



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

FSD CAUSE NO. 205 OF 2017 (NSJ)

IN THE MATTER OF THE ESTATE OF ISRAEL IGO PERRY DECEASED

BETWEEN

- (1) LEA LILLY PERRY**
- (2) TAMAR PERRY**

Plaintiffs

and

- (1) LOPAG TRUST REG.**
- (2) PRIVATE EQUITY SERVICES (CURAÇAO) NV**
- (3) FIDUCIANA VERWALTUNGSANSTALT**
- (4) GAL GREENSPOON**
- (5) YAEL PERRY**
- (6) DAN GREENSPOON**
- (7) RON GREENSPOON**
- (8) MIA GREENSPOON**
- (9) ADMINTRUST VERWALTUNGS ANSTALT**

Defendants

**JUDGMENT ON FURTHER DIRECTIONS TO THE RECEIVERS IN RELATION TO THE
TRANSFER OF THE FUNDS HELD BY BANQUE PICTET & CIE SA**

Appearances: Mr David Brownbill QC instructed by Mr Nicholas Dunne of Walkers
(Cayman) LLC on behalf of the Plaintiffs

Mr Justin Fenwick QC instructed by Mark Goodman and Shaun
Tracey of Campbells LLP on behalf of the First and Ninth Respondents

Mr Graham Brodie QC instructed by Sam Dawson of Carey Olsen on
behalf of the Fifth Respondent

Mr Christopher Harlow of Mourant instructed on behalf of the Joint
Receivers

Before: The Hon. Justice Segal

**Draft judgment
circulated:** 1 December 2021

Judgment delivered: 7 December 2021



1. This Ruling deals with various issues arising out of my judgment dated 1 December 2020 (the ***Consequential Judgment***) and the order made to give effect to that judgment dated 15 January 2021 (the ***Consequential Order***). The background and the details of the relevant accounts dealt with in this Ruling can be found in the Consequential Judgment.
2. In the Consequential Judgment I decided (at [53]) that the funds deposited with Banque Pictet & Cie SA (***Pictet***) in accounts in the names of Solid Fund Private Foundation (***SFPF***) and Solid NV (***Solid***) should be moved to accounts in which the Receivers were joint-account holders so that they had direct rights against the account bank. In paragraph 5(3) of the Consequential Order it was ordered that:

“The funds in the Pictet Accounts shall be transferred to accounts over which the Receivers are joint-account holders. Accordingly, the Receivers shall:

 - (a) *as soon as practicable identify bank accounts in Switzerland which will be opened to hold the fund currently in the Pictet Accounts; and*
 - (b) *within 14 days thereafter inform the parties of the details of the new bank accounts which are to be opened in the joint name of the Receivers, and SFPF or Solid as applicable.”*
3. Paragraph 6 of the Consequential Order imposed various obligations on the Plaintiffs “*upon the completion [of] the steps in paragraph 5(3)*”.
4. Despite the terms of the Consequential Judgment and the Consequential Order, the funds have still not been transferred, even though today is the first anniversary of the Consequential Judgment.
5. On 28 May 2021, in view of the failure to achieve the transfer of the funds, the Receivers issued a summons seeking an amendment to paragraph 5(3) of the Consequential Order to read as follows:

*“The funds in the Pictet Accounts shall be transferred to accounts over which the Receivers are ~~joint-account holders~~ **sole account holders (or in such manner as the Court shall direct)**. Accordingly, the Receivers shall:*

- (a) *as soon as practicable identify bank accounts in Switzerland which will be opened to hold the fund currently in the Pictet Accounts; and*



(b). *within 14 days thereafter inform the parties of the details of the new bank accounts which are to be opened in the ~~joint~~ names of the Receivers, and ~~SFPF or Solid as applicable.~~*"

