

Applicant  
S E Butt

1<sup>st</sup> Witness Statement  
21 October 2015  
Exhibit "SEB1"

No. 1051 of 2015



IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

**IN THE MATTER OF BOSTON PRIME LIMITED (IN SPECIAL ADMINISTRATION)**

**AND**

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

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**WITNESS STATEMENT OF  
STEVEN EDWARD BUTT**

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I, Steven Edward Butt, of Rollings Oliver LLP, 6 Snow Hill, London, EC1A 2AY **WILL SAY:**

1. I am a licensed insolvency practitioner and partner at Rollings Oliver LLP ("**Rollings Oliver**"). My fellow partner at Rollings Oliver, Michael David Rollings, and I are the Joint Special Administrators of Boston Prime Limited (in special administration) (the "**Company**") (the "**Special Administrators**").
2. I make this witness statement in relation to an application by the Company and the Special Administrators for directions as to how to deal with client money held by the Company. I am authorised by Mr Rollings to make this witness statement on his behalf.
3. The facts and matters set out in this statement are within my own knowledge, unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, I identify the source of that information. Facts and matters derived from other sources are true to the best of my knowledge and belief.
4. There is now produced and shown to me a paginated bundle of true copy documents marked "SEB1". All references to documents in this statement are to Exhibit SEB1 unless otherwise stated.

### **Background to the special administration**

5. The special administration commenced on 9 February 2015, by order of Mr Justice Newey. A copy of the order commencing the special administration is exhibited to this witness statement at pages 1 to 3 of SEB1.
6. A copy of the Special Administrators' proposals, which were approved at a meeting of creditors (effectively the Company's former clients) on 8 April 2015, is exhibited to this witness statement at pages 4 to 49 of SEB1.
7. A copy of the progress report (for the period 9 February 2015 to 8 August 2015) circulated to creditors and clients, and filed at Companies House on 4 September 2015, is exhibited at pages 50 to 76 of SEB1.
8. In broad terms, the Company provided foreign exchange brokerage services for professional (as opposed to retail) clients. It was regulated by the Financial Conduct Authority ("FCA") to perform the following functions:
  - a) agreeing to carry on a regulated activity;
  - b) arranging (bringing about) deals in investments;
  - c) arranging safeguarding and administration of assets;
  - d) dealing in investments as agent;
  - e) dealing in investments as principal; and
  - f) making arrangements with a view to transactions in investments.
9. The background to the failure of the Company, as explained by its sole director, George Popescu, was set out for the Court in Mr Popescu's witness statement, dated 6 February 2015, which was filed in support of the application to put the Company into special administration.

### **The reason for this application**

10. The broad context in which the Application is made is as follows:
  - a) The Company is an investment bank within the meaning of s232 of the Banking Act 2009, in part, because it held client assets.

- b) In the Company's case, the client assets were exclusively client *money*.
  - c) The special administration of the Company is governed by the Investment Bank Special Administration Regulations 2011 ("IBSAR").
  - d) One of the objectives of IBSAR (as opposed to the "normal" administration regime set out in Schedule B1 to the Insolvency Act 1986) is to ensure that client assets are returned to those entitled to them as quickly as possible.
  - e) The IBSAR regime contains no provisions which facilitate the special administrator to impose a bar date on claims to client *money*, whereas it does make provision for a bar date to be imposed on claims to other client assets.
  - f) The Special Administrators would expose themselves, and the Company, to potential claims for breach of trust were they to distribute client money without having the protection of a "bar date order".
11. Accordingly, the Special Administrators invite the Court to give them directions which facilitate them setting a bar date for the submission of claims to client money.
12. The Special Administrators note that this is an issue that has been:
- a) encountered by other special administrators, including those appointed in relation to MF Global and Worldspreads Limited; and
  - b) recognised as a problem by Peter Bloxham, the independent reviewer of IBSAR, appointed by HM Treasury.
13. The report produced by Mr Bloxham in January 2014 is exhibited to this statement at pages 77 to 155 of SEB1. It is to be noted that one of the "key recommendations" put forward by Mr Bloxham (page 80 of SEB1) is:
- "4. Bar date mechanism should be extended to include Client Monies."*
14. This is expanded on later in the report (pages 120 to 121 of SEB1), in which it is stated:
- "8.9 Having made enquiries as to the reasoning behind the introduction in the SAR of a Bar Date for custody assets but not Client Monies, I am satisfied that there was no overriding policy reason for excluding Client Monies from the Bar Date procedure. It seems that, as the Courts were already considering the precise application of the*

