

CASE NUMBER: CR-2019-005229

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

**IN THE MATTER OF SVS SECURITIES PLC (IN SPECIAL  
ADMINISTRATION)**

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

**Before [●]  
Dated [●] 2020**

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**ORDER**

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**UPON THE APPLICATIONS of:**

- (1) SVS Securities plc (in special administration) (the "**Company**"), as trustee of the trust of the statutory trust of Client Money under CASS 7 and 7A, pursuant to CPR Part 64 and paragraph 63 of Schedule B1 of the Insolvency Act as modified by IBSAR, regulation 15, for directions as to whether it is permitted to distribute the Client Money pool via a transfer of Client Money to the Nominated Broker; and
- (2) Messrs Andrew Poxon, Julien Robert Irving, Alex David Cadwallader in their capacity as joint special administrators of the Company (the "**Administrators**"), pursuant to Rule 146 of the IBSA Rules, for approval of the distribution plan dated [●] 2020 exhibited to the witness statement of Mr Alex David Cadwallader dated [●] (the "**Distribution Plan**")

**UPON READING** the witness statement of Mr Alex David Cadwallader dated [●] 2020

**UPON HEARING** Mr Daniel Bayfield QC and Mr Adam Al-Attar for the Applicants

**UPON** the Nominated Broker having provided undertakings to the Court, in the terms contained in Schedule I of this Order.

**AND UPON** the Court being satisfied:

- (1) as regards the Distribution Plan, that (i) the Administrators have made the necessary notifications in accordance with Rule 143 of the IBSA Rules; and

- (ii) the creditors' committee of the Company has approved the Distribution Plan; and
- (2) as regards the transfer of Client Money to the Nominated Broker, that the Company, acting by the Administrators, has obtained:
- a. from the FCA, the CASS Waiver so as to permit the transfer of Client Money to the Nominated Broker, as contemplated by and in connection with the Sale and Purchase Agreement; and
  - b. from the Nominated Broker (i) an undertaking to hold the Client Money in accordance with CASS 7, as required by CASS 7A.2.4R(4)(c); (ii) an undertaking that the Nominated Broker will issue to each Client whose Client Money is transferred to it a notice in accordance with CASS 7A.2.4R(4)(e) and CASS 7A.2.4A-2G(2); and (iii) an undertaking that the Nominated Broker will comply with any such Client's request for a reverse of their Client Money to the Company in accordance with IBSAR, regulation 10C in accordance with CASS 7A.2.4A-2G(1).

**IT IS ORDERED** that:

**General**

1. The definitions contained in Schedule II of this Order shall apply to the terms of this Order. Save as defined therein or otherwise specified, capitalised terms in this Order shall have the meaning defined in the Distribution Plan.

**Client Assets**

2. Pursuant to Rule 146 of the IBSA Rules, the Distribution Plan is approved, and the Administrators shall have permission to deal with client assets in accordance with the procedure set out in the Distribution Plan.
3. The Administrators' costs of and occasioned by the Court application to have the Distribution Plan approved shall be paid as an expense of the administration.
4. The Administrators shall have liberty to apply in connection with the terms of this Order and the Distribution Plan.

**Client Money**

5. The Company, acting by the Administrators, is at liberty as trustee, subject to the terms of this Order, to transfer Client Money to the Nominated Broker in discharge of its obligations as trustee under CASS 7A.2.4R(4) (transfer as an alternative to a distribution under CASS 7A.2.4R(2)(a)).
6. Any transfer of Client Money pursuant to paragraph 5 above shall discharge the Company's fiduciary duty as trustee under CASS 7 and 7A in accordance with CASS 7.11.34R(2)(e) save that the trustee shall remain responsible for (i) any Client Money retained to satisfy provisions made pursuant to the terms of the Dispute Resolution Procedure described below; and (ii) the

determination and, as required, the adjudication of any clients' client money entitlements the subject of a dispute to be resolved in accordance with the procedure set out in Schedule III (the "**Client Money Distribution Procedure**").