6. Regrettably, the earliest date on which the summons could be listed, in view of the unavailability of counsel and my being unavailable from the mid-August until mid-September, was 11 November 2021. At the hearing, the Receivers appeared and set out why they considered that the proposed amendments were needed and justifiable. The other parties appeared and made various representations. The Plaintiffs opposed the relief which the Receivers sought and argued that they had complied with the terms of the Consequentials Order and that the terms of the Consequentials Order should be given effect by having the funds transferred to joint accounts with Pictet. The Trustees and the Fifth Defendant, in view of what they alleged were breaches by the Plaintiffs of, and in any event the long delay in implementing and giving effect to, the Consequentials Order, supported the Receivers application for the accounts to be in their sole name but also argued that the Court should order that the funds be transferred to another bank other than Pictet, even if that bank had a branch in this jurisdiction. At the conclusion of the hearing, I directed that the Receivers give further consideration, in light of the parties' submissions and concerns, as to their preferred approach and in particular whether the most appropriate course was to press ahead to arrange for the opening and transfer of the funds to joint-accounts at Pictet or whether it was necessary and justifiable to transfer the funds to accounts in the Receivers' sole name and if so at which bank. The Receivers did so and wrote to the Court with the result of their further deliberations on 12 November 2021. In an email sent to the attorneys by my assistant on 15 November 2021, I issued the following decision:

"I refer to the hearing on Thursday of last week and to the letter (the Letter) of Friday from Mourant on behalf of the Joint Receivers.

In view of the urgency of the matter, I shall set out in this email a short note of my decision. If the parties wish me to do so, I shall also prepare a written judgment for distribution in due course.

Having reviewed and carefully considered the Joint Receivers' application and submissions, and their proposals as set out in the Letter, and the submissions made by the other parties at the hearing, I have concluded that:

- 1. in the Consequentials Judgment dated 1 December 2020 I decided as follows (underlining added) (at [53]):*

“Secondly, the funds [in the Pictet accounts] should be moved to accounts in which the Receivers are joint-account holders so that they have direct rights against the account bank. This will ensure that, as originally required, the funds are held in accounts which are clearly controlled by the Receivers, in the sense that the Receivers’ consent to withdrawals is a legal requirement binding on the bank with whom the funds are deposited. It is in my view sufficient that such accounts are in Switzerland provided that the accounts are in the name of the Receivers and SFPF and the Receivers and Solid respectively. I propose to direct that the Plaintiffs’ Alternative Proposal be implemented and that the Plaintiffs take steps to procure that SFPF and Solid open new accounts in Switzerland with Pictet or another bank in the joint names of the Receivers and each of them and that SFPF and Solid transfer all the funds currently in the Pictet accounts to such new accounts. I propose to direct that the Receivers have discussions with the parties and with suitable Swiss banks (including Pictet if appropriate) within 14 days after the date on which this Judgment is handed down in order to identify where the new accounts will be opened and held and that within 14 days thereafter they shall decide and inform the parties in which bank the new accounts are to be opened, whereupon the Plaintiffs shall within 14 days procure and direct (as monitoring beneficiaries or otherwise in the exercise of their rights and powers) that SFPF and Solid seek the consent of the Swiss prosecutor to (to the extent that such consent has not already been obtained) the opening of and the transfer of the funds to such accounts and that within 7 days of such consent being obtained, that SFPF and Solid execute and deliver to the new bank the papers required to open the new accounts and give instructions to Pictet for the immediate transfer of the funds to the new accounts.”

2. *as is clear from this extract, my decision was that the funds in the Pictet accounts be transferred into accounts in which the Joint Receivers were joint (and not sole) account holders and that the new joint accounts could be opened with Pictet if appropriate. The decision as to which bank would be used and hold the joint accounts was to be made by the Joint Receivers.*
3. *I also concluded (at [54]) that I did not consider that “it would justifiable or fair to change the jurisdiction in which the funds are held by transferring them to accounts in Cayman (this could change and weaken the position of the Plaintiffs and SFPF/Solid in litigation both before and after the outcome of the Appeal).”*
4. *the principle which the Consequentials Judgment was designed to give effect, as it related to the funds held by SFPF and Solid NV, was that a proper balance of the interests of the parties was to be found by ensuring, by orders directed to the Plaintiffs in these proceedings, that these funds could not be dissipated or moved pending the outcome of these proceedings (and that BGNIC acting with the consent of the Joint Receivers, should be able to prosecute proceedings to challenge and set aside the Solid Dilution and recover these funds). I took the view that giving the Joint Receivers negative control of the funds was sufficient. I considered that it was not appropriate, at least on the facts as presented at the Consequentials Hearing, to grant relief intended to protect the Trustees’ (and the other Defendants’) rights to enforce any judgment which BGNIC may obtain in other proceedings (probably but not necessarily only in Curaçao) as a result of such a challenge.*