*Client Money rules in the LBIE insolvency, it was decided not to include any substantive provisions in the SAR pending the outcome of those cases.*

*8.10 I conclude therefore that the exclusion of client monies from the Bar Date procedure is anomalous and should not be maintained.*

*8.11 I am fortified in this view by developments in the MF Global case, where the Administrators have successfully requested the Court to permit them to establish an ad hoc Bar Date mechanism so as to facilitate the return of Client Money to clients.*

*[...]*

*8.19 In most cases, distributions (particularly of Client Monies) will take place in stages. This being the case, I recommend that there should be a procedure in the SAR for the Administrator who has been through one or more "soft" Bar Dates to set a final "hard" Bar Date which will be definitive and exhaust client claims."*

#### **Correspondence with creditors of the Company**

15. From the Company's books and records, it appears that, at the date of the commencement of the special administration, the Company had a total of 119 clients. Since their appointment, no-one has intimated to the Special Administrators that, although it is not disclosed by the Company's books and records, they were also a client of the Company. It appears, therefore, that the universe of potential client money claimants is limited to the 119 clients of the Company identified in the books and records.
16. The Special Administrators have written letters to each of these 119 clients on seven occasions.
17. The Special Administrators believe that they have taken reasonable steps to obtain up to date contact details for each of the clients. They have received contact information from both Mr Popescu, the Company's former sole Director, and from Forexware LLC ("**Forexware**") a Delaware based Company who effectively operated the Company's day to day business through its offices in Boston. From these two parties, the Special Administrators have received postal addresses and email addresses for the Company's clients and, where possible, these have been cross referenced using internet searches to verify that the information received was correct (the vast majority of these clients were based overseas).
18. In addition to this, anyone carrying out an internet search for "Boston Prime Limited" will have discovered the Special Administrator's dedicated web page (the fourth item in a Google

Search), which provides information about the Special Administration, including five of the seven letters referred to above as well as contact details for the Special Administrators. The Company's website can no longer be accessed. Given that the Company's business was predominately conducted online, this is very important.

19. For a client to have not received any communications from the Special Administrators they would have had to have changed both their email address (in some cases multiple email addresses) and their postal address from those provided to the Special Administrators by Mr Popescu and Forexware, and in multiple cases verified with internet searches. Further, they would have failed to undertake an internet search that would have led them to the Special Administrators dedicated web page, as well as large volumes of internet journalism and foreign exchange industry related comment devoted to the insolvency of the Company. The Special Administrators consider such a possibility to be highly remote.
20. The first letter (of which an example is exhibited at pages 156 to 157 of SEB1) was sent by email on 11 February 2015, and by letter on 16 February 2015 or 27 February 2015, depending on when the Special Administrators identified accurate, current contact details for the relevant client or former client. As can be seen, it notified them of the Special Administrators' appointment. Amongst other things, the letter stated as follows:

*"To assist in our assessment of the financial position and, in the case of clients of the Company, to assist in the reconciliation of client accounts and our understanding of the extent of claims to funds held in the Company's client money bank accounts, please provide details of the amount owed to you as at the date of the Special Administration Order together with full supporting documentation. As regards claims by clients (including those who consider that they have a claim to funds held in the Company's client money bank accounts), this should include;*

- *a copy of the signed version of the terms and conditions of trading between the Company and the client;*
- *as well details of funds deposited with and/or received from the Company; and*
- *details of the trading activity undertaken via your account with the Company.*

*If you contend that you hold any form of security, collateral, pledge or reservation of title, would you please forward details in writing to me as soon as possible."*

21. On 16 March 2015, the Special Administrators sent a letter convening an initial meeting of creditors and clients. This letter also informed creditors and clients that the Special Administrators' proposals, the formal notice of meeting, a statement of claim form and a proxy form could either be downloaded from the Special Administrators' website or requested in hard copy from the Special Administrators. A copy of this letter is exhibited at pages 158 to 159 of SEB1. The letter included the following request:

*"As referred to in our letter dated 26 February 2015, where you believe you are a client of the Company (including those who consider that they have a claim to funds held in the Company's client money bank accounts), please provide the full supporting documentation for your claim including the following;*

- *details of funds deposited with and/or received from the Company;*
- *details of the trading activity undertaken via your account with the Company;*
- *the documentation that establishes (or amends) the terms of trading between the Company and the client including, but not limited to, a copy of the signed version of the Company's terms and conditions relevant to the client."*

22. On 14 April 2015, the Special Administrators sent a letter to clients informing them of the outcome of the initial meeting of creditors and clients. A copy of this letter is exhibited at pages 160 to 161 of SEB1.

