP was subsequently confirmed in a letter issued by the Bank to the Investment Firm on 12 November 2021.

54. Also on 19 October 2021, following further engagement in September 2021 and early October 2021 between the Bank and the HCAO at the Investment Firm with respect to previously undisclosed investment product maturities, the Bank issued a letter setting out concerns regarding the lack of transparency from the Investment Firm regarding deferred investment product maturities and discrepancies in data provided directly by the Investment Firm and the information contained in the Investment Firm's monthly client asset report (or "**MCAR**"). The letter imposed a Regulatory Requirement that the Investment Firm commence daily client asset reporting in respect of client funds and submit a monthly record of financial instruments held with Citibank, in addition to the enhanced monthly reporting requirements imposed in October 2020.

55. Then, in a further reversal of the strategy for the Investment Firm, on 12 November 2021, Mr O'Shea notified the Bank by email that the Board had decided not to pursue the "*invest and grow strategy*", due to tightening margins resulting from ongoing significant inflationary pressures, increasing regulatory engagement and difficulties in recruiting and retaining resources, and that it was now the preferred strategy to wind-down the Investment Firm.

56. In November 2021, the Bank made the decision to appoint Alvarez & Marsal as an authorised officer to the Investment Firm pursuant to Section 27 of the 2013 Act (the "**Authorised Officer**") in order to (a) conduct a forensic investigation into certain products offered by the Investment Firm and the arrangements between the Investment Firm and other affiliates of the Blackbee Group and other entities under common control with it; and (b) to prepare a confidential report for the Bank setting out any conclusion or recommendations that it may have arising from such investigations. This report was prepared for the Bank by the Authorised Officer on the basis that it would be kept confidential and would be used solely for the Bank's internal purposes. Accordingly, it has not been disclosed to the Investment Firm, is not relied upon by the Bank for the purposes of the Petition and is not exhibited to this Affidavit.

57. The decision to appoint the Authorised Officer was informed by:

57.1 elevated supervisory concerns at the Bank relating to the safeguarding of client assets, ongoing governance and prudential concerns and the deferrals of product maturities;

57.2 the extended period of enhanced and intensive supervision with respect to the Investment Firm for more than one year; and

57.3 the fact that (a) the concerns raised by the Bank during that period of extended supervisory engagement had not been mitigated and (b) the Bank had been provided with inconsistent and unreliable information by the Investment Firm in relation to its strategy and financial risk management and planning.

58. During the period between the end of November 2021 and January 2022, the Authorised Officer engaged with the Investment Firm on a variety of issues relating to its investigation. On 24 December 2021, the Authorised Officer received an email from Mr O'Shea indicating that certain information that he provided to the Authorised Officer was not accurate. In that context in January 2021, the Authorised Officer issued a letter requiring Mr O'Shea to certify, pursuant to Section 27(1)(m) of the 2013 Act, that the information provided by him to the Authorised Officer was correct and complete, and to disclose any information provided that was not. Subsequently, on 3 February 2022, Mr O'Shea provided a certification of fact to the Authorised Officer consisting of four pages of factual corrections relating to information he had previously provided to the Authorised Officer. Arising from a review of this information, the Bank engaged in further correspondence with the Investment Firm in the period between March 2022 and May 2022 in relation to the status of an investment made by the Investment Firm on behalf of clients in Aperee Holdings Limited, a company in which Mr. David O'Shea is the sole shareholder and of which he is a director, with various real estate investments in nursing homes, which was to have been secured by shares to be issued by Aperee Holdings Limited.

59. On 12 May 2022, the Bank was informed that Mr Will Hogan (having agreed to extend his contract beyond the expected expiry date of 31 December 2021) had resigned as CFO, and on 6 June 2022, Mr Eugene O'Callaghan resigned as HCAO.

60. On 13 July 2022, the Bank issued an email to Ms Emma Ryan (who was subsequently appointed as CFO and HCAO at the Investment Firm) noting that the Bank had raised various queries with Mr Hogan with regard to certain deficiencies in the financial projections provided by the Investment Firm in the context of the wind-down scenarios previously identified by the Investment Firm, and which had not been addressed by Mr Hogan prior to his resignation. Noting that the most recent financial projections provided by the Investment Firm identified a potential liquidity breach in October 2022, the Bank requested confirmation as to whether the Board had now approved a process for the identification and reporting of such breaches. The Bank also requested confirmation as to whether the Investment Firm continued to expect to be in a position to submit its audited financial statements by 29 July 2022 (which were originally due to be submitted to the Bank on 30 June 2022). The Investment Firm's prudential breach policy was subsequently submitted to the Bank on 29 July 2022 and further revised following comments issued by the Bank.

61. On 24 July 2022, the Investment Firm informed the Bank that it was no longer proposed that the shares of the Investment Firm would be sold to Aria, with whom the Investment Firm had been in discussions with regarding a potential transaction since late 2020, and that instead it was now contemplated that Aria would "*acquire the Blackbee Nominee Company and client assets*" which was "*intended to simplify the negotiation process with a view to an early commercial agreement*". Subsequently, on 28 July 2022, the Bank was informed by the Investment Firm that the finalisation of both the audited financial statements and the financial projections for the Investment Firm would be delayed due to the change in the nature of the proposed transaction with Aria.

62. Subsequently, the Bank received an email from the Investment Firm on 9 August 2022 which attached the audited financial statements for the Investment Firm for the year ended 31 December 2021, which were prepared on a basis other than going concern, and on 19 August 2022 the Bank received financial projections and the Investment Firm's capital management plan. The financial projections provided by the Investment Firm:

    62.1 forecast that the Investment Firm would be in breach of its regulatory capital requirements by December 2022 (taking into account the additional capital buffer imposed by the Bank by the Regulatory Directions and Condition on Authorisation given in November 2020);

    62.2 forecast that, excluding the additional capital buffer imposed by the Bank pursuant to the Regulatory Directions given in November 2020, the Investment Firm would be in breach of its minimum regulatory capital requirements by March 2023; and

    62.3 indicated that the financial projections and the solvency of the Investment Firm were entirely dependent on the Investment Firm recovering the full amount of a €700,000 BGHL Receivable owing to it by its immediate parent company, BGHL, and assumed that there would be monthly repayments of €100,000 beginning in November 2022 and ending in March 2023.

63. On 30 August 2022, the Bank issued an email to the Investment Firm with various urgent queries concerning the financial projections submitted to it and requesting responses by 6 September 2022.

64. I beg to refer to copies of the said correspondence from 1 August 2021 to 30 August 2022 at **Tab 6** of the Booklet.