5. *while there has been a thoroughly undesirable delay in giving effect to this part of the Consequential Judgment, and various factors have resulted in and parties contributed to the delay, in my view in light of the evidence filed on the Joint Receivers' application and for the purpose of last Thursday's hearing, and the Joint Receivers' proposals set out in the Letter, the Court should order that the original terms of the Consequential Judgment should now be given effect without further delay. I consider that the funds in the Pictet accounts should be transferred to new accounts with Pictet in the joint names of the Joint Receivers and SFPP and Solid. I do not consider that accounts with EFG are suitable or necessary. EFG has a Cayman branch and this risks changing the position of the parties to the Solid Dilution dispute and being inconsistent with the principle I have referred to above. Various assertions were made at the hearing as to the impact of EFG having a Cayman branch, but the issue was only dealt with perfunctorily and not in depth. I would need to consider the consequences much more carefully and on the basis of proper submissions and be satisfied on the basis of evidence that there had been a relevant and material change in circumstances, before being prepared to direct that the funds be held in accounts with EFG. Furthermore, I am not satisfied on the evidence filed to date that it is necessary to transfer the funds to EFG (or a bank other than Pictet). I recognise that the Trustees and the Fifth Defendant have serious (and understandable) concerns about Pictet's role in the Solid Dilution and that new evidence establishing for example wrongdoing or impropriety would make it necessary to move the funds to another bank. But the unsupported assertions and inferences relied on at the hearing are insufficient. Nor is there any suggestion, let alone evidence from Swiss lawyers, that the Joint Receivers as joint account holders would not as a matter of Swiss law have the right to prevent any withdrawals from or dealings with the funds in the joint accounts with Pictet or would otherwise be at risk. As will be clear, I do not consider, despite giving great weight to the Joint Receivers' views, that it is necessary or appropriate to require the funds to be transferred to accounts with Pictet in the sole name of the Joint Receivers.*

6. *I do not propose in this short note of my decision to discuss in any detail the parties' conduct and the reasons for the delay in the matter come back before the Court. But I will say this. First, it is most unfortunate that the Joint Receivers' summons which was issued on 28 May could only be listed on 11 November. Part of the responsibility for this was no doubt mine as I was out of action for part of August and September. But in future, if a summons is considered to be urgent and a listing is delayed, the attorneys should approach me via my assistant with a request for expedition, even if all the parties' counsel is not available. Secondly, where a matter is to be decided by the Joint Receivers and time is of the essence, the Joint Receivers would be well advised (even though discussions among the parties is important) to set a clear deadline by which discussions with and among the parties are to be concluded and their decision unequivocally and firmly communicated so that if that decision is not implemented an application to the Court can be made without delay. Thirdly, while the Plaintiffs are entitled to raise concerns and issues regarding such a matter in discussions, once a decision has been made and clearly communicated, they must give effect to it unless they promptly apply to the Court to challenge the decision on proper grounds.*



7. *The new joint accounts with Pictet must now be opened and the funds transferred as a matter of urgency (obviously once the Swiss Prosecutors' consent has been obtained, where that is required). I consider that the consent of the Swiss Prosecutor should be sought (by the Plaintiffs acting together with the Joint Receivers) as soon as possible and by no later than Wednesday of this week, and that the necessary papers for opening the accounts and effecting the transfers should also be prepared, signed and delivered to Pictet as soon as possible and by no later than Friday of this week, subject to obtaining and conditional upon the consent of the Swiss Prosecutor (the Plaintiffs shall procure that SFPPF and Solid give the requisite consents and agreements and sign and deliver the necessary papers within that time frame). If the new accounts have not been opened and the funds transferred by Friday 26 November, the Joint Receivers shall prepare for and file with the Court a report setting out what steps have been taken and the reasons in their view as to why the accounts have not been opened or the funds have not been transferred and the Joint Receivers and the parties shall have liberty to apply for additional relief (upon making a suitable application supported by the requisite evidence). The hearing of any such application would be expedited and I would, subject to directions for the filing of evidence, aim to list the application during or before the week commencing 13 December.*

8. *I shall invite the attorneys to prepare and seek to agree the form of order to give effect to this decision and to file a draft in agreed form or with brief statements setting out the parties' respective positions on issues which cannot be agreed, together with submissions as to costs, by Friday 19 November."*

7. After my decision, steps have continued to be taken with a view to opening the two new joint accounts (the **New Accounts**) at Pictet and I have issued further directions requiring the Receivers to prepare and file reports updating the Court and the parties as to the steps taken and the status of the account opening process and also on the merits, expense, and practicability of taking steps to open other accounts while the process for opening the New Accounts continued.

