

On behalf of AGPS BondCo PLC  
Andrea Trozzi  
Second Witness Statement  
Exhibit AT2  
23 March 2023

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF AGPS BONDCO PLC**

– AND –

**IN THE MATTER OF THE COMPANIES ACT 2006**

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**SECOND WITNESS STATEMENT OF ANDREA TROZZI**

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I, **ANDREA TROZZI**, of 16 Eastcheap, London, United Kingdom, EC3M 1BD, **WILL SAY AS FOLLOWS:**

**I INTRODUCTION**

- 1 I am, and have been since its incorporation on 23 December 2022, a director of AGPS BondCo Plc., with company number 14556926 and registered office at 16 Eastcheap, London, United Kingdom, EC3M 1BD (the “**Plan Company**”).
- 2 I make this witness statement on behalf of the Plan Company in support of its proposed restructuring plan under Part 26A of the Companies Act 2006 (the “**Plan**” or the “**Restructuring Plan**”). I am duly authorised to do so by a resolution of the board of

directors of the Plan Company.<sup>1</sup> This second witness statement supplements my first witness statement in these proceedings dated 20 February 2023 (the “**First Statement**”) and should be read together with my First Statement.

- 3 My professional experience is set out in full at paragraph 7 of my First Statement. However, since the date of my First Statement, THM Partners was acquired by AlixPartners LLP (“**AlixPartners**”). I therefore became a partner and managing director at AlixPartners on 1 March 2023. A copy of my CV is exhibited at [AT2/4]. I remain acquainted with the affairs of the Plan Company and the wider Group. As noted in my First Statement, I am able to give evidence on the matters I refer to in this witness statement from the knowledge I have acquired regarding the affairs of the Plan Company and the Group in my capacity as director of the Plan Company and from information supplied to me by the sources which I refer to in this witness statement.
- 4 I confirm that this witness statement has been prepared with assistance from solicitors at White & Case LLP (“**White & Case**”), counsel for the Plan Company, via email, telephone and videoconference calls. In this witness statement, I occasionally refer to advice received from legal and financial advisers to explain the source of my belief on certain matters. In doing so, I do not intend to (and do not) waive any privilege in respect of such advice.
- 5 Insofar as the facts and matters set out in this statement are within my own knowledge, they are true. Insofar as they are not within my own knowledge, they are true to the best of my information and belief.
- 6 There is produced to me and exhibited to this witness statement a bundle of documents marked as Exhibit “**AT2**”, to which I refer in this witness statement. References in this witness statement to “[AT2/X]” are references to that exhibit where “**X**” is a reference to the page number.

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<sup>1</sup> Resolution of the Plan Company, 20 February 2023 [AT1/1].

7 Capitalised terms used in this witness statement shall, unless otherwise defined, have the meanings given to them in the First Statement or the Explanatory Statement dated 27 February 2023, as updated on 15 March 2023 (at [AT2/5] as appropriate).

8 The First Statement sets out background information on, among other things, the Plan Company and the Group (of which the Plan Company is a part), the financial position of the Group, and the Restructuring Plan.<sup>2</sup> The purpose of this witness statement is to update the Court on certain developments that have occurred since the Convening Hearing (defined below) concerning the Group and the Restructuring Plan.

9 By consent order filed on 17 March 2023, the parties agreed to vary the procedural timetable set out in the Convening Order (defined below).<sup>3</sup> Among other things, it was agreed that the AHG's deadline to file its evidence relating to the Comparator Report be extended until (at the latest) 19 March 2023. Similarly, the deadline for the Plan Company's evidence in reply, in respect of the Comparator Report, was extended until (at the latest) 25 March 2023.

