

No 1051 of 2015

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Before

Dated ... 2015

IN THE MATTER OF BOSTON PRIME LIMITED (in special administration)

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

Draft ORDER

UPON THE APPLICATION of (1) Boston Prime Limited (in special administration) (“**the Company**”) as trustee of the trust of client money under the client money rules (“**CASS 7**”) including the client money distribution rules (“**CASS 7A**”) of which the “*firm*” within the meaning of CASS 7.7.2R is the Company (the “**Client Money Trust**”); and (2) Michael David Rollings; and (3) Steven Edward Butt of Rollings Oliver LLP, 6 Snow Hill, London EC1A 2AY, the joint special administrators of the Company (the “**Administrators**”), by their application notice dated 21 October 2015 made pursuant to rule 64 of the Civil Procedure Rules 1998 as amended (the “**CPR**”) and / or the inherent jurisdiction of the Court and / or paragraph 63 of Schedule B1 (“**Schedule B1**”) to the Insolvency Act 1986 (the “**Act**”) as applied without modification by regulation 15 of The Investment Bank Special Administration Regulations 2011 (the “**Regulations**”)

AND UPON reading the witness statement of Steven Edward Butt dated 21 October 2015

AND UPON HEARING Daniel Bayfield for the Company and the Administrators

IT IS ORDERED AND DIRECTED that:

1. The procedure set out in the schedule hereto and marked “A” (the “**Client Money Distribution Procedure**”) 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.
2. If the Administrators give notice of intention to declare a dividend in accordance with Rule 6 of the Client Money Distribution Procedure, they shall be at liberty to cause the Company to distribute property or any part thereof of the Client Money Trust on the basis that:
 - (1) subject to each of subparagraphs 2(2) to 2(4) below, the only clients with a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust are the clients who have submitted a “**client money proof**” as defined in Rule 1 of the Client Money Distribution Procedure by 5 pm on “**the last date for proving**” as defined in Rule 6 of the Client Money Distribution Procedure;
 - (2) any client who appears to have a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust by virtue of information in the records of the Company but who, by 5 pm London time on the last date for proving, has not claimed an entitlement against the Client Money Trust does not have such an entitlement *provided that* the Company complies with Rule 11 of the Client Money Distribution Procedure;
 - (3) any person claiming an entitlement against the Client Money Trust (a “**Client Money Claimant**”) whose client money proof has been rejected does not have a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust *unless* that person has filed an application with the Court to appeal against that rejection and given notice to the Administrators of the filing of that application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators have sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure;
 - (4) any Client Money Claimant whose client money proof is accepted as to part (the “**accepted part**”), but rejected as to part (the “**rejected part**”) does not have a “*client money entitlement*” under CASS 7A.2.4R as against the Client Money Trust in respect of the rejected part *unless* that person has filed an application with the Court to appeal against the rejection of the rejected part and given notice to the Administrators of the filing of that application by the later of: (a) 5pm London time on the last date for proving;

and (b) 30 days after the Administrators have sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure;

3. If the Administrators cause the Company to act in accordance with paragraph 2 above, neither the Company nor the Administrators shall be liable, with respect to any distribution made in accordance with that paragraph, to any client of the Company:

- (1) of whom the Administrators were not actually aware as at 5pm London time on the last date for proving (and, for these purposes, the Administrators shall be deemed not to have been aware: (a) of clients who were treated as having no client money entitlement pursuant to paragraph 2(2) above; or (b) of any other clients who had not submitted a client money proof (as defined in the Client Money Distribution Procedure) by 5 pm on the last date for proving);
- (2) who it is later established (by agreement or by the Court) has a client money entitlement but who had failed to file an application with the Court to appeal against the rejection of its client money proof and give notice to the Administrators of the filing of such application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators had sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure; or
- (3) whose client money entitlement is later agreed or established by the Court as being greater than the accepted part of its claim, but who had failed to file an application with the Court to appeal against the rejection of its client money proof and give notice to the Administrators of the filing of such application by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators had sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable) of the Client Money Distribution Procedure.