8. In accordance with those directions, on Friday 26 November the Joint Receivers filed their report dealing with the steps taken to open the New Accounts (the **Account Opening Report**). This followed the filing on Tuesday 24 November 2021 of their report on the practicality, cost, and merits of opening two new accounts in their sole at either Bank J. Safra Sarasin (Switzerland) or EFG Bank AG (the **Parallel Accounts Report**).

9. On Wednesday 25 November 2021 (and in accordance with my directions), the Trustees and the Fifth Defendant filed written submissions setting out their position with respect to matters dealt with in the Parallel Accounts Report.



10. On Monday 29 November 2021, the Trustees and the Plaintiffs filed written submissions setting out their position with respect to the need for and if required the terms of further directions to be given by Court in light of and following the filing of the Account Opening Report (and the Parallel Accounts Report).
11. Yesterday (30 November), the Joint Receivers wrote again to the Court to confirm that they would not be executing, and Pictet had not required that they enter into, a pledge agreement or credit facility management agreement and that they were not aware of any of the assets held in Solid and SFPPF's accounts at Pictet being encumbered by any form of loan or other credit arrangement.
12. In the Account Opening Report, the Joint Receivers explained the steps that had been taken to open two new joint accounts (the *New Accounts*) at Banque Pictet & Cie SA (*Pictet*) to hold the funds currently held by Pictet in the names of Solid Fund Private Foundation (*SFPPF*) and Solid NV (*Solid*). They confirmed that "*all parties [had] been proactive in attempting to open the New Accounts as quickly as possible*"; that "*the Swiss Prosecutor [had] confirmed that he intends granting consent to the Joint Receivers' and Plaintiffs joint application to transfer the funds to new accounts at Pictet*"; that the account opening forms signed in wet-ink form by all parties had to be delivered to Pictet; that the account opening forms had already been signed by Mr Royle and sent on 26 November to the BVI for Mr Dickson, the other Joint Receiver, to sign, whereafter they would be sent by courier to New Jersey for Michael Jacob to sign, then to the Isle of Man for Neil Duggan to sign and then to Switzerland to Pictet to "*complete the process*"; and that "*On the basis that the New Accounts cannot be formally activated until Pictet has received the original signed account opening forms, the Joint Receivers anticipate that the accounts will not be fully operational until at least mid-December.*" The Joint Receivers concluded as follows:

"Based on their correspondence with Pictet and the progress which has been made with Pictet in relatively short order with the assistance of Solid and SFPPF, the Joint Receivers believe that the process of opening the New Accounts at Pictet is progressing as expeditiously as possible and that the New Accounts will be opened at Pictet once the account opening forms are signed by the remaining three necessary signatories and the Swiss Prosecutor's consent is obtained (although he has already confirmed his approval subject to any objections by the Trustees)."



13. The Trustees' counsel (Campbells) has confirmed in their written submissions dated 29 November that the Trustees' Swiss counsel wrote to the Swiss Prosecutor on 22 November 2021 and informed him that the Trustees would not object to the transfer of funds, so long as the Swiss freezing order continued to apply to those funds once transferred to the New Accounts.
14. In the Parallel Accounts Report the Joint Receivers confirmed that the Safra Group entity at which the New Accounts would be opened did not have a branch in the Cayman Islands; that the EFG entity in Switzerland where the funds would be held is the entity that holds a Category B licence issued by the Cayman Islands Monetary Authority; that the transfer of funds to new accounts at Safra or EFG will require the Swiss Prosecutor's consent, which had not yet been sought; Safra had advised that it would need to complete a further compliance review of SFPP and Solid from a source of funds perspective before it could accept the transfer of the funds from Pictet but the Joint Receivers did not yet know how long this review was expected to take and whether it could be undertaken concurrently with the account opening process; Safra's proposed annual fees for operating (in the first instance) a cash only execution account service was US\$232,000 per annum based on the value of the combined funds held by Solid and SFPP, however Safra had indicated previously that it may be willing to reduce its fees to match those of its competitors; EFG had advised that all documentation required to open the New Accounts had been populated and was only awaiting execution by the Joint Receivers, that it estimated that these forms should take approximately one hour to complete which could be done electronically and that it would be able to complete the account openings for the New Accounts within two to five working days; EFG had also advised that it had received all relevant KYC documentation for the Joint Receivers and was fully satisfied from a source of funds perspective and that its proposed annual fees for operating (in the first instance) a cash only execution account service were US\$160,000 per annum based on the value of the combined funds held by Solid and SFPP. The Joint Receivers concluded as follows:

“Based on their correspondence with EFG and Safra to date, the Joint Receivers are of the view that:

- a. Opening accounts at EFG will be quicker than at Safra: EFG say that they can be opened within two to five days, whilst Safra is estimating a period of one to two weeks;*
- b. Opening and maintaining the accounts at EFG would be cheaper than at Safra by approximately US\$72,000 annually, but as noted Safra may match a lower fee quote received by the Joint Receivers; and*



c. *Therefore, if His Lordship deems it appropriate, the Joint Receivers recommend that the New Accounts be opened with EFG in order to facilitate an expeditious transfer of the funds held in the Solid and SFPF Pictet accounts (subject to the co-operation of Solid and SFPF in providing the requisite closing instructions to Pictet) rather than at Safra.”*

15. The written submissions of the Fifth Defendant’s counsel, filed before the filing of the Account Opening Report, set out the Fifth Defendant’s position. She supported the suggestion (put forward by me for the parties’ consideration) that the Joint Receivers take steps immediately to open accounts at Safra or EFG in the Joint Receivers' sole names and submitted that the Plaintiffs and the Joint Receivers be directed immediately to seek the Swiss Prosecutor's consent to the transfer of the funds currently held at Pictet in the sole names of SFPF and Solid NV into such new accounts at Safra or EFG. I made this suggestion (following Pictet’s initial statements on timing, which appeared to me to suggest a lengthy process and further delays in completing the account opening process and some comments it made suggesting that this process gave rise to certain complexities, which comments Pictet has subsequently clarified) on the basis that the Court wished to avoid being in a position where the New Accounts had not been opened after the elapse of a further period of time and there were no alternative accounts opened into which the funds held by Pictet could be transferred, so that further delays would occur while the process of opening accounts with other banks started from scratch. The written submissions explained that in order to facilitate, and provided that the Swiss Prosecutor gave his consent to, such a transfer, the Fifth Defendant intended to file a summons seeking an amendment to paragraph 5(3) of the Consequentials Order. The proposed amendment was set out in the written submissions and provided for the funds held by Pictet to be “*transferred to accounts **in another Swiss bank***” (the words in bold being the amended language) although it still referred to accounts “*over which the Receivers are joint-account holders.*” The written submissions also stated that the Fifth Defendant considered that for so long as the funds remained at Pictet, the Second Plaintiff had the ultimate control over the accounts and that this should not be permitted. The written submissions further stated that (a) the Fifth Defendant submitted that precluding the funds being deposited and managed by Swiss banks with a Cayman branch was prejudicial to the parties since the most reputable Swiss banks (such as UBS) had such a branch and might be the preferred holder of the funds and (b) that the substantial amount of the funds required that they be properly managed and not held in cash accounts, so that further directions were urgently required since the Joint Receivers’ proposals only involved payments of the funds into cash accounts. The Fifth Defendant requested that the Court instructed the Joint Receivers, as a matter of urgency, to



obtain proposals from all of Pictet, EFG, Safra for investment accounts, as directed in paragraph 55 of the Consequentials Judgement.