Engagement between 1 September 2022 and 31 October 2022

65. On 6 September 2022, the Bank received responses from the Investment Firm with respect to its queries concerning the financial projections. The Bank considered such responses to be inadequate having regard to the serious nature of the issues identified and, on 9 September 2022, the Bank issued a letter to the Investment Firm in which it identified the Bank's concerns regarding (a) the capital and liquidity management of the Investment Firm, (b) the Investment Firm's projected prudential breaches (as set out in the latest financial projections), (c) the Investment Firm's heavy reliance on the recoverability of the BGHL Receivable from its parent, BGHL, (d) the quality of the financial projections provided by the Investment Firm, and (e) the turnover of employees holding PCFs roles within the Investment Firm. In light of those concerns, the letter confirmed that the Bank was minded to issue further Regulatory Directions and Regulatory Requirements to the Investment Firm as follows:

65.1 a Regulatory Direction to suspend the making of any distribution or dividend payments for a period of 12 months; and

65.2 a Regulatory Requirement to provide the following information to the Bank within five days of the date of the direction:

(a) a Board approved capital management plan setting out the Investment Firm's plan to mitigate a breach of its regulatory capital requirements within the short, medium and long term, to the maturity date of the portfolio of business; and

(b) evidence of BGHL's ability to repay the BGHL Receivable to the Investment Firm, including:

(i) if available, the most recent annual accounts and six-monthly management accounts for BGHL;

(ii) if in place, a repayment agreement with BGHL;

(iii) the underlying documentation relating to the most recent due diligence performed by the Investment Firm regarding BGHL;

(iv) any other relevant information deemed pertinent by the Investment Firm.

66. The above-mentioned letter also proposed a further RMP with respect to the Investment Firm which would involve:

66.1 enhanced reporting of the Investment Firm's liquidity position on a weekly basis;

66.2 the submission to the Bank of the Investment Firm's regulatory Investment Firms Reporting (or "**IFREP**") return within five working days of each month end; and

66.3 the provision of a supplemental confirmation to the Bank every second Wednesday of each month as to the Investment Firm's compliance with its regulatory capital requirements.

67. The Investment Firm was invited to make submissions to the Bank with respect to:

67.1 the Regulatory Directions and Regulatory Requirements proposed in the letter within ten working days; and

67.2 the RMP proposed in the letter within five working days.

68. The Bank did not receive any submissions from the Investment Firm with respect to the proposed RMP within the time required, and on 21 September 2022, the Bank issued a further letter imposing a RMP on the Investment Firm on the terms set out in its letter dated 9 September 2022. Subsequently on 22 September 2022 (but outside the time allowed for submissions), the Bank received a letter from the Investment Firm seeking additional time to respond to the proposed RMP. On the following day, the Bank received a number of submissions from the Investment Firm with respect to the proposed RMP and the proposed Regulatory Directions and Regulatory Requirements, which can be summarised as follows:

68.1 the Investment Firm confirmed its ongoing commitment to comply with all regulatory requirements including its capital and liquidity requirements;

68.2 confirmed that the Board had adopted "*a range of measures to address the Firm's capital and liquidity needs as outlined in this letter*" which should "*comprehensively address the CBI concerns relating to capital and liquidity and the recoverability of the intercompany debtor*";

68.3 asserted that the Investment Firm "*continues to comply with all regulatory obligations*" and is therefore "*not clear on what basis [the] Central Bank is satisfied that the conditions specified in Section 45(2)(b) and (c) exist and would appreciate clarification in this respect*";

68.4 noted that "*commitments were made by Mr David O'Shea, in his capacity as a director of Blackbee Group Holdings Limited at a meeting of the Board of Directors of BBI on 21 September with respect to repayments*" of the balance owing to the Investment Firm

and that "*the inter-company debtor balance had been reduced from approximately EUR3.8 million at end 2020 to approximately EUR0.7 million at present, evidencing the ongoing commitment to reduce this balance*";

68.5 confirmed that the Investment Firm was committed to "*meet its capital and liquidity obligations over the short-term through a capital injection*" and that a "*capital contribution of EUR250,000 will be submitted to the Central Bank via the ONR on 23 September*" and that "*payments toward the Firm's inter-company debtor balance will proceed*" with two payments of €250,000 in October 2022 and December 2022, with repayment of the balance to occur in "*Q1 2023*";

68.6 with regard to compliance with capital and liquidity obligations over the medium to long term, the Investment Firm asserted that this would "*depend substantially on the Firm completing the proposed asset transfer to Aria prior to end 2022*" following which the Investment Firm "*will have no regulated activity, no clients and no AUM* [Assets under Management] *following the transaction*" and that it was anticipated that a share purchase agreement would be entered into between Aria and the Investment Firm within the following week, but that if "*the transfer to Aria does not complete, the Firm will seek alternative custody providers at the earliest opportunity to ensure a transfer is completed prior to end 2023*"; and

68.7 with respect to the RMP, the Investment Firm asserted that certain "*data will not be available within 5 working days of month end*" and that a "*submission by workday 15 would facilitate a timely gathering of relevant invoices and facilitate appropriate time for review, reconciliation and production of the monthly accounts*".

69. The Bank, having due account of the submissions received from the Investment Firm, issued three letters to the Investment Firm on 30 September 2022 which (a) reiterated the RMP issued on 21 September 2022 and (b) gave effect to the Regulatory Directions and the Regulatory Requirements on the terms specified in the "minded to" letter issued on 6 September 2022.

70. On 4 October 2022, the Investment Firm issued an email to the Bank requesting "*clarity on the Central Bank's basis for the continued requirement of the Firm to hold a 50% capital buffer in excess of the Firm's minimum regulatory capital requirements subject to the Firm completing a transfer of client assets to Aria*".

71. The Bank responded by email later that day to explain that in the Bank's opinion none of the Bank's concerns outlined in its letter of 12 November 2020 (relating to, amongst other things, regulatory capital planning and management, production of regulatory capital returns, quality

of financial projections, ongoing operational losses and the level of intra-group transactions) had been alleviated and that, accordingly "*the regulatory capital buffer as set out in the letter of 12 November 2020 remains in place*".

72. On 6 October 2022, the Investment Firm submitted a memorandum to the Bank setting out an overview of the proposed sale to Aria of the Investment Firm's book of business via the acquisition of the shares of its wholly-owned subsidiary, BBI Nominees, being the entity in whose name the client assets are held, along with a client communication strategy. Subsequently, on 11 October 2022, the Investment Firm provided the Bank with a copy of an executed share purchase agreement (the "**Aria SPA**") between the Investment Firm and Aria for the sale and purchase of the entire issued share capital of BBI Nominees (the "**Aria Transaction**"). This represented the first evidence of documentation setting out an agreement between Aria and the Investment Firm since it first notified the Bank that it was in discussions with Aria in November 2020.

73. On 9 October 2022, the Investment Firm provided the Bank with the following information in accordance with its obligations under the Regulatory Requirements imposed on 30 September 2022:

73.1 unaudited profit and loss management accounts for BGHL; and

73.2 a proposed timeline for payment of BGHL Receivable and capital injection as follows:

(a) 28 October 2022 - €250,000 partial repayment of the BGHL Receivable;

(b) 1 November 2022 - €250,000 capital contribution from BGHL;

(c) 30 December 2022 – €250,000 partial repayment of the BGHL Receivable;

(d) Q1 2023 – the balance (c. €200,000) of the BGHL Receivable would be repaid.