**Client Money Distribution – Dispute Resolution**

7. The procedure set out in Schedule III shall apply for the purpose of ascertaining the claims of clients, and persons claiming to be clients, to share in a distribution of the Client Money Trust, and the Company and the Administrators shall be at liberty to act in accordance with that procedure.
8. The Company, acting by the Administrators, shall be at liberty to transfer or to distribute the Client Money Trust on the basis that the only clients with a "**client money entitlement**" under CASS 7A.2.5R as against the Client Money Trust are the clients who have:
  - (1) submitted a "**client money proof**" as defined in Rule 1 of the Client Money Distribution Procedure by the Soft Bar Date, as extended to the Effective Date by notice given on 24 April 20202 being "**the last date for proving**" or whose client money entitlement is accepted by the Administrators based on the Company's books and records; and
  - (2) whose client money entitlement is either:
    - (a) agreed by the Company acting by the Administrators; or
    - (b) to be admitted in accordance with an order of the Court on an appeal issued in accordance with Rule 4 of the Client Money Distribution Procedure.
9. For the avoidance of doubt, the Administrators shall act in accordance with this order and the Client Money Distribution Procedure solely as agents of the Company in its capacity as trustee of the Client Money Trust, and nothing in this order or in the Client Money Distribution Procedure or in the performance thereof shall result in the Administrators assuming liability as trustees.
10. The costs of and occasioned by the Distribution Application shall be paid as costs properly attributable to the distribution of the Client Money Trust within the meaning of CASS 7.17.2R(4).

11. The Company and the Administrators shall have liberty to apply to the Court including to vary or modify the terms of this Order and the Client Money Distribution Procedure.

The Court provided a sealed copy of this order to:

Ashurst LLP, London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW

## SCHEDULE I

### Form of undertakings

**[TO BE PLACED ON THE NOMINATED BROKER'S HEADED PAPER]**

FAO the Administrators  
of SVS Securities PLC (in Special Administration)  
of Riverside House,  
Irwell Street,  
Manchester M3 5EN

April 2020

Dear Sirs,

#### **SVS SECURITIES PLC (In Special Administration)**

Unless a contrary intention appears, for the purpose of this undertaking, we shall adopt the definitions used in the Client Money Order and Distribution Plan in respect of the Company, as approved by the Court.

We hereby undertake to the Court, in favour of the Administrators, with immediate effect upon Transfer as defined in the Sale and Purchase Agreement on the Transfer Date, to:

- (a).to hold the Client Money in accordance with CASS 7, as required by CASS 7A.2.4R(4)(c);
- (b).issue to each Client whose Client Money is transferred to it a notice in accordance with the terms and requirements of CASS 7A.2.4R(4)(e) and CASS 7A.2.4A-2G(2); and
- (c).comply with any such Client's request for a reverse to the Company in accordance with IBSAR, regulation 10C or, as may be required if that regulation should not apply for whatever reasons, to return the money to the client at the client's request in accordance with CASS 7A.2.4A-2G(1).

Signed

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Authorised signatory  
for and behalf of [●]

of [●]

## SCHEDULE II

### Definitions

In this Order:

“**CASS 7**” means Chapters 7 of the FCA’s Client Assets Sourcebook (the “Client Money Rules”)

“**CASS 7A**” means Chapters 7A of the FCA’s Client Assets Sourcebook (the “Client Money Distribution and Transfer Rules”)

"**CASS Waiver**" means the proposed FCA waiver of CASS Rule 7A2.4.(4)(b);

“**Claim Form**” means a client money claim form, in the form made available on the Administrators' client claims portal on [www.leonardcurtis.co.uk/svs/](http://www.leonardcurtis.co.uk/svs/) completed to the satisfaction of the Administrators;

"**Client**" means a person for whom the Company has undertaken to receive or hold Client Assets or Client Money (whether or not that undertaking has been complied with);

"**Client Assets**" means assets which the Company holds for a client (whether by means of trust or other means) but does not include Client Money

"**Client Money**" means client money which the Company holds in accordance with the rules made by virtue of sections 138 and 139 of Financial Services and Markets Act 2000;

“**Court**” means the High Court of Justice, Business and Property Courts of England and Wales, Chancery Division.

“**Distribution Application**” means the application by the application notice dated [●] April 2020 by which the Company and the Administrators applied for permission to act in accordance with the terms of Schedule III.

"**FCA**" means the Financial Conduct Authority;

"**IBSAR**" means the Investment Bank Special Administration Regulations 2011 as amended as at the date of the administration of the Company

"**IBSA Rules**" means The Investment Bank Special Administration (England and Wales) Rules 2011 as amended as at the date of the administration of the Company;

“**Order**” means the order, on the Distribution Application, to which this Client Money Distribution Procedure is scheduled.

“**Rule**” means each of the sections of the Client Money Distribution Procedure under Schedule III numbered 1 to 12.

“**sub-paragraph**” means each of the sub-sections of the Rules in the Client Money Distribution Procedure under Schedule III numbered in the format (1), (2) etc.

**"Sale and Purchase Agreement"** means the agreement entered into between the Administrators, the Company and the Nominated Broker dated 16 March 2020

## SCHEDULE III

### Client Money Distribution Procedure

In this Schedule:

Any expression not defined herein has the meaning defined in the Order or, as applicable, in CASS 7 and CASS 7A and other provisions of the FCA's Handbook including the Glossary thereto as at 30 October 2019.