10 The structure of the remainder of this statement is as follows:

- (a) Update and Outcome of the Plan Meetings (**Section II**);
- (b) Undertakings (**Section III**);
- (c) Engagement with the AHG since the Convening Hearing (**Section IV**);
- (d) The Purported Termination Notices (**Section V**);
- (a) Update on the Financial Position of the Plan Company and the Group (**Section VI**); and

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2 In section A of my First Statement, I explained that the Lock-Up Agreement was initially made available to all Plan Creditors on 25 November 2022, and Plan Creditors have been entitled to accede to the Lock-Up Agreement at any time. Initially, any Plan Creditor that acceded to the Lock-Up Agreement by no later than 13 December 2022 would be entitled to a lock-up fee equal to 0.25% of the value of that Plan Creditor's locked-up SUNs (the "**Lock-Up Fee**"). The Court should note that on 19 February 2023, the Group extended the Lock-Up Fee eligibility deadline to noon London time on the date of the Plan Meetings (21 March 2023). As matters stand, 68.85% of the SUN Holders by value acceded to the Lock-Up Agreement prior to the deadline.

3 Unsealed signed consent order [AT2/1494].

(e) Conclusion (Section VII).

## II UPDATE AND OUTCOME OF THE PLAN MEETINGS

- 11 By an order of the Court (the “**Convening Order**”) made in these proceedings on 27 February 2023 by Sir Anthony Mann (the “**Convening Hearing**”) [AT2/1497], the Plan Company was granted permission to convene in the manner recorded in the Convening Order meetings of the Plan Creditors (the “**Plan Meetings**”) for the purpose of considering and, if thought fit, approving (with or without modification) the Plan proposed to be made between the Plan Company and the Plan Creditors.
- 12 The Court appointed Michael James Westcott (director of the Plan Company), Thomas Josef Echelmeyer (director of the Plan Company and Chief Financial Officer of the Parent Company), or myself to act as chair of the meeting (the “**Chair**”), or if they were unable to act, Ben Davies or Christian Pilkington of White & Case LLP, and directed that the Chair should report the results of the Plan Meetings to the Court [AT2/1498].
- 13 The Plan Meetings were summoned by the notice of Plan Meetings sent to Plan Creditors as a standalone document, and as included at Appendix 3 of the Explanatory Statement (as posted on the Plan Portal) (the “**Notice of Plan Meetings**”)<sup>4</sup> and were originally scheduled to take place between 9:00 a.m. and 12:00 p.m. (London time) via webinar on 16 March 2023. Simultaneously with the issuance of the Notice of Plan Meetings on 27 February 2023, the Explanatory Statement and the Holder Letter to be used by Plan Creditors to vote on the Restructuring Plan, substantially in the form appended to the Explanatory Statement, were made available to Plan Creditors through the Clearing Systems and posted on the Plan Portal, in each case by the Information Agent.
- 14 As I explained in section IX of my First Statement (paragraph 174), at the instruction of the Plan Company, BCG prepared an independent report (the Comparator Report) setting out what the likely outcomes for Plan Creditors (and other Group creditors) would be under

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<sup>4</sup> Notice of Plan Meetings dated 27 February 2023, [AT2/1503].

the Plan and in the Relevant Alternative. A copy of the Comparator Report dated 15 February 2023 was exhibited at [AT1/2286] of my First Statement.

15 Shortly before the scheduled Plan Meetings, on 13 March 2023, the Plan Company became aware that the Comparator Report (and hence the summary of it contained in the Explanatory Statement) was required to be updated in certain respects. I am informed by BCG that these updates were primarily necessary because BCG became aware of a technical error in their modelling of the Relevant Alternative. Specifically, the calculation of the proceeds from the sale of yielding assets in the Relevant Alternative and the Restructuring Plan scenarios in the Comparator Report had used different market curves. I understand from BCG that this error was due to the Relevant Alternative analysis having been completed by an earlier internal editorial deadline than the Restructuring Plan analysis. This had the consequence that the Relevant Alternative analysis did not use the most up-to-date market curve, unlike the Restructuring Plan analysis. Additionally, BCG made an adjustment in the calculation methodology used in the application of insolvency discounts in the Comparator Report.