74. On 10 October 2022, the Bank requested balance sheet management accounts for BGHL, which were provided on 11 October 2022. On 17 October 2022, the Bank issued an email to the Investment Firm noting concerns that the management accounts for BGHL appeared to indicate significant capital and liquidity constraints and that BGHL did not appear to have sufficient liquid assets to make repayments of the BGHL Receivable balance owing to the Investment Firm or the proposed capital contribution, in accordance with the Investment Firm's proposal to address short term capital and liquidity issues. In particular, the Bank noted that BGHL appeared to be incurring average monthly losses of €215,000 in the five-months to May 2022, the latest date for which accounts were provided. The Bank requested that the Investment Firm

provide additional clarification and / or information to support its assessment of the recoverability of the BGHL Receivable by 18 October 2022.

75. On 18 October 2022, the Bank was provided with an unsigned letter from BGHL confirming that provision had been made to support the sale of BBI Nominees to Aria and to use BGHL funds to:

75.1 repay €250,000 of the BGHL Receivable to the Investment Firm on 28 October 2022;

75.2 make a €250,000 capital contribution to the Investment Firm in November 2022;

75.3 repay a further €250,000 of the BGHL Receivable to the Investment Firm repayment in December 2022; and

75.4 make a final repayment of c.€200,000 of the BGHL Receivable payment in the first quarter of 2023.

76. It was also suggested in that letter that legal documentation regarding the source of the funds committed from BGHL would follow.

77. On 19 October 2022, the Bank issued queries to the Investment Firm in relation to the Aria SPA and the proposed communications strategy. On 20 October 2022, the Investment Firm responded and submitted revised proposed communications to investors notifying them of the proposed transfer of their assets to Aria and requesting their consent to the transfer.

78. On 26 October 2022, the Bank issued an email to the Investment Firm requesting, amongst other things, "*the legal documentation supporting the source of funds that Mr O Shea referred to in his email of 18 October*". Later that day, the Bank received an email from the Investment Firm addressing certain queries raised by the Bank in its previous email, but did not provide the legal documentation relating to the source of funding for BBGH.

79. I beg to refer to copies of the said correspondence from 1 September 2022 to 31 October 2022 at **Tab** 7 of the Booklet.

Engagement between 1 November 2022 to 31 December 2022

80. On 8 November 2022, the Bank wrote to the Investment Firm noting amongst other things that:

80.1 the Bank had been informed that the Investment Firm had not received the promised payment of €250,000 in partial repayment of the BGHL Receivable (which was due on 28 October 2022), nor had it received the capital contribution from BGHL in the amount of €250,000 which was due to have been received on 2 November 2022; and

80.2 in light of such failure, the Bank reserves its right to "*take any consequent action to supervise and regulate the Firm, and / or to take such action as is considered necessary for the appropriate protection of investors, to include seeking the appointment of a Liquidator*".

81. On 8 November 2022, the Chairperson of the Board and the remaining non-executive director of the Investment Firm, Mr James Cleary, advised the Bank by phone that he had tendered his resignation effective immediately.

82. On 10 November 2022, the Investment Firm issued a memorandum to the Bank in which it proposed a new capital plan with reduced capital injections, which was proposed to be sourced from a new loan to be obtained by BGHL. In the covering email, the CFO of the Investment Firm confirmed that, in the absence of further capital payments, or a request to recognise the sum of €45,000 that had been received from BGHL on 4 November 2022 (in partial satisfaction of its capital contribution commitment given to the Bank on 9 October 2022) as Common Equity Tier ("**CET**") 1 capital, the Investment Firm would breach its regulatory capital requirements on 21 November 2022. The revised capital plan proposed that the next capital payment to be received by the Investment Firm would be for the sum of €55,000, due on 17 November 2022.

83. The following day, on 11 November 2022, the Bank issued a further letter to the Investment Firm highlighting, amongst other things, the following issues:

83.1 the failure on the part of the Investment Firm to advise the Bank in a timely manner that it would not receive the sums due on 28 October 2022 and 2 November 2022;

83.2 that the Investment Firm had explained that this failure had arisen because the payments were dependent upon "*the completion of a transaction to wind down the iNua Fund, which had not previously been disclosed to the Central Bank by the Firm*";

83.3 that the Investment Firm had committed to the payment of the remaining €205,000 of the capital contribution committed to by BGHL by 11 November 2022, but had yet to be received;

83.4 that the Bank now "*understands that the Firm no longer proposes to adhere to the capital management plan*" that it had previously committed to, and now proposes a new reduced capital payment plan which lacks sufficient detail and involves a materially lesser capital sum compared with the previous proposal made by the Investment Firm;

83.5 that given the "*continued lack of clarity provided by the Firm throughout the Central Bank's engagement with you regarding our concerns, 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, and the changing financial strategy, the Central Bank has significant concerns in relation to the Firm's ability to manage its financial risks and maintain compliance with capital and liquidity requirements*";

83.6 that in light of the resignation of Mr Cleary as Chairperson and director of the Investment Firm "*the composition of the Board is now reduced to a single Executive Director*" which gives rise to "*serious concerns as to whether effective governance, oversight and independent challenge at the Board level can be achieved*";

83.7 that given the "*escalating concerns regarding the capital and liquidity position of the Firm and the departure of Mr Cleary, the Central Bank is concerned about the Firm's ability to direct its financial and operational affairs in line with regulatory requirements and to appropriately oversee and monitor the management decision making*";

83.8 with regard to the Investment Firm's request for approval of the proposed sale of the shares of BBI Nominees to Aria and the related client communication plan, the Bank advised that the Bank "*is not a party to the Share Purchase Agreement and does not have a role in approving the Firm's client communication plan*" but reminded the Investment Firm "*of its obligation to act in the best interest of clients and ensure that the information provided to clients in respect of the proposed Aria transaction is clear, fair and not misleading, at each stage of the communication strategy*"; and

83.9 that in light of "*the ongoing concerning developments, the Central Bank again advises that it reserves its right to take any consequent action to supervise and regulate the Firm, and/ or take any such action as is considered necessary for the appropriate protection of investors, to include seeking the appointment of a Liquidator*".

84. On 15 November 2022, Mr O'Shea provided the Bank with a copy of a loan agreement between BGHL and a former shareholder of the Investment Firm, and stated that the remaining requested documents relating to the source of funds, which had been due by 14 November 2022, would be provided in due course.

85. On 16 November 2022, the Bank again wrote to the Investment Firm by email noting that the requested information required in order for the Bank to make a decision as to whether or not to

recognise the sums received from BGHL as CET1 capital remained outstanding and reiterating concerns regarding potential breach of capital requirements.

86. On 18 November 2022, the Investment Firm's CFO confirmed to the Bank that the expected capital injection of €55,000, due on 17 November 2022, had not been made, and that she did not have a revised timeline for the payment. She further stated that the Investment Firm was now expected to commit a breach of its regulatory capital requirements on the later date of 12 December 2022 due to lower than expected October expenses, a reallocation of Mr O Shea's salary within the related entities; reduction of management fees charged to the Investment Firm from BGHL; and reduced staff costs as a result of Mr Cleary's departure. On the same date, the Investment Firm's CFO and HCAO, Ms Emma Ryan, informed the Bank that she had submitted her resignation from both roles and would cease to be an employee of the Investment Firm on 16 December 2022. She later agreed to extend her resignation date to 21 December 2022 "*to accommodate monthly regulatory reporting*".