4. Any distribution from the Client Money Trust in accordance with paragraph 2 above shall be without prejudice to any entitlement of clients falling within any of paragraphs 3(1), 3(2) or 3(3) above:

- (1) to participate in any subsequent distribution from the Client Money Trust subject to the provisions of the Client Money Distribution Procedure; and / or
- (2) to pursue a claim, if any such claim is otherwise available to them (without acknowledging any such claim), to follow or trace and claim against clients in receipt of any part of the distribution from the Client Money Trust made in accordance with paragraph 2 above prior to the agreement or establishment of their claim.

5. 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.
6. The costs of and occasioned by the Application shall be paid as costs properly attributable to the distribution of the Client Money Trust within the meaning of CASS 7.7.2R(4) and CASS 7.17.2R(4).
7. 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.

SCHEDULE A

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 Financial Conduct Authority's Handbook including the Glossary thereto as at 9 February 2015.

"business day" means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

"Claim Form" means a client money claim form, completed to the satisfaction of the Administrators, in the form available from the Boston Prime Limited pages of the Rollings Oliver LLP website at: <http://www.rollingsoliver.com/bostonprime/>.

"Court" means the High Court of Justice of England and Wales, Chancery Division, or any appellate court with jurisdiction to hear appeals therefrom.

"Distribution Application" means the application by the application notice dated 21 October 2015 by which the Company and the Administrators applied for permission to act in accordance with the terms of this Schedule.

"Order" means the Order, on the Distribution Application, to which this Client Money Distribution Procedure is scheduled.

"Rule" means each of the sections of this Client Money Distribution Procedure numbered 1 to 12.

"Settlement Agreement" means a settlement agreement fixing the value of a client's client money entitlement, in the form sent by the Administrators to the client in question.

"sub-paragraph" means each of the sub-sections of the Rules in this Client Money Distribution Procedure numbered in the format (1), (2) etc.

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 or a signed Settlement Agreement.

(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 (other than a signed Settlement Agreement) 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.

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.

(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.—(1) 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.—(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.

Admission or rejection of proofs

7.—(1) Unless the Administrators have already dealt with them, within 14 days of the last date for proving, 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 in the period of 4 months referred to in Rule 6(4)(a) 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.

Payment of distributions and related matters

9.—(1) Where the Administrators have not, pursuant to Rule 8, cancelled or postponed the proposed distribution they shall, within the period of 4 months referred to in Rule 6(4)(a), proceed to make the proposed distribution.

(2) The Administrators shall make provision for the amount of any client money proof received by them by 5pm London time on the last date for proving and which they have rejected in whole or in part, where they have received notice of an application by the Client Money Claimant to appeal the rejection of their client money proof (in whole or in part) by the later of: (a) 5pm London time on the last date for proving; and (b) 30 days after the Administrators have sent a statement under Rule 3(2) or a notice under Rule 3(3) (as applicable);

(3) The Administrators are not obliged to make provision for client money entitlements in any circumstances other than those described at Rules 7(1)(b) and 9(2) above and Rule 11(1) below; but the Administrators may, in their absolute discretion, make provision in other circumstances.

(4) 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 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; but is entitled to be paid, out of any client money for the time being available for the payment of any further distribution, 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.

(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 shall make provision as if that client has a client money entitlement equal to that 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.

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) Any notices or legal proceedings to be sent to or served on the Company or the Administrators must be emailed to boston.prime@rollingsoliver.com with a hard copy delivered for the attention of the Administrators to: Rollings Oliver LLP, 6 Snow Hill, London EC1A 2AY, England.

APPEAL AGAINST REJECTION OF CLIENT MONEY PROOF

Rule 4 of the
Client Money
Distribution
Procedure

Form

IN THE MATTER OF THE INVESTMENT BANK SPECIAL ADMINISTRATION REGULATIONS 2011

1

1) Application Notice

**Boston Prime Limited (in special
administration)**

Company number **07435569**

**IN THE HIGH COURT OF
JUSTICE**

For court use only
Court case number: **1051 of 2015**

Appeal against the rejection of a client money proof pursuant to
Rule 4 of the Client Money Distribution Procedure prescribed by
the Order of dated

**Between
Applicant**

**and
Respondents**

(1) BOSTON PRIME LIMITED

(as trustee of the Client Money Trust)

(2) MICHAEL DAVID ROLLINGS

(3) STEVEN EDWARD BUTT

(as Administrators of Boston Prime Limited (in
special administration))

(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

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**

ORDER

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