16 BCG subsequently prepared an updated Comparator Report. A copy of the updated Comparator Report is at [AT2/[852]] and a detailed explanation of the changes made is at [AT2/[851]].

17 In my First Statement at paragraph 203, I explained that BCG anticipates that SUN Holders will make 100 per cent. recoveries on the face value of their SUNs if the Plan is implemented (and will receive interest thereon until maturity or repayment), whereas, in the Relevant Alternative, BCG forecasts recoveries to be 57 per cent. The principal consequence of the updates to the Comparator Report is to increase the estimated recovery for the SUN Holders in the Relevant Alternative from 57 per cent. to 63 per cent. [AT2/866]. The expected recoveries for SUN Holders under the Plan remain unchanged. Notwithstanding that the anticipated recoveries for SUN Holders under the Relevant Alternative have increased (by 6 per cent.), the Plan Company remains of the view that the Restructuring Plan is likely to offer materially higher returns for each class of Plan Creditors than they would achieve under the Relevant Alternative.

18 On 14 March 2023, the Plan Company gave notice (as posted on the Plan Portal) to Plan Creditors of the updates to the Comparator Report and the projected impact on their returns under the Relevant Alternative (the “**Adjournment Notice**”).<sup>5</sup> The Adjournment Notice also informed the Plan Creditors that, in light of the updates required to the Comparator Report, the Plan Meetings would be adjourned from 16 March 2023 until 21 March 2023 to enable the Plan Creditors to consider the updated Comparator Report and the updated Explanatory Statement. The Voting Instructions Deadline was also extended until 12:00 p.m. (London time) on 17 March 2023, again, to give Plan Creditors more time to consider the updates before they lodged their Holder Letters indicating the direction of their votes.

19 An updated Explanatory Statement was made available to Plan Creditors on 15 March 2023 [AT2/1508], enclosing an updated version of the Comparator Report (including a summary of the changes made to the Comparator Report) and with a redline document showing the changes made to the main body of the Explanatory Statement [AT2/1510]. Such documents were posted on the Plan Portal and circulated to the Plan Creditors through the Clearing Systems, and accompanied by a further posting notice to Plan Creditors.

20 On the face of paragraph 1 of the Convening Order, the Plan Company’s adjournment of the Plan Meetings is permitted:

*“The Plan Company shall convene the Plan Meetings to be held between 9:00 a.m. London time and 12 p.m. London time on 16 March 2023 (or such other date as the Plan Company may notify to the Plan Creditors) for the purpose of considering and, if thought fit, approving (with or without modification) the Plan proposed to be made between the Plan Company and the Plan Creditors. The Plan Meetings shall be held by webinar (the “Webinar”) in the manner set out in Appendix 2 of the Explanatory Statement”* (emphasis added) [AT2/1498].

21 However, on 14 March 2023, Akin Gump (on behalf of the AHG) wrote to White & Case contending that, despite the express terms of the Convening Order, the Plan Company did

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5 Adjournment Notice dated 14 March 2023, [AT2/1506].

not have the power to change the date of the Plan Meetings after the date thereof had first been notified to the Plan Creditors, and that any power to “adjourn” the Plan Meetings rests with the Chair and not the Plan Company.<sup>6</sup>

22 White & Case responded to Akin Gump on 15 March 2023 explaining that the proper procedure was followed for rescheduling the Plan Meetings, in accordance with the terms of the Convening Order, and that the conclusions in Akin Gump’s letter were therefore wrong.<sup>7</sup>

23 Notwithstanding this, given the objections raised by the AHG, the Plan Meetings went ahead as originally scheduled in the Notice of Plan Meetings, solely for the purpose of the Chair opening the Plan Meetings and adjourning them until 21 March 2023. This approach was taken by the Plan Company out of an abundance of caution, should it be considered that there was any technical defect in the postponing of the Plan Meetings by the Plan Company through the Adjournment Notice.