87. Between 21 November 2022 and 1 December 2022, the Bank engaged in daily correspondence with or placed telephone calls to the Investment Firm, which can be summarised as follows:

87.1 on 21 November, the Bank wrote to the Investment Firm by email, noting that the information requested in letters issued on 11 November 2022 and 16 November 2022 remained outstanding, reiterating concerns regarding the potential imminent breach of capital requirements and requesting that, when responding to such requests, the Investment Firm should also include a detailed plan to replace the departing CFO and HCAO and to provide an updated capital management plan given that the previous plan had not been implemented;

87.2 given the lack of response from the Investment Firm, on 22 November 2022, Mr Des Ritchie, the Head of Division, Consumer Protection Investment Firms and Client Assets (or "**CPIC**"), contacted Mr O'Shea by telephone and email to note that he had not responded to the Bank's communications since 15 November 2022 and seeking an update or timeline for response - Mr O'Shea noted he would provide a response later that evening, but no response was received until 23 November 2022 when he emailed the Bank to state that a response would be provided to the outstanding information later that day - however no further communication was received from Mr O'Shea on that date;

87.3 on 23 November 2022, Mr Ritchie emailed Mr O'Shea requesting an update on outstanding information. Having received no response, on 24 November 2022, Mr

Ritchie phoned and emailed Mr O'Shea to seek an update on the outstanding information, but was unable to contact him and received no response;

87.4 on 25 November 2022, the Bank issued a Regulatory Requirement for:

(a) a six month capital management plan;

(b) a written request to recognise capital instruments as CET1 and confirmation that they are in line with regulation with supporting documentation;

(c) a detailed six month liquidity plan and supporting documentation;

(d) a governance plan including a succession plan for recent resignations of key roles within the Investment Firm; and

(e) daily bank statements for the Investment Firm's three bank accounts;

87.5 on 25 November 2022, in light of the resignation of the Chairperson of the Board, the Bank issued a letter pursuant to Section 22 of the 2013 Act:

(a) lifting the Regulatory Requirements imposed in the Bank's letter of 21 October 2020 (which required the Chairperson to provide an attestation to the accuracy of client asset reconciliations); and

(b) replacing those Regulatory Requirements with a new Regulatory Requirement for the Investment Firm to submit signed monthly client asset reconciliations along with an attestation from Mr O'Shea, as the only remaining Board member, confirming the accuracy and completeness of the return;

87.6 on 28 November 2022, Ms Emma Ryan advised the Bank that she would be out of the office on unplanned leave from 29 November 2022 for "*a few days*" – the Bank then queried how this would affect the regulatory obligations that Ms Emma Ryan would usually submit - the Investment Firm advised by email that the reporting activities would not be impacted, but that the Investment Firm was communicating with AIB to retrieve a bank statement for the daily liquidity reporting as required under the recently imposed RMP;

87.7 on 29 November 2022, the Bank received the daily bank account report for 28 November 2022 but this submission did not include the above mentioned AIB bank statement - Mr O'Shea subsequently emailed the Bank to state that he expected the bank statement to arrive "*shortly*", and later that day the Investment Firm informed the

Bank that the AIB account statement was still not available, but provided an email from AIB stating that the balance was unchanged from the previous reported date of 25 November 2022; and

87.8 on 1 December 2022, the Bank received an email from the Investment Firm acknowledging that it still had not compiled the information requested by the Bank on 11 November 2022 and explaining that "*we are focused on closing the business and ensuring the best outcome for investors – which thru* [sic] *the Aria deal I believe we have delivered in very difficult circumstances and with very restrictive conditions*" and that the information would be provided to the Bank later that day.

88. On 1 December 2022, Mr Kevin McHugh, the HOC, sent an email to the Bank to confirm that he had resigned, effective immediately.

89. On 1 December 2022, having become increasingly concerned by the lack of meaningful response 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, the Bank issued a further letter, the contents of which can be summarised as follows:

89.1 the Bank again 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 Ms Emma Ryan, CFO and HCAO, had also resigned, effective 21 December 2022; and

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

89.2 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*";

89.3 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

89.4 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.*

90. Also included in the letter dated 1 December 2022, but effective from 2 December 2022, the Bank issued a Regulatory Direction to the Investment Firm to "*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*".

91. 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 regards to daily client asset bank account monitoring.

92. 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:

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

92.2 the lack of a suitably experienced, independent individual(s) *in situ* in the positions of HOC, Head of Risk and Head of Anti-Money Laundering and Counter Terrorist Financing;

92.3 the lack of a suitably experienced, independent individual(s) *in situ* in the positions of CFO and HCAO; and

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

93. 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*".

94. 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.

95. 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:

95.1 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

95.2 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).

96. 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*".

97. 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:

97.1 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*";

97.2 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*;

97.3 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*";

97.4 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;

97.5 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*";

97.6 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

97.7 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*".

98. 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.

99. On 9 December 2022, the Bank separately sent an email to Mr O'Shea acknowledging his email received at 7.24p.m on of 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.

100. 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.

101. 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:

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

101.2 an outline of their proposed duties;

101.3 confirmation on the proposed period of their appointment; and

101.4 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.

102. 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 to whether the Regulatory Direction which was imposed on 1 December 2022 could be removed.

103. 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 and informed it 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.

104. 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:

104.1 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;

104.2 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;

104.3 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;

104.4 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

104.5 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.

105. 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.

106. 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 affect 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.

107. 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.

108. 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.

109. 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.

110. 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.

111. 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.

112. I beg to refer to copies of the said correspondence from 1 November 2022 to 30 December 2022 at **Tab 8** of the Booklet.

Engagement between 1 January 2023 and 31 March 2023

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

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

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

114. On 5 January 2023, the Bank sought details on the Investment Firm's 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 liquidity 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.

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

115.1 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*";

115.2 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

115.3 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.

116. 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:

116.1 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;

116.2 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;

116.3 the Bank pointed to the failure of the Investment Firm to provide it with its capital and liquidity plans and to resubmit its regulatory IFREP return for November due to a change in the Own Funds figure;

116.4 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

116.5 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.

117. 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*".

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

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

118.2 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

118.3 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.

119. 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:

119.1 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;

119.2 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;

119.3 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";*

119.4 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;

119.5 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;

119.6 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;

119.7 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*";

119.8 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

119.9 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.

120. 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 said call, it was agreed that Mr O'Shea would attend to the following action points:

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

120.2 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.

121. 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.

122. 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.

123. 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:

123.1 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;

123.2 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 Head of Finance ("**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;

123.3 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;

123.4 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;

123.5 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;

123.6 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*";

123.7 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;

123.8 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;

123.9 the Bank indicated that it required at least two separate individuals be appointed to undertake the roles referenced above at paragraphs 123.8(b) and 123.8(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

123.10 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.

124. 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 IQ 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.

125. 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 DeVere. 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*".

126. 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:

126.1 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

126.2 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

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

127.1 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;

127.2 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

127.3 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.

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

128.1 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;

128.2 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*";

128.3 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

128.4 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*".

129. 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:

129.1 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*";

129.2 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*";

129.3 the HOTs envisaged that Mr Green would personally make a payment of €350k 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";

129.4 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

129.5 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*".

130. 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.