#### Claiming for a client money entitlement

1.—(1) A person claiming to have a client money entitlement (a “**Client Money Claimant**”) and wishing to recover their client money entitlement in whole or in part must (subject to any order of the Court to the contrary) submit or have submitted their claim in writing to the Administrators; and they may do so or have done so by way of a Claim Form..

(2) A Client Money Claimant is referred to as “**proving**” for their client money entitlement and a document by which a Client Money Claimant seeks to establish their claim is their “**client money proof**”.

(3) Subject to the next sub-paragraph, a client money proof must take the form of a Claim Form and must contain sufficient information to enable the Administrators to reach a decision on the admissibility of the claim.

(4) The Administrators may call for any document or other evidence to be produced, where they think it necessary for the purpose of adjudicating on the whole or any part of the client money proof.

(5) Any client money proof submitted prior to the Soft Bar Date (as extended pursuant to paragraphs 8(1) of Order above) via the Company's dedicated portal hosted on the website at [www.leonardcurtis.co.uk/svs/](http://www.leonardcurtis.co.uk/svs/) and which has been accepted by the Administrators shall be deemed a client money proof submitted prior to the Soft Bar Date.

#### Costs of proving

2. Unless the Court otherwise orders—

(a) every Client Money Claimant shall bear the cost of proving their own entitlement, including costs incurred in providing documents or evidence under Rule 1; and

(b) costs incurred by the Company and by the Administrators in assessing a Client Money Claimant's client money entitlement, including the costs of and occasioned by any appeal under Rule 4, are payable from the Client Money Trust as costs properly attributable to the distribution of the Client Money Trust (without prejudice to any right the Company and/or the Administrators



may have to recover their costs of an appeal from the Client Money Claimant in such appeal).

### **Admission and rejection of client money proofs**

**3.—**(1) The Administrators may admit a client money proof either for the whole amount claimed, or for part of that amount. Where a client money proof has not already been agreed as at the date of this Order, the Administrators shall notify clients of the amount of the proof admitted either by individual notice where practicable or by website publication (at [www.leonardcurtis.co.uk/svs/](http://www.leonardcurtis.co.uk/svs/)) using anonymised client identifiers.

(2) If the Administrators reject a client money proof in whole or in part on or after the date of the Order, the Administrators shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the Client Money Claimant.

(3) If the Administrators had rejected a client money proof in whole or in part and sent such a statement prior to the date of the Order, the Administrators shall send a notice to the Client Money Claimant confirming that statement.

### **Appeal against decision on proof**

**4.—**(1) If a Client Money Claimant is dissatisfied with the Administrators' decision with respect to their client money proof, that Client Money Claimant may apply to the Court for the decision to be reversed or varied. Any such application must be made pursuant to Chapter 5 of Part 9 of The Investment Bank Special Administration (England and Wales) Rules 2011, in the Company's special administration proceedings, using the form of application notice appended to this Client Money Distribution Procedure ("**Form 1**").

(2) An application under sub-paragraph (1) must be filed with the Court within 21 days of the Client Money Claimant receiving the statement under Rule 3(2) or the notice under Rule 3(3), as applicable.

(3) A Client Money Claimant who files an application under sub-paragraph (1) above must forthwith give notice in writing to the Administrators of the filing of that application.

(4) Where application is made to the Court under this Rule, the Court shall fix a venue for the application to be heard, notice of which shall be sent by the applicant to the Administrators.

(5) Neither the Company nor the Administrators shall be personally liable for costs incurred by a Client Money Claimant or any other person in respect of an application under this Rule unless the Court otherwise orders.

### **Variation of proof**

**5.** A Client Money Claimant's client money proof may at any time, by agreement with the Administrators, be varied as to the amount claimed.

### **Notice of proposed distribution**

6. Where the Administrators propose to make a distribution to clients or a transfer of client money, the Administrators shall give notice of that fact.

### **Provision and late claims**

7.— (1) Unless the Administrators have already dealt with them, the Administrators shall—

(a) admit or reject (in whole or in part) client money proofs that have been submitted; or

(b) make such provision in respect of them as they think fit.

(2) The Administrators are not obliged to deal with client money proofs lodged after the last date for proving, but may do so if they think fit.

### **Postponement or cancellation of distribution**

8.— If the Administrators consider that by reason of the size of the provision required to be made in respect of any unresolved Client Money Claim or for any other reason that it is expedient to do so, the Administrators may cancel or postpone the proposed distribution or transfer.

### **Payment of distributions and related matters**

9.—(1) The Administrators are not obliged to make provision for Client Money entitlements in any circumstances other than those described at Rule 7(1)(b)) above and Rule 11(1) below; but the Administrators may, in their absolute discretion, make provision in other circumstances.