24 I chaired the Plan Meetings on 16 March 2023 (to the extent that they were, in fact, Plan Meetings) and addressed the Plan Creditors in attendance at the Plan Meetings as described in the Chair’s Report (defined below) [AT2/2044]. The only Plan Creditors which attended were members of the AHG, who attended through their legal counsel Akin Gump, and a representative from SteerCo. Akin Gump took the opportunity I gave the Plan Creditors to ask certain questions of me as Chair and these questions were answered during the Plan Meetings. As noted in the Chair’s Report, each of the Plan Meetings was adjourned to the relevant time set out in the Adjournment Notice on 21 March 2023, and there was no voting on the Plan on 16 March 2023.

25 The adjourned Plan Meetings were resumed or held (depending on whether the Adjournment Notice was valid) at the relevant times on 21 March 2023. The Plan was considered at each of the Plan Meetings. I addressed the Plan Creditors at the Plan Meetings as described in the Chair’s Report [AT2/2047].

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<sup>6</sup> Letter from Akin Gump to White & Case dated 14 March 2023, [AT2/[1520].

<sup>7</sup> Letter from White & Case to Akin Gump dated 15 March 2023, [AT2/1522].

26 The votes given by such Plan Creditors or their proxies "For" and "Against" the Restructuring Plan are correctly stated in columns 2 and 3 of the tables below:

(a) Holders of the €400,000,000 1.500% Notes due 2024 (ISIN: XS1652965085) (the "2024 SUNs")

1 <b>How present (in each case via webinar)</b>	2	3
	<b>FOR</b>	<b>AGAINST</b>
	<b>Plan Claims</b>	<b>Plan Claims</b>
<b>In person</b>	0	0
<b>By proxy</b>	380,600,000 (98.50%)	5,800,000 (1.50%)
<b>TOTALS</b>	380,600,000 (98.50%)	5,800,000 (1.50%)

(b) Holders of the €400,000,000 3.250% Notes due 2025 (ISIN: XS2010029663)

1 <b>How present (in each case via webinar)</b>	2	3
	<b>FOR</b>	<b>AGAINST</b>
	<b>Plan Claims</b>	<b>Plan Claims</b>
<b>In person</b>	0	0
<b>By proxy</b>	360,300,000 (92.93%)	27,400,000 (7.07%)
<b>TOTALS</b>	360,300,000 (92.93%)	27,400,000 (7.07%)

(c) Holders of the €700,000,000 1.875% Notes due January 2026 (ISIN: XS2283224231)

1 <b>How present (in each case via webinar)</b>	2	3
	<b>FOR</b>	<b>AGAINST</b>
	<b>Plan Claims</b>	<b>Plan Claims</b>
<b>In person</b>	0	0
<b>By proxy</b>	631,100,000 (95.00%)	33,200,000 (5.00%)
<b>TOTALS</b>	630,900,000 (95.00%)	33,200,000 (5.00%)

(d) Holders of the €400,000,000 2.750% Notes due November 2026 (ISIN: XS2248826294)

1 <b>How present (in each case via webinar)</b>	2 <b>FOR</b>	3 <b>AGAINST</b>
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	<b>Plan Claims</b>	<b>Plan Claims</b>
<b>In person</b>	0	0
<b>By proxy</b>	347,100,000 (91.97%)	30,300,000 (8.03%)
<b>TOTALS</b>	347,100,000 (91.97%)	30,300,000 (8.03%)

(e) Holders of the €500,000,000 2.250% Notes due 2027 (ISIN: XS2336188029) (the “**2027 SUNs**”)

<b>1</b> <b>How present (in each case via webinar)</b>	<b>2</b> <b>FOR</b>	<b>3</b> <b>AGAINST</b>
	<b>Plan Claims</b>	<b>Plan Claims</b>
<b>In person</b>	0	0
<b>By proxy</b>	365,000,000 (80.68%)	87,400,000 (19.32%)
<b>TOTALS</b>	365,000,000 (80.68%)	87,400,000 (19.32%)

(f) Holders of the €800,000,000 2.250% Notes due 2029 (ISIN: XS2283225477) (the “**2029 SUNs**”)