131. On 2 March 2023, the Bank received a copy of the De Vere SPA, the key terms of which can be summarised as follows:

131.1 Clause 2.2 of the De Vere SPA provides that:

(a) the "*total purchase consideration*" for the shares of the Investment Firm is €350,000, which was required to have been paid to BBGH by Mr Green on the execution of the De Vere SPA, rather than on completion, and which payment was stated to be "*conditional on it being used by the vendors to maintain compliance by the Company with regulatory obligations and to discharge ongoing business expenses*";

(b) the "*inter-company balance on the Company's Balance Sheet will be discharged subject to source code for the HIVE / Connect system being provided to the Purchaser, whereupon the I.T. system will be reflected as an asset on the Balance Sheet*;

131.2 pursuant to clause 3.1 of the De Vere SPA, BBGH "*acknowledges and accepts that the Purchaser is entering into this Agreement in reliance upon the Warranties*", being the statements set out in Schedule 2 of the De Vere SPA;

131.3 at clause 3.2 of the De Vere SPA, BBGH "*warrants and represents to the Purchaser that except as Disclosed, each Warranty is true and accurate in all material respects as at the date of this agreement and shall be true and accurate in all material respects on the Completion Date unless otherwise advised in writing, on or prior to the Completion Date, but provided that in the event that it becomes evident that any Warranty is not true and accurate in all material respects or if ongoing due diligence contains information that, in the opinion of the Purchaser, materially impacts on the status of the Company or its ability to place reliance upon the Warranties then the Purchaser shall have a right of rescission of this agreement without any further obligation*";

131.4 clause 4.1 of the De Vere SPA sets out certain conditions that must satisfied in order for completion to occur, which conditions must be satisfied by the "*Long Stop Date*" being the date falling "*ten months from the date of this Agreement*", unless such date is extended by agreement of the parties;

131.5 pursuant to clause 4.4 of the De Vere SPA, the parties agree to use all reasonable endeavours to "*ensure the satisfaction of the Regulatory Conditions*" (being the conditions that the Bank approve the acquisition of the Investment Firm by Mr Green, and the revised business plan of the Investment Firm) by 31 August 2023;

131.6 clause 4.3 of the De Vere SPA obliges each party to "*provide such information as is required to the CBI and any explanation or clarification that the CBI may require*";

131.7 clause 4.7 of the De Vere SPA provides that if the conditions are not satisfied by the "Long Stop Date", Mr Green will be entitled to sell the shares of the Investment Firm to "*another third party, subject to the same conditions, but not purchase price, as set out in this SPA*"; and

131.8 finally, Clause 4.10 of the De Vere SPA provides that the "*consideration provided by the Purchaser at the point of execution of this agreement, shall be used by the Company to maintain ongoing compliance with the Company's regulatory obligations, including but not limited to; compliance with capital and liquidity requirements and recruitment of additional resources identified by the Vendor and Purchaser to cover pre-approval control function ("PCF") roles. The consideration will be used by the Company to cover normal business running expenses and contracts already in place*".

132. 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 March 2023 Regulatory Directions were issued by the Bank in the following terms:

132.1 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 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.

132.2 the Bank required that at least two separate individuals are appointed to undertake the roles referred to at paragraphs 132.1(b) and 132.1(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

132.3 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.

133. 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.

134. 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:

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

134.2 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

134.3 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.

135. On the same day, the Bank issued an email to the Investment Firm in relation to the application submitted to the 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.

136. I beg to refer to copies of the said correspondence from 1 January 2023 to 31 March 2023 at **Tab 9** of the Booklet.

Engagement between 1 April 2023 and the date of the Petition

137. 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.

138. 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:

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

138.2 Mr David Nolan as HOC and MLRO; and

138.3 Mr Carl Dillon as HOF and HCAO.

139. 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

140. 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.

141. 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.

142. 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.

143. 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*".

144. 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. I refer to the supplemental affidavit of Ms Orla Mellett, an employee of the Bank. Ms Mellett has explained that at the meeting:

144.1 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;

144.2 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;

144.3 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;

144.4 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;

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

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

(a) 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

144.7 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.

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

145.1 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 March 2023 Regulatory Directions, 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 March 2023 Regulatory Directions, 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;

145.2 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;

145.3 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;

145.4 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 that 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; and

145.5 the letter further stated that the Bank considers it is now necessary to "*consider the immediate presentation of a petition to wind up the Firm, and to apply for the appointment of a provisional liquidator on the date that such petition is presented*".

146. Finally, in its letter dated 28 April 2023, the Bank stated that if the Investment Firm "*wishes to make any final submissions to the Central Bank with respect to the matters referred to in this letter, please provide those submissions in writing by not later than 5 pm on Thursday 4 May 2023, and the Central Bank will give due consideration those submissions before making a final decision as to whether or not to present a petition to wind up the Firm*". The letter dated 28 April 2023 was unintentionally marked privileged. On 2 May 2023 the Bank emailed the Investment Firm, explaining the unintended reference to the letter being privileged and reissued the letter on the same terms and with the same deadline of 5 pm on Thursday 4 May 2023 but without it being marked privileged.

147. 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:

147.1 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*";

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

147.3 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*";

147.4 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*";

147.5 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*";

147.6 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*";

147.7 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

147.8 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*".

148. Finally, the letter 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*".

149. I beg to refer to copies of the said correspondence from 1 April 2023 to the date of this Petition at **Tab 10** of the Booklet.

Recent meeting on 6 May 2023 between the Bank and the Investment Firm

150. At 5.30p.m. on Saturday 6 May 2023, the Bank arranged and attended a meeting with the Investment Firm. I attended that meeting, along with two colleagues from CPIC and from the Legal Division of the Bank, and the Investment Firm was represented solely by Mr O'Shea.

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

151.1 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

151.2 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;

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

152.1 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;

152.2 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;

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

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

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

152.6 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;

152.7 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;

152.8 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;

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

152.10 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 Investment Firm by the end of next week;

152.11 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;

152.12 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

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

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

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

153.2 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;

153.3 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

153.4 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.

154. Mr O'Shea noted in response that:

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

154.2 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;

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

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

154.5 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;

154.6 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

154.7 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.

155. In its closing remarks, the Bank noted that it had carefully considered the impact of the appointment of a provisional liquidator and / or 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.

D. CURRENT POSITION

156. 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 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 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. The Bank is engaged in the supervision of more than 10,000 regulated entities across the Irish economy, and does not have the resources to perform the function of vetting every payment to be made from the Relevant Accounts for any extended period, nor does it have access to the books and records of the Investment Firm in order to fully vet every payment request made with respect to the Relevant Accounts. The Bank is also strongly of the view that it is not in the interests of investors and clients of the Investment Firm for the Bank to continue to perform this role for any further period. Clients expect and are entitled to expect that the safeguarding of client funds held by the Investment Firm will be overseen by a suitably qualified person holding a PCF role within the Investment Firm and having access to all relevant books and records of the Investment Firm, and not by the Bank in its capacity as that firm's regulatory supervisor.