16. In the written submissions filed on 29 November 2021, the Trustees' counsel submitted that the Receivers' Account Opening Report revealed that there was no guarantee that the New Accounts will be opened with Pictet within a reasonable timeframe and that in view of the extensive delay in the implementation of the Consequentials Order and the importance to the parties of safeguarding of these funds, particularly given the circumstances outlined by the Fifth Defendant in her Tenth Affidavit, the Court should now direct that the Receivers open as soon as possible new accounts with EFG in their own name and that the funds currently held in the Pictet accounts should be transferred to the new EFG accounts if the New Accounts with Pictet had not been opened (and funds transferred thereto) by 4pm Cayman time on 3 December 2021.
17. In the written submissions also filed on 29 November 2021, the Plaintiffs' counsel submitted that it was plain that the New Accounts with Pictet accounts can, and will, be opened in the very near future and that no reason had been identified as to why the likely timeline for that process will put the funds at risk, or prejudice, any party. There was no suggestion from any party that the freezing order in Switzerland will be lifted in the near future (or indeed that it will ever be lifted without notice to the parties), so that there was no material difference between an account being opened now or within the next two weeks, as the funds were plainly not at any risk in the interim. Furthermore, the Receivers' Account Opening Report demonstrated that the Receivers and the Plaintiffs had acted expeditiously and cooperatively in connection with the opening of the New Accounts, both in liaising with Pictet and with the Swiss Prosecutor; that Pictet was fully cooperating in that process, and was expediting its internal processes and understood the urgency of the situation; that the account opening process had already been commenced and account numbers reserved and that the further short delay in opening the accounts was attributable to the need for wet ink signatures on the same document as required by Pictet's internal processes. Accordingly, they submitted, the Court's existing order was entirely adequate to put in place the protections envisaged by the Consequentials Order and requires no further amendment or gloss.
18. At present, the only summons before the Court is the Receivers' summons of 28 May. The Receivers had, as I have explained, applied for an amendment to paragraph 5(3) of the Consequentials Order. Despite giving great weight to the opinions and wishes of the Receivers as the Court's officers, I was not prepared, following the 11 November hearing, for the reasons



explained in my decision of 15 November 2021, to grant the Receivers' application. I concluded that what was needed were further urgent steps to ensure that the New Accounts were opened with Pictet, and the funds transferred thereto, as a matter of urgency (subject to and once the Swiss Prosecutors' consent had been obtained) so that the requirements of the Consequentials Order were given effect and complied with. The Receivers' Account Opening Report provides the Court with a further update on the steps that have been taken to do so. It is true that the New Accounts have yet to be opened but it seems to me, as the Plaintiffs' submitted, that the Receivers' Account Opening Report shows that to date Pictet has been cooperating and acting with a view to making progress towards completing the account opening process as soon as practicable (the Receivers confirmed that in their view Pictet was "*progressing as expeditiously as possible*") and that the delays have been the result of understandable problems in completing the account opening documents in circumstances where the required signatories are in four different jurisdictions and Pictet is in a fifth jurisdiction, and where Pictet requires a single set of account opening documents manually signed by each of the required signatories. While this appears to be an antiquated and slow procedure, it has not been suggested that Pictet has imposed special conditions and requirements for this case or is acting otherwise than in accordance with its standard procedures. Nor has it been suggested that it was practicable or cost effective for the signatories to travel to and meet in Switzerland to sign the documents. In view of the number of jurisdictions and parties involved, the requirements of Swiss banking law and the involvement of the Swiss Prosecutor it would be unreasonable and unrealistic to believe that the account opening, and funds transfer process could be completed within a matter of a few days. Some good progress now appears to have been made (after the delays that occurred prior to the 11 November hearing) and there are grounds for concluding that the New Accounts can be opened, and the funds transferred within the next two weeks. It appears that the Swiss Prosecutor has informally confirmed his consent to the opening of the New Accounts and the fund transfers and that his formal consent can be obtained within that timeframe. It also appears, as the Plaintiffs also submitted, that the Swiss freezing order means that both as a matter of law and practice, that the funds in the Pictet accounts cannot be moved and therefore are not at risk in the meantime.

19. In my view, in these circumstances, the basis for my decision of 15 November still stands and the Receivers should for the time being, proceed to arrange for the New Accounts to be opened and the funds from the existing Pictet accounts to be transferred as soon as possible. In these circumstances, paragraph 6(2) of the Consequentials Order should be treated as engaged so that, on the assumption that SFPF and Solid have already executed and delivered all the required



account opening documents to Pictet, the Plaintiffs are required once the Swiss Prosecutor's consent has been formally confirmed, to give instructions to Pictet for the immediate transfer of all the funds in the Pictet accounts to the New Accounts. I do not see why the Plaintiffs need or should still be given 7 days to do so. They should have the relevant instructions prepared and authorised so that they should give them and be required to give them on the business day following the date on which the Plaintiff is given written (including of course by email) notice that the Swiss Prosecutor has given his consent in writing. The Consequential Order is to be treated as amended to that extent.