23. On 28 April 2015, the Special Administrators sent a letter to creditors and clients (exhibited at pages 162 to 164 of SEB1) requesting that they be provided with information about any client money claims and setting a deadline of 29 May 2015 for this to happen. The letter went into considerable detail about the FCA's CASS rules and the way in which money was held by the Company. It contained the following section:

*"Making Client Money Claims*

*In order to be considered as having a Client Money Claim, clients will need to provide the Special Administrators with the specific information and documents in support of such claims which are described in more detail below.*

*Whilst a number of clients have provided us with information relating to their claims, in order for us to ascertain the full extent of Client Money Claims as soon as possible,*

*we require all clients (including those who may have previously supplied any information) to provide us with the following details in full:*

- *A completed client claim form (which can be downloaded from the webpage that we have created specifically for this matter at [www.rollingsoliver.com/bostonprime](http://www.rollingsoliver.com/bostonprime));*
- *Details of the extent of the outstanding amount due to the client as at the date of the Special Administration order, as well as details of funds transferred to, held with and/or received from the Company and the trading activity undertaken via your account with the Company, all obtained from the Boston Prime back office system (the web based platform to which access was provided by the Company);*
- *All documentation that represents the full extent of the contractual terms of trading between the client and the Company (including the basis upon which funds due to the Client were to be held) which must include a signed copy of both the Company's terms and conditions of trading (including all attached schedules and notices) and any amendments, variations or replacements to those terms; and*
- *Any other documents that you believe are relevant to either the quantum or nature of your claim.*

*In order to expedite this matter, please return all of the above information as soon as is possible and, in any event, no later than 5.00 pm UK Time on Friday 29<sup>th</sup> May 2015 [...]"*

24. On 20 May 2015, the Special Administrators sent a letter to creditors and clients reminding them of the deadline of 29 May 2015. A copy of the letter is exhibited at pages 165 to 166 of SEB1. The letter repeated the request for information set out above.
25. On 8 July 2015, the Special Administrators sent another letter to the creditors and clients who had not submitted the required information (exhibited at pages 167 to 168 of SEB1), reminding them of the information that was still required and giving them an extended deadline to respond of 30 July 2015. Amongst other things, this letter stated:

*“Despite the deadline set out in our Previous Letter, a significant number of the parties that that [sic] had trading accounts with the Company have either failed to respond to our request or have provided incomplete information to us.*

*We are writing to you because you are one of these parties.*

*If you wish to participate in the return of funds to clients entitled to them, we would encourage you to provide the full information requested in paragraphs 1-3 of this letter, if you have anything relevant to paragraph 4 please also provide us with copies of this. Please see below a table setting out the information that we have received from you to date and the information that we still require from you, which is indicated with a cross [...]"*

26. Finally, on 4 September, all known creditors were sent a letter providing them with a link to view the Special Administrators' progress report (which is exhibited to this statement at pages 50 – 76 of SEB1) on the special administration's dedicated web page.

#### **Responses from creditors**

27. Of the 119 clients who might seek to claim that they have client money claims:
- (a) 52 have provided all of the information requested;
  - (b) 27 are missing one of the 3 pieces of information requested (this includes 11 who are not able to access the broker's portal and therefore cannot provide the Special Administrators with a copy of the screenshot of the portal. This is because the broker's portal has now been closed. However, the Special Administrators are able to obtain the necessary information directly from the broker and will do so);
  - (c) 9 are missing 2 of the 3 pieces of information requested (this includes 2 who are not able to access the broker's portal and therefore cannot provide the Special Administrators with a copy of the screenshot of the portal. This is because the broker's portal has now been closed. However, the Special Administrators are able to obtain the necessary information directly from the broker and will do so); and
  - (d) 31 have not provided any information. 25 of this group have not made any contact with the Special Administrators or responded to any communication – although the communications sent to them have not been returned undelivered.
28. Of the clients who have so far made client money claims, 2 of those claims accord with the Company's records (see further below). A number of other clients have intimated that they think that they might have client money claims as well, although, at this stage, it is difficult to quantify these claims and how many of them are being made in earnest. Despite the Special