157. I believe that it is important to emphasise that the measures taken by the Bank with respect to the client funds in the Relevant Accounts do not extend to the client financial instruments held

by the Investment Firm in custody in the Citibank client asset account and with BBI Nominees. The safekeeping of those client financial instruments and all day-to-day decisions arising with respect to them, remain under the sole control of Mr O'Shea, and as I have explained earlier, that is an untenable situation given the requirements of Regulation 17(8) of the 2017 Regulations. The absence of governance, oversight and independence in the client asset function is of particular concern in the context of those client financial instruments in the form of Alternative Investments (c. €152 million according to the most recent information provided to the Bank by the Investment Firm) arranged by the Investment Firm and issued by City Quarter Capital II plc, a company controlled by Mr O'Shea. Furthermore, this absence of appropriate segregation of duties, in particular independent oversight, gives rise to heightened risks with respect to that element of the Alternative Investments (c. €17 million) that are not held in a client asset account with a third-party custodian and are instead held directly by BBI Nominees.

158. 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 the PCF holders, 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 a 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 it, 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 potentially 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.

159. 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. 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.

160. 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 constraints imposed on the Investment Firm's ability 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.

161. 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.

162. The Bank notes that, during his recent meeting with the Bank on 27 April 2023, 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 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.

E. BANK'S ASSESSMENT

163. I believe it is important in the context of the Petition for the winding-up of the Investment Firm to outline to the Court what the Bank believes are the underlying causes of the Investment Firm's difficulties.

164. These difficulties were identified through supervisory / regulatory interactions and are summarised below.

Failure of Corporate Governance

165. 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.

166. It is instructive to note that, since 2020, the Investment Firm has seen resignations from the following key PCF holders:

166.1 the Chairperson;

166.2 two non-executive directors;

166.3 four HOCs;

166.4 two Chief Risk Officers;

166.5 two CFOs; and

166.6 two HCAOs.

167. To mitigate risks associated with the high level of turnover in PCF roles, the Bank has issued several 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.

168. The immediate departure of the Chairperson on 8 November 2022, the only remaining director other than Mr O'Shea, has resulted in the Board 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.

169. 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.

170. 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.

171. 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.

172. 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

173. 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. Due to serious concerns regarding the Investment Firm's strategic risk management, the Bank imposed on the Investment Firm a Condition on Authorisation to cease taking on new business in September 2021.

174. By way of illustration:

174.1 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;

174.2 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;

174.3 to mitigate the risk that the Investment Firm would engage in new business without the necessary governance and financial arrangements in place, 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

174.4 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.

175. 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.

176. 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.

177. 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 as explained at paragraph 162 above, 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

178. 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.

179. 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:

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

179.2 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);

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

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

179.5 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;

179.6 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;

179.7 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

179.8 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.

180. 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

181. 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 Investment 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.

182. 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 remains 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.

183. 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 Investment Firm for the repayment of the advance consideration paid to BGHL pursuant to De Vere SPA.

184. 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.

185. 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 prudential 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 sufficient 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.

186. From the Bank's assessment of the financial information provided by the Investment Firm and in light of the collapse in the governance arrangements within the Investment Firm, and the repeated failure of the Investment Firm to provide sufficient assurances to the Bank in respect of its financial position, the Bank has significant doubts as to the Investment Firm's ability to continue to comply with capital and liquidity requirements in the short term, or the ability to restore the Investment Firm's prudential health to continue to meet its obligations to creditors.

F. GROUNDS FOR WINDING UP

187. 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(2) of the 2017 Regulations, being that:

187.1 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;

187.2 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;

187.3 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

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

188. Having carefully considered:

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

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

188.3 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;

188.4 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;

188.5 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

188.6 all of the reasons for the failure of the Investment Firm as specified in Section E above,

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 (iii) 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.

189. 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.

G. APPLICATION FOR APPOINTMENT OF JOINT PROVISIONAL LIQUIDATORS

190. The Bank believes that it is necessary to seek the immediate appointment of joint provisional liquidators to the Investment Firm, pending the hearing of the winding-up Petition of the Investment Firm for the reasons set out below.

191. Based on the experience of RES in other resolution cases concerning entities that are regulated by the Bank, the Bank is of the view that, once the fact of the presentation of the winding-up Petition becomes public, there is a very strong likelihood that:

191.1 clients of the Investment Firm, and their brokers, will understandably become concerned as to what the winding up of the Investment Firm will mean for them, and in particular whether it will result in an interruption of access to client assets and / or client funds;

191.2 the contents of the Petition, and potentially this Affidavit, will become known to the clients of the Investment Firm and / or become public knowledge prior to the hearing of the Petition and potentially very shortly following the date of presentation - the Bank is acutely conscious that clients of the Investment Firm, and their brokers, are likely not aware of information contained in the Petition and this Affidavit, particularly insofar as it relates to:

(a) the inadequate capital and liquidity position of the Investment Firm;

(b) the recent second unsuccessful attempt to sell the Investment Firm to De Vere (and the apparent reasons for the failure of that transaction);

(c) the reliance placed by the Investment Firm upon the recoverability of the BGHL Receivable, and the apparently precarious financial position of BGHL; and

(d) the sheer extent and seriousness of the issues that have arisen during the course of the Bank's regulatory and supervisory engagement with the Investment Firm;

191.3 the Investment Firm will become inundated with urgent queries from those clients and / or their brokers who will, also quite understandably, seek urgent clarity as to what the presentation of the Petition means for them and the client funds and client financial instruments held on their behalf by BBI Nominees;

191.4 given that a single person – Mr O'Shea - is the only person with control over the

executive functions within the Investment Firm, and there are no officers fulfilling the various vacant PCF roles, there is a very material risk that the Investment Firm will be incapable of addressing those queries, communicating effectively with stakeholders and / or continuing to function in a meaningful way during the period prior to the hearing of the Petition, resulting in a real and material risk of an uncontrolled and disorderly collapse of the operations of the Investment Firm;

191.5 these risks must be considered against the backdrop of the fact that (as explained at paragraph 143 above) the Bank has been informed by Brokers Ireland (being the representative body in Ireland for investment brokers) that the Investment Firm is the subject of an unusual number of queries from its members with respect to (a) the Investment Firm's failure to provide updates with respect to the performance of its Alternative Investments and (b) the Investment Firm's failure to respond to queries from brokers in relation to the fact that maturity dates with respect to a number of those investments have long passed without the Investment Firm providing appropriate updates – in addition, the Bank is conscious that the Investment Firm's failure to appropriate communicate with its clients and their brokers with respect to such issues was among the reasons given by Aria for its rescission of the Aria SPA; and

191.6 if the Investment Firm is currently failing to communicate appropriately with its clients and their brokers with respect to critical issues such as maturity defaults arising with respect to Alternative Investments that have been issued by a special purpose vehicle controlled by Mr O'Shea (being City Quarter Capital II plc), then the Bank believes that there must be no prospect whatsoever that the Investment Firm will be able to communicate coherently and effectively with its clients and brokers after the Petition has been presented, and that fact becomes public knowledge.

