

IN THE MATTER OF PROSPERO MARKETS PTY LTD (IN LIQUIDATION)

NSD 1020/2024

Note for the case management hearing on need for contradictors

	Orders sought	Issue	Interested groups/conflict
Main potential conflicts			
1	Orders 1 and 15 Source from which the liquidators' costs and remuneration re distribution of trust funds should be paid and the potential resulting shortfall	<p>A) Whether the costs of distribution of the trust funds should be paid from the trust funds, the general funds or shared between the two: see <i>Kelly, Re Halifax Investment Services Pty Ltd (In Liq) (No 6)</i> [2019] FCA 2111 at [6].</p> <p>B) Whether clients whose money is held on trust have claims against the company for the shortfall in the trust funds when such shortfall results only from the payment of the costs of the distribution.</p>	<p><i>Clients v unsecured creditors</i></p> <p><u>Conflict:</u> Clients would benefit if the costs came out of general funds (because there would then be no shortfall in the trust funds), creditors would benefit if the costs came out of the trust funds.</p> <p><u>Note:</u> The current Estimated Outcome Statement estimates 100c/\$ for both clients and creditors in either scenario, however, this assumes that the shortfall caused by the costs results in clients having a valid claim as unsecured creditors.</p>
2	Orders 9 and 12 Pooling of trust bank accounts and currency conversion date	<p>A) Whether pragmatic solution is appropriate in light of lack of fulsome records: see eg <i>Re BBY Ltd (Recs and Mgrs Apptd) (In Liq) (No 2)</i> [2018] NSWSC 346 at [40]-[61].</p> <p>B) Whether proposed pragmatic solution to a need for a conversion date is appropriate.</p>	<p><i>Clients with USD claims v Clients with AUD claims/unsecured creditors</i></p> <p><u>Conflict:</u> As a result of the current shortfall in USD denominated bank accounts, and current surplus in AUD denominated bank accounts, clients with USD accounts would benefit from pooling, the AUD clients and the unsecured creditors would not.</p> <p><u>Note:</u> The current Estimated Outcome Statement assumes that the proposed conversion and pooling occurs and estimates 100c/\$ for all clients (whether USD or AUD) and unsecured creditors.</p>

	Orders sought	Issue	Interested groups/conflict
3	Order 10 Limited notice and claim assessment re persons in MT4 Offshore Database	A) Whether orders 10(a) and 10(a)(i)(B) are appropriate in light of the investigations to date and the costs of further investigations re MT4 Offshore Database.	<i>Clients v persons in MT4 Offshore Database</i> <u>Conflict:</u> Most persons in MT4 Offshore Database will not receive notice of the process if orders made (and it is therefore less likely that they will lodge a proof of debt for the liquidators to adjudicate).
Other issues			
4	Orders 2 to 8 Quantum of liquidators' remuneration	Determination of quantum of the remuneration: s 60-5 to 60-12 of the <i>Insolvency Practice Schedule (Corporations)</i> being Schedule 2 to the <i>Corporations Act 2001</i> (Cth).	All clients and creditors
5	Order 10 Distribution process generally	Whether pragmatic process proposed to comply with <i>Corporations Regulations 2001</i> , r 7.8.03 is appropriate.	All clients
6	Order 11 Disregarding client account balances under AUD\$100	Whether the proposed pragmatic solution is appropriate in light of the associated costs: <i>Re BBY Ltd (Recs and Mgrs Apptd) (In Liq) (No 2)</i> [2018] NSWSC 346 at [393]-[397].	<i>Clients under AUD\$100 v other clients</i>
7	Order 13 The available credit bonus promotion terms	Whether the proposed pragmatic solution to the lack of fulsome records of contractual terms is appropriate.	<i>Clients entitled to bonus promotion v other clients/creditors</i>
8	Order 14 Unclaimed money (no bank account details for clients)	Whether the proposed pragmatic solution is appropriate. <i>Corporations Act 2001</i> , s 544 (Unclaimed Money to be paid to ASIC) or general power re payment into court.	<i>Clients with no bank account data v other clients/creditors</i>