Administrators' communications with them on the topic, several clients seem either not to understand what a client money claim is and / or to be asserting a client money claim on the basis that they have nothing to lose (and potentially something to gain) from doing so. The Special Administrators will have to engage in further communication with these clients (including by informing them of the bar date envisaged by this application) before they can accurately quantify how many genuine client money claims are being made.

29. The most concerning category from the Special Administrators' point of view are the "non-responders". The clients who are engaging with the Special Administrators, even with incomplete information, can be dealt with through an adjudication process. The Special Administrators understand what these claimants are claiming and such claims can be investigated and either approved or rejected. It remains a theoretical possibility, however, that there is a client who has ignored all of the Special Administrators' correspondence so far but who may seek to make a client money claim at some point in the future. The purpose of this application is to impose a bar date so that, in assessing claims against the client money pool and making distributions from it, the Special Administrators can be sure that they are taking into account the claims of all of those clients which they are required to take into account and do not need to concern themselves with the risk of late claims being made after the event. The alternative to imposing a bar date is to delay (possibly indefinitely) paying out valid client money claims because of the theoretical possibility that a client or former client who has so far refused to engage with the process may, at some future point, choose to assert a claim (being a claim of which the Special Administrators are currently unaware from their investigations into the Company's books and records).

### **The Company's records**

30. The Company's books and records and the Client Money and Asset Return documents ("CMARs") filed by the Company with the FCA show that the Company believed it only had 2 clients whose money was protected as client money under the CASS rules and entitled to be so protected. This is corroborated by the sole director of the Company, George Popescu. The money held in relation to these two clients totals \$900,344.49.
31. The 2 clients mentioned above have made client money claims that match the records held by the Company.
32. As far as the Company's records are concerned (including its returns to the FCA), there are no other clients entitled to client money protection and no money otherwise held on trust by the Company.

33. On a practical level, however, various clients are asserting that their money either was, or ought to have been, held as client money.
34. Once the Special Administrators have established the universe of such claims, they will be in a position to decide how these disputed claims can most efficiently be resolved or, potentially, compromised.
35. The amount of money currently held in the estate by the Special Administrators is approximately £4.2 million (the number is approximate as it is held in different currencies), a number which includes the \$900,344.49 that, as far as the Special Administrators can ascertain from the Company's records, is the only client money held by the Company.
36. According to the Company's records, the total number of potential claims for all 119 clients or former clients is \$17,768,318.94 (£11,662,828.32). The total claims of those clients or former clients who have so far submitted claims are \$18,189,667.21 (£11,939,394.30). It is to be noted that the total of the claims so far submitted exceeds the total liabilities to clients recorded in the Company's books and records. This is due to clients' claims in the special administration exceeding the liabilities recorded as due to them in the Company's books and records. This discrepancy is one subject of the Special Administrators' ongoing investigations.

#### **Interactions with the FCA**

37. The Special Administrators have engaged with the FCA on the issues raised in this witness statement and have explained their proposed course of action.
38. The FCA has considered a near-final draft of this witness statement and the proposed draft order and engaged with the Special Administrators' solicitors, CMS Cameron McKenna LLP ("CMS"), on various points that it wanted to be clarified or explained.
39. After considering the issues, on 21 October 2015 the FCA wrote to CMS, stating that it had no objection to the Special Administrators proceeding with their proposed course of action and making this application. The email from the FCA is exhibited to this witness statement at page 169 of SEB1.
40. The Special Administrators explained to the FCA that, in essence, they would like to make a final distribution without regard to the client money entitlement of a client or former client who has not submitted a claim, provided that the Special Administrators have taken certain steps subject to a timetable. The steps are reflected in the "Client Money Distribution Procedure", which is appended at Schedule A to the order that is being sought on this application. For ease

of reference, Rule 6 of Schedule A, which deals with setting a “last date for proving” (i.e. a bar date) is set out below:

*“Notice of proposed distribution*

*6.—(1) Where the Administrators propose to make a distribution to clients, the Administrators shall give notice of that fact.*

*(2) A notice pursuant to sub-paragraph (1) shall be given to all clients:*

*(a) who are shown in the Company's records: (i) to have had balances on their accounts with the Company as at 9 February 2015, whether positive or negative; and / or (ii) to have submitted a Claim Form to the Administrators; and*

*(b) in each case, whose email addresses, fax numbers or addresses are known to the Administrators;*

*save that the Administrators are at liberty to state, in the first or any subsequent notice, that all further notices shall be given by way of advertisement on the Boston Prime Limited pages of the Rollings Oliver LLP website only at: <http://www.rollingsoliver.com/bostonprime/>. In that event, the subsequent notices need only be advertised on that website and need not be sent to clients.*

*(3) With respect to the first distribution after the date of the Order only (and not subsequent distributions), a notice pursuant to sub-paragraph (1) shall, in addition, be published in the gazette and advertised in the following publications:*

*(a) Financial Times (all editions);*

*(b) The Times; and*

*(c) Wall Street Journal (USA edition and Europe & Asia edition).*

*(4) A notice pursuant to sub-paragraph (1) must—*

*(a) state that it is the intention of the Administrators to make a distribution to clients within the period of 4 months from the last date for proving as defined in sub-paragraph (c) below;*

*(b) specify whether the proposed distribution is interim or final;*

*(c) specify a date (“the last date for proving”) up to which client money proofs may be lodged being a date which—*

*(i) is the same date for all clients; and*

*(ii) is not less than 21 days from that of the notice;*

*(d) state that any Client Money Claimant who has not already submitted a client money proof and who does not submit a client money proof by the last date for proving will not be entitled to share in the proposed distribution.”*

41. Importantly, this does not affect a non-responder’s right to prove as an unsecured creditor (should it have a right to do so) in the special administration or, at least in theory, to make a proprietary claim against the client money in the hands of other clients.
42. One important point to note is the difference between the situations faced by the Special Administrators of the Company and the special administrators of MF Global and Worldspreads Limited. In the latter two cases, the FCA required (and granted) modifications to CASS rule 7A.2.4R(2).
43. These modifications were granted, in summary, to permit the relevant firm (subject to the completion of certain steps) to distribute client money after a primary pooling event without regard to the client money claims of clients who (i) had not submitted a client money proof by the relevant bar date but (ii) were shown in the firm’s records as having a client money claim. The modifications also provided that, with effect from the final distribution of the client money pool, such clients ceased to have any beneficial interest in the client money which the firm had held.
44. However, the FCA rule modifications in respect of MF Global and Worldspreads Limited did not apply in respect of clients who (i) had not submitted a client money proof by the relevant bar date and (ii) *were not* shown in the firm’s records as having a client money entitlement. The imposition of a bar date in that regard was achieved solely by the court order in the cases of both MF Global and Worldspreads Limited. The court order protected the special administrators from liability to third parties for disregarding the potential claims of such clients when distributing the client money pool (as the proposed draft order does in this application).
45. In the case of the Company, and in particular given that there are no creditors of the Company who are shown in the firm’s records as having a client money entitlement who have *not* made a

client money claim, the Special Administrators, with advice from CMS, concluded that they did not require a modification of CASS rule 7A.2.4R(2). The FCA had no objection to this.

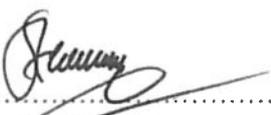
#### **Notice of this application**

46. Once issued, notice of this application will be given to all known creditors by email and / or post (depending on the contact details available) in the form exhibited at page 170 of SEB1. As can be seen, creditors will be directed to the website dedicated to the special administration of the Company, on which they will be able to view copies of the papers relevant to this application, including this witness statement. Hard copies of the relevant papers will also be made available to creditors on request.

#### **The creditors' committee**

47. The creditors' committee, which accounts for 65.08% of creditors by value using the Company's records and including creditors who have not submitted a claim, has been consulted at every stage about this application and has approved the approach taken by the Special Administrators. A copy of the resolution signed by the creditors' committee is exhibited at pages 171 to 176 of SEB1.

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

  
.....  
Steven Edward Butt

Dated 21 October 2015

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