192. The Bank considers that it is clearly in the interests of clients and other stakeholders of the Investment Firm that immediate steps should be taken, following the presentation of the Petition, to mitigate the risks outlined above, and based on the experience of the Bank in other cases concerning the winding up of regulated firms, the Bank believes that the most effective means to mitigate these risks, which arise whenever the Bank or another regulator makes a decision to wind up a regulated entity, is for joint provisional liquidators to be appointed to the Investment Firm immediately following the presentation of the Petition. This is because, if appointed by this Honourable Court, joint provisional liquidators will be able, immediately following the presentation of the Petition, to:

192.1 assume all executive functions that are currently vested in Mr O'Shea as the sole

director of the Investment Firm, in order to ensure that all decisions required to be made by the Investment Firm pending the hearing of the Petition are taken in the best interests of the Investment Firm and all of its stakeholders, and in doing so a provisional liquidator will be able to act independently and as an officer of the Court, and without any risk, or any perception of risk, that such decisions may be influenced by the conflicts of interest that arise for Mr O'Shea, given that he is the sole director, and the indirect sole shareholder, of the Investment Firm as well as the owner of the issuer of the Alternative Investments constituting a significant proportion of client assets held by the Investment Firm;

192.2 undertake, and / or appoint suitably qualified members of his or her firm to undertake, the PCF and other roles within the Investment Firm that have been vacant for a significant period, a situation that the Bank considers to be entirely unacceptable from a regulatory and supervisory perspective;

192.3 take steps to assume control and oversight of the client assets held by the Investment Firm, including in particular those client financial instruments with a face value of more than €17 million in the form of Alternative Investments that are not held with any third party custodian, and immediately begin work on investigating the status of those assets, with a view to ensuring that they can be returned to clients as quickly as possible following the making of any winding-up order;

192.4 take steps to ensure that those client assets are properly safeguarded pending the hearing of the Petition, including by exercising the voting rights attaching to the shares held by the Investment Firm in BBI Nominees, the entity in whose name the client assets are held to remove and replace the existing directors of that company with directors nominated by the provisional liquidator;

192.5 engage with the Bank, brokers and clients in relation to payments that are due to be made to them from client funds, in order to ensure that the Bank and clients can have confidence that the information provided by the Investment Firm is correct and accurate based on the provisional liquidator's review of the relevant books and records of the Investment Firm, with a view to enabling the Bank to remove the Regulatory Directions imposed on the Investment Firm on 1 December 2022 preventing payments being made from the Relevant Accounts without the approval of the Bank - as explained at paragraph 156 above, the imposition of the afore-mentioned Regulatory Directions was intended as an emergency and temporary measure, and it is not sustainable, nor is it in the interests of clients of the Investment Firm, for the Bank to continue to perform any

partial oversight role with respect to the release and / or payment of these client funds for any further period;

192.6 apply appropriate resources from their firm, and apply the expertise of dealing with similar insolvency situations, to ensure that a comprehensive communications strategy is put in place to ensure that queries received from clients and brokers, as well as other stakeholders, are responded to and that all such stakeholders have access to information concerning the provisional liquidation, and potential official liquidation, of the Firm;

192.7 co-ordinate with the Bank to ensure that it is also in a position to provide clients and other stakeholders in the Investment Firm with clear and consistent information relating to why the Bank has taken the action that it has by presenting a Petition to wind-up the Investment Firm, and how such persons can engage with the Investment Firm, acting by the joint provisional liquidators, to deal with any issues that may arise for them as a result of that action; and

192.8 assume control of and safeguard the books and records of the Investment Firm, to ensure that the provisional liquidator, the Bank and, ultimately, this Honourable Court can have a clearer picture of the financial position of the Investment Firm, including with respect to the recoverability or otherwise of the BGHL Receivable, and where necessary take steps to engage with BGHL with respect to the BGHL Receivable with a view to securing payment thereof.

193. Furthermore, the Bank is of the view that it is in the public interest for joint provisional liquidators to be appointed immediately following the presentation of the Petition because if there is an uncontrolled and disorderly collapse of the operations of the Investment Firm pending the hearing of the Petition, this could erode market confidence generally with respect to investment firms operating in Ireland, and could lead to unfounded speculation or concern with respect to the stability of other investment firms. The Bank believes that any, even short delay, following the presentation of the Petition of the appointment of joint provisional liquidators could lead to such speculation or concern. The Bank notes that, during its meeting with the Investment Firm on 6 May 2023, the Investment Firm also asserted that, although it is clearly opposed to a provisional liquidation, the presentation of a petition to wind up the Investment Firm may result in contagion in the market. While it is not entirely clear what was meant by this statement, insofar as it was a reference to a risk of contagion in the wider market, it would appear that the Investment Firm also recognises the risk the Bank has identified associated with any uncontrolled or disorderly collapse.

194. The Bank believes that there is a material risk that the disorderly collapse of the operations of

the Investment Firm resulting from the presentation of the Petition could, absent the immediate appointment of joint provisional liquidators, undermine public confidence in the efficacy of the regulatory and supervisory regime in Ireland for such firms, and the capacity of the regulatory system to manage, in an orderly manner, the unavoidable consequences of a decision of the Bank to present a petition to wind up an entity that it regulates. The Bank believes that such an outcome would be contrary to the core purpose of the regulatory and supervisory regime relating to firms such as the Investment Firm, which is to protect the interests of investors and clients in firms such as the Investment Firms. The interests of the clients and investors of the Investment Firm must take precedence over those of that firm itself, or its shareholders, or indeed Mr O'Shea. It is critically important that the Bank, as regulator, can give confidence to investors and clients that it will, in all circumstances, put their interests first and, where appropriate, seek the immediate appointment of one or more provisional liquidators following the taking of the unusual step (which is, as is the case with respect to the Investment Firm, only ever taken as a last resort after all other regulatory and supervisory options have been exhausted) of presenting a petition to wind up an investment firm in their best interests.

195. The Bank is conscious that the Investment Firm has indicated, most recently in its letter to the Bank dated 4 May 2023 (the contents of which are summarised at paragraph 147 and paragraph 148 above) that it is of the opinion that "*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*". The Bank disagrees with this statement. For the reasons explained above, the Bank is of the view that the immediate appointment of joint provisional liquidators is essential to avoiding a disorderly collapse of the Investment Firm prior to the date of the hearing of the Petition. The Bank also believes that a suitably experienced and resourced insolvency expert will be best placed to operate the business of the Investment Firm in accordance with regulatory standards. It is surprising that the Investment Firm would assert otherwise in circumstances where it has repeatedly suggested to the Bank in recent months that it intends to appoint an accountant from its former audit firm to fill various vacant PCF roles.

196. All investment firms that hold client assets in Ireland must conform to the corporate governance requirements of the 2017 Regulations and the Bank's Fitness and Probity Regime. It is axiomatic that any investment firm that is unable to satisfy these requirements is, by definition, failing to preserve and protect the client assets that it holds for the benefit of its investors. In the afore-mentioned letter the Investment Firm also appears to suggest that a provisional liquidation would only be appropriate where "*there is a genuine risk that the directors of the Firm would allow client assets to be compromised*". This statement is indicative of Mr

O'Shea's fundamental misunderstanding of the importance of the regulatory regime within which the Investment Firm operates. The clients of the Investment Firm are entitled to expect that the Investment Firm will comply with its regulatory obligations and uphold the high standards of corporate governance that are required of all client asset holding firms. By failing to comply with those standards, the Investment Firm, and Mr O'Shea as its sole director, is placing those client assets at risk.