<b>1</b> <b>How present (in each case via webinar)</b>	<b>2</b> <b>FOR</b>	<b>3</b> <b>AGAINST</b>
	<b>Plan Claims</b>	<b>Plan Claims</b>
<b>In person</b>	0	0
<b>By proxy</b>	475,600,000 (62.28%)	288,100,000 (37.72%)
<b>TOTALS</b>	475,600,000 (62.28%)	288,100,000 (37.72%)

27 In accordance with paragraph 13 of the Convening Order [AT2/1500], the Chair prepared a report to the Court on the results of the Plan Meetings, dated 23 March 2023 (the “**Chair’s Report**”). A copy of the Chair’s Report is at [AT2/2047]. This is a true report of the proceedings and the results of the Plan Meetings, and the copy of the Plan annexed to it is a true copy of the Plan [AT2/2056]. As was contemplated at the Convening Hearing, (see paragraph 29 of the Convening Hearing judgment dated 27 February 2023 [AT2/1534]), the Chair’s Report provides such information as to cross-holdings as can be derived from the voting forms submitted by Plan Creditors [AT2/2172] (the “**Cross-holdings Information**”). The Chair’s Report contains a summary of what occurred at the Plan Meetings and I do not repeat the contents of the Chair’s Report in this witness statement.

28 The Cross-holdings Information provides an overview, on an anonymised basis, of the votes submitted by individual Plan Creditors in respect of the Restructuring Plan, and I would note the following observations drawn from such information:

- (a) As noted in paragraph 26 above, in respect of five out of the six series of Plan Creditors, the percentage of votes cast in favour of the Plan exceeds 75 per cent. of all relevant SUNs voting at such Plan Meeting. In respect of the series comprising the 2029 SUNs, the percentage of votes case in favour of the Plan exceeded 60 per cent. of the relevant SUNs voting at such Plan Meeting.
- (b) Across all of the SUNs, the percentage of votes cast in favour of the resolution tabled at the Plan Meetings exceeded 84 per cent. of all SUNs voting at such Plan Meetings. Across all of the SUNs, excluding the 2024 SUNs, such figure exceeds 82 per cent.
- (c) Plan Creditors holding €475,600,000 of 2029 SUNs voted in favour of the Plan, of which Plan Creditors holding approximately €473,000,000 either hold no 2024 SUNs or their holdings of 2024 SUNs comprise less than 50 per cent. of their total holdings of SUNs.
- (d) Across all of the SUNs, excluding the 2024 SUNs and the 2029 SUNs, and excluding the votes of Plan Creditors with holdings in the 2024 SUNs and the 2029 SUNs, between approximately 94 and 100 per cent. of Plan Creditors in each series of SUNs voted in favour of the Plan.
- (e) Holder 5 and Holder 6 do not have any holdings in the 2024 SUNs, but collectively hold €148,900,000 across the remaining SUNs and voted the entirety of such holdings in favour of the Plan.
- (f) Holder 15 only holds 2027 SUNs (€5,900,000) and 2029 SUNs (€31,200,000) and voted in favour of the Plan.

- (g) The majority of the holdings of Holder 34 and Holder 36 are of 2029 SUNs (and such Plan Creditors have no holdings of 2024 SUNs), and such Plan Creditors voted in favour of the Plan.
- (h) Holder 95 and Holder 103 each only hold 2029 SUNs, and such Plan Creditors voted in favour of the Plan.