20. But I accept the concerns repeatedly and loudly expressed by the Trustees and the Fifth Defendant that it has taken far too long to give effect to paragraph 5(3) of the Consequential Order. It is unacceptable that this part of the Consequential Order is still outstanding one year after the Consequential Judgment. While (as I noted in my decision of 15 November) I have not yet been able to form a view as to whether the Plaintiffs were in breach of the Consequential Order and as to who precisely was at fault for the delay (although my first impression is that various parties contributed), and while the New Account opening process with Pictet should be given a reasonable further period in which to be completed, it is clear that the delay cannot be permitted to continue. I consider that the reasonable further period is until 14 December. I do not consider that the Trustees' suggestion of 3 December is reasonable or appropriate. If the New Accounts are not opened and the funds have not been transferred by that date, then it will, absent exceptional circumstances, be time for a different approach. Circumstances will have changed in that it will have become apparent that it has not been possible to open and transfer funds to the New Accounts within a reasonable or acceptable timeframe. The Court will then need rapidly to consider what alternative arrangement is required and fair and reasonable in the circumstances.
21. It seems to me that it will be important for the Receivers to have if at all possible opened other accounts by then so that if appropriate the funds can be transferred rapidly. The Receivers have reiterated that in their considered view, they should be permitted to open such accounts in their own name with EFG. They have explained that it appears that new accounts can be opened most rapidly with EFG and that EFG's fees (for operating cash accounts) are competitive. Indeed, it appears from what the Receivers have said that it is only if new accounts are to be opened with EFG that there is a reasonable prospect that such accounts could be opened by 14 December. It also appears that the Receivers are satisfied, despite the Plaintiffs' questions and concerns, that EFG is a financially sound financial institution and an appropriate bank to hold the substantial funds with which we are dealing in the present case. It is true that EFG has a Cayman branch and



that I have been concerned, if at all possible, to avoid making an order that gave rise to a material risk that the position of the parties (or SFPF/Solid) following judgment would be altered. As I noted in paragraph 5 of my 15 November decision, “*Various assertions were made at the hearing as to the impact of EFG having a Cayman branch, but the issue was only dealt with perfunctorily and not in depth. I would need to consider the consequences much more carefully and on the basis of proper submissions and be satisfied on the basis of evidence that there had been a relevant and material change in circumstances, before being prepared to direct that the funds be held in accounts with EFG.*” However, my preliminary view is that the inability to open (in the sense of an unacceptable delay in opening) the New Accounts would satisfy the requirement for a change of circumstances and, taking into account the Receivers’ reports and position, justify an order that the funds be transferred to accounts in the Receivers’ sole names with EFG.

22. Accordingly, it seems to me that the Receivers should be directed to take immediate steps to open two new accounts in their sole names with EFG into which the funds currently held by Pictet in accounts in the name of SFPF and Solid would be transferred with a view to these accounts being opened and operational by 14 December. The Parallel Accounts Report confirms that this can be done without undue expense.

23. In the event that the New Accounts are not opened, and the funds transferred to them by 14 December, the parties should file by 5pm Cayman time on 15 December further written submissions setting out the orders they invite the Court to make together with any requisite further applications and evidence in support. I appreciate that this is a short deadline, but the parties will be able to prepare most of that evidence in advance of 14 December and be able to respond quickly to a failure to open and fund the New Accounts by 14 December. Furthermore, the parties will be able to cross-refer to previous submissions. The issues have been well rehearsed albeit that further applications and evidence are likely to be needed to support the position of some parties and enable the Court to consider the relief they seek.



24. I shall then provisionally list a hearing at 9am Cayman time on Friday 17 December for the purpose of hearing the parties' submissions and applications. If the New Accounts have been opened and funded by 14 December or if the parties have reached agreement as to an alternative arrangement (subject to such agreement being approved by the Court), the hearing can be vacated. Of course, if the Fifth Defendant has filed the summons referred to in the written submissions filed on 25 November on her behalf (seeking an amendment to the Consequential Order to require that the funds which will have then been transferred to the New Accounts with Pictet be transferred to a different bank) together with any further evidence on which she wishes to rely and directions for evidence in opposition and skeleton arguments have been agreed or made that allow that summons to be effective and heard on 17 December, it will be possible to do so. Otherwise, if the Fifth Defendant chooses to issue such a summons a further hearing can rapidly be listed to deal with it.

Mr. Justice Segal
Judge of the Grand Court
7 December 2021