197. In addition, in the afore-mentioned letter the Investment Firm asserts 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*". That is not correct, for the reasons explained above. Whilst client funds (i.e., cash) derived from client assets and deposited in the Relevant Accounts cannot be dissipated by the Investment Firm because all payments from those accounts require the approval of the Bank, the Investment Firm and its subsidiary, BBI Nominees remain in control of the client assets themselves. The safekeeping of client financial instruments and all day-to-day decisions arising with respect to them, remain under the sole control of Mr O'Shea as the sole director of the Investment Firm. The extent of Mr O'Shea's control is particularly evident in the context of certain of the client financial instruments in the form of Alternative Investments (c. €152 million) which were arranged by the Investment Firm and issued by City Quarter Capital II plc, a company controlled by Mr O'Shea. Furthermore, elements of those Alternative Investments have not been placed in custody with an independent third party and are instead held directly in BBI Nominees, giving rise to heightened risks. The absence of appropriate independence and oversight of the client financial instruments, and the books and records relating to them, is entirely unacceptable and contrary to the regulatory requirements with respect to corporate governance, particularly in circumstances where the Issuer entity, City Quarter Capital II plc is also controlled by Mr O'Shea.

198. Finally, the Bank is also conscious that the Investment Firm has, in recent correspondence with the Bank, and during recent meetings with the Bank, expressed the view that any application for the appointment of a provisional liquidator should not be made on an *ex parte* basis, but on notice to the Investment Firm. The Bank has carefully considered this request on the part of the Investment Firm and it does not believe that it would be appropriate or responsible for the Bank to make such an application on notice to the Investment Firm for the following reasons:

198.1 the Bank is of the view that the benefits for investors and clients to be derived from the appointment of joint provisional liquidators to the Investment Firm (being the mitigation of the risks identified in paragraphs 190 to 194) are likely to be available only if the joint provisional liquidators are appointed immediately following the presentation of the Petition – if such appointment takes place weeks or even a few days

after the presentation of the Petition, then it is almost certain that in the meantime the fact that the Bank has presented the Petition will become public knowledge, which will exacerbate the potential for the risks outlined above to materialise - that creates the risk that the potential risks and damage identified will have already materialised by the time the Court has an opportunity to decide whether or not to appoint joint provisional liquidators;

198.2 the Bank acknowledges the serious implications for the Investment Firm if joint provisional liquidators are appointed however for the reasons explained, the Bank believes the appointment of joint provisional liquidators is nonetheless essential to mitigate the risk of damage to the interests of the investors and clients, and the Bank believes that it is central to the legislative purpose of the 2017 Regulations that their interests are paramount to those of the Investment Firm or its shareholder where a conflict arises;

198.3 the Bank would be extremely concerned that if even a short period of time - of for example 48 hours – were to elapse between the presentation of the petition and the appointment of joint provisional liquidators, that short time period could be very problematic for all of the reasons identified already as to why the Bank believes it is essential that joint provisional liquidators are appointed. In particular, the Bank believes that clients and investors would immediately become seriously concerned upon hearing that a petition had been presented. In the absence of a provisional liquidator *in situ* to immediately respond to investor and/or client and/or broker concerns and/or queries, those concerns will escalate. For the reasons already explained, the Bank does not believe that the Investment Firm would be in a position to deal effectively with the likely level of communications from clients. In the absence of clear information, the Bank has real concerns that investors and clients might in that immediate time period might be prejudiced and in particular might make decisions adverse to their interests. The Bank also believes that it is extremely important in terms of maintaining confidence in the market that in a scenario such as this where the Bank has had to take the step of presenting a petition to the High Court, investors and clients are given certainty at the earliest possible moment. The Bank has material concerns about the risks which any lack of certainty, for any, even extremely short period of time, presents in terms of the market more generally.

198.4 the Bank has in accordance with its disclosure obligations to this Honourable Court, and as requested by the Investment Firm in its recent correspondence, sought to put all material facts and correspondence, and an account of all recent meetings and calls with

the Investment Firm, in detail before this Honourable Court in this Affidavit, in order that a decision can be made in full knowledge of all of the facts, regardless of whether those facts and the contents of such correspondence and accounts are helpful or prejudicial to the Bank's application;

198.5 For all of the reason set out the Bank believes that the public interest, is best served by the appointment of joint provisional liquidators immediately in order to protect the interests of the clients and investors of the Investment Firm, which is the core purpose of the regulatory and supervisory framework within which the Investment Firm operates; and

H. DECISION BY GOVERNOR

199. On 4 May 2023, a copy of the Resolution Memorandum was provided to the Governor. On 5 May, 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 CPIC, namely the Head of CPIC as opposed to the Director of Consumer Protection. Later that day, also on 5 May 2023, the Governor, having carefully considered the Resolution Memorandum, decided that the Bank should proceed to present the Petition and to make an application before this Honourable Court for the appointment of one or more provisional liquidators to the Investment Firm. I beg to refer to a copy of the said Letter from the Governor to me at **Tab 11** of the Booklet.

I. PROPOSED LIQUIDATORS

200. If this Honourable Court is minded to make a provisional liquidation and / or a winding up order with respect to the Investment Firm, the Bank proposes that it would be appropriate in the circumstances for joint liquidators, rather than a sole liquidator, should be appointed with respect to the Investment Firm, with the ability to act jointly and severally in accordance with the powers that this Honourable Court deems fit to confer upon them. The Bank believes that a joint appointment will facilitate the orderly and efficient exercise of those powers, which is of benefit to the Investment Firm, its clients and other stakeholders

201. I say that Mr Luke Charleton and Mr Colin Farquharson, both of EY Ireland, have indicated that they are willing to act as joint liquidators and also as joint provisional liquidators if the Court sees fit to appoint them. I beg to refer to the letters from Mr Charleton and Mr Farquharson in which they, *inter alia*, confirm their willingness to act as joint liquidators and joint provisional liquidators (if so appointed) which are located at **Tab 12** of the Booklet.

J. CONCLUSION

202. For all of the reasons set out, I therefore pray this Honourable Court for the reliefs set out in the Petition and *ex parte* docket herein.

CLAIRE McGRADE

I **hereby**
Certify that I know the Deponent

SWORN by the said **CLAIRE McGRADE**
on the 8th day of May 2023
at 10 Earlsfort Terrace, Dublin 2
in the County of the City of Dublin
before me a Commissioner for Oaths / Practising Solicitor and
~~(1) I know the Deponent; or,~~ Alice
(2) ~~the Deponent has been identified to me by~~ Alice
~~who is personally known to me~~;
~~or~~,
(3) prior to the swearing hereof the identity of the Deponent has been established by me by reference to PASSPORT with number [redacted] containing photograph evidence

~~COMMISSIONER FOR OATHS~~/
PRACTISING SOLICITOR

MORAG MC CULLAGH
BYRNE WALLACE LLP

This Affidavit is filed on behalf of the Petitioner by Arthur Cox, Solicitors, Ten Earlsfort Terrace, Dublin 2. Filed this day of 2023

THE HIGH COURT

Record Number: 2023 / 77COS

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

AFFIDAVIT OF CLAIRE McGRADE

Arthur Cox
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