(2) Payment of distributions may be made by electronic bank transfer or by any other means agreed between the Administrators and the Client Money Claimant.

### **Client money entitlement established, increased or reduced after payment of distribution**

10.—(1) If after payment of a distribution or any transfer of Client Money any Client Money Claimant subsequently establishes a Client Money entitlement, or an increased Client Money entitlement, in either case for which the Administrators did not make provision under Rule 9, the Client Money Claimant is not entitled to disturb the distribution or transfer; but is entitled to be paid, out of any Client Money for the time being available for the payment of any further distribution or transfer, any distribution which the Client Money Claimant has failed to receive.

(2) Any distribution payable under sub-paragraph (1) shall be paid before the Client Money there referred to is applied to the payment of any such further distribution or transfer.

(3) If, after a client's client money proof has been admitted, the amount of the client money proof is reduced, the Administrators have liberty to apply to the Court for an order that the client is liable to repay to the Administrators (for the benefit of the

Client Money Trust) any amount overpaid by way of distribution together with interest.

**Client money balances in the records of the Company for which no claim is submitted**

**11.**—(1) Where the Company has a record of a Client Money balance with respect to a client who has not submitted a client money proof, the Administrators may in their sole and absolute discretion make provision as if that client has a Client Money entitlement equal to their Client Money balance.

(2) The Administrators shall be entitled to apply for directions with respect to any provision made in accordance with sub-paragraph (1) above, and, in default of any further directions applied for, paragraph 8 of the Order shall govern the treatment of such money.

(3) Subject to any provision or any application for directions pursuant to sub-paragraphs (1) and (2) above which the Administrators may make, the Administrators are entitled to transfer Client Money in respect of any client money entitlements which the Administrators accept based on the Company's books and records notwithstanding that the client or clients in question have failed to submit a client money proof.

**Notices**

**12.**— (1) Any notice or statement to be sent by the Administrators to a Client Money Claimant may be sent by email, fax and/or post and shall be deemed to have been received by the Client Money Claimant:

(a) if sent by first class post to an address within the UK, 2 business days after posting;

(b) if sent by airmail post to an address not within the UK, 5 business days after posting;

(c) if sent by fax or email before 5 pm London time on a business day, on that business day; and

(d) if sent by fax or email on a day that is not a business day or after 5 pm London time on a business day, on the next following business day.

(2) For the purposes of sending notices or statements to a Client Money Claimant, the Administrators shall use the primary email address, fax number and/or address recorded on the Company customer information system.

(3) Any notices or legal proceedings to be sent to or served on the Company or the Administrators must be emailed to [EMAIL] with a hard copy delivered for the attention of the Administrators to: [ADDRESS]

**FORM 1**

**APPEAL AGAINST REJECTION OF CLIENT MONEY PROOF**

Rule 4 of the  
Client Money  
Distribution  
Procedure

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

For  
m 1

*Application Notice*

**SVS Securities plc (in special  
administration)**

Company number **04402606**

**IN THE HIGH COURT OF  
JUSTICE  
CHANCERY DIVISION**

*For court use only*  
Court case number: **CR-2019-005229**

Appeal against the rejection of a client money proof pursuant to  
Rule 4 of the Client Money Distribution Procedure prescribed by  
the Order of [JUDGE] dated [7 May 2020].

**Between  
Applicant**

**and  
Respondents**

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**(1) SVS SECURITIES PLC**

(as trustee of the Client Money Trust)

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**(2) ANDREW POXON**

**(3) JULIEN IRVING**

**(4) ALEX DAVID CADWALLADER** (as

Administrators of SVS Securities Plc (in  
special administration))

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This application is made pursuant to the Investment Bank Special Administration (England and Wales) Rules 2011, in accordance with Rule 4 of the Client Money Distribution Procedure prescribed by the Order of [JUDGE] dated [7 May 2020].

The application shall be governed by the Client Money Distribution Procedure and the Court shall give directions for the determination of this application in accordance with that procedure and, as appropriate, Chapter 5 of Part 9 of The Investment Bank Special Administration (England and Wales) Rules 2011.

(a) Insert name of applicant appealing the rejection of the client money proof

The Applicant (a)

whose address is (b)

(b) Insert address of the applicant and / or solicitor for the applicant

For Office use intends to apply to the Judge on:-

Date

Time \_\_\_\_\_ hours

Place \_\_\_\_\_

\_\_\_\_\_

(c) State clearly what order you are seeking.

For an order that (c)

For the following reasons (d)

(d) Briefly set out why you are seeking the order and what evidence you rely on in support of this application

The Applicant appends to this application a copy of: (1) its client money proof; and (2) the notice of rejection of that proof.

Date

Signed:

(SOLICITOR FOR THE) APPLICANT

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