### **III      UNDERTAKINGS**

29 The Parent Company, the Information Agent, the Principal Payment Agent and LendingCo have each provided an undertaking agreeing to be bound by the terms of the Restructuring Plan, as set out below:

- (i) By a deed of undertaking dated 23 March 2023, the Parent Company executed the Parent Company Undertaking [AT2/1535] (as defined in the Plan), agreeing to be bound by, and perform the terms of, the Plan.
- (j) By a deed of undertaking dated 23 March 2023, the Information Agent executed the Information Agent Undertaking [AT2/1538] (as defined in the Plan), agreeing to be bound by, and perform the terms of, the Plan.
- (k) By a deed of undertaking dated 23 March 2023, the Principal Payment Agent executed the Principal Paying Agent's Undertaking [AT2/1541] (as defined in the Plan), agreeing to be bound by, and perform the terms of, the Plan.
- (l) By a deed of undertaking dated 23 March 2023, LendingCo executed the LendingCo Undertaking [AT2/1545] (in each case as defined in the Plan), agreeing to be bound by, and perform the terms of, the Plan.

### **IV      ENGAGEMENT WITH THE AHG SINCE THE CONVENING HEARING**

30 On 27 February 2023, in compliance with paragraph 17 of the Convening Order, the Plan Company provided the AHG with the information in the schedule agreed between the

parties on 24 February 2023.<sup>8</sup> By their first letter of 28 February 2023, Akin Gump sought to imply that the Plan Company had not complied with the terms of the disclosure required under the Convening Order.<sup>9</sup> However, I am advised by White & Case that all required information was provided in advance of the deadline.<sup>10</sup>

- 31 Over the course of two weeks, since 27 February 2023, the Plan Company has received at least 9 letters or emails from Akin Gump requesting information far beyond that which the Plan Company is required to provide. Many of these requests were duplicative, or requested information that was readily available to the AHG on a proper review of the documents already provided by the Plan Company.
- 32 However, in an effort to provide the AHG with all the information that it reasonably requires in order to understand the analysis and conclusions reached by BCG in the Comparator Report, I am informed that White & Case has responded to every information request made by the AHG. I understand that White & Case has provided the AHG with at least 71 documents to date, including 60 documents following the Convening Hearing. This is in addition to the documents included in the Convening Hearing bundle and the information included in at least 8 letters or emails in response to Akin Gump from White & Case.
- 33 Moreover, upon the AHG's request, the Plan Company facilitated two meetings on 2 and 13 March 2023 between, among others, BCG and FTI in order to answer further questions raised by the AHG in respect of the Comparator Report. I am advised by White & Case that the first meeting ran for two hours and FTI were provided with answers to approximately 40 questions on the Comparator Report. I am informed by BCG that during the second meeting FTI were also provided with comprehensive answers covering several topics relating to the Comparator Report.

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<sup>8</sup> Convening Order, paragraph 17 [AT2/1500]; Second Letter from White & Case to Akin Gump dated 23 February 2023 and enclosure [AT2/1548].

<sup>9</sup> Letter from Akin to White & Case, dated 28 February 2023 [AT2/[155]].

<sup>10</sup> Letter from White & Case to Akin, dated 28 February 2023 [AT2/[1558]].

## V THE PURPORTED TERMINATION NOTICES

34 Certain members of the AHG (respectively, various affiliate companies of Strategic Value Partners – “**SVP**”, as well as DWS Investment GmbH – “**DWS**”) have issued purported termination notices, each dated 21 February 2023 (the “**PTNs**”) in respect of the relevant SUNs held by them – see **[AT2/1622/1722]**, as follows:<sup>11</sup>

<b>Relevant Series of SUNs held by SVP</b>	<b>Holding Amount (€)</b>	<b>% of total outstanding</b>
€400,000,000 1.500 per cent. notes due 2024	3,500,000	0.875%
€400,000,000 3.250 per cent. notes due 2025	10,600,000	2.650%
€700,000,000 1.875 per cent. notes due 2026	2,500,000	0.357%
€400,000,000 2.750 per cent. notes due 2026	9,000,000	2.250%
€500,000,000 2.250 per cent. notes due 2027	10,100,000	2.020%
€800,000,000 2.250 per cent. notes due 2029	107,500,000	13.438%

<b>Relevant Series of SUNs held by DWS</b>	<b>Holding Amount (€)</b>	<b>% of total outstanding</b>

11 I am advised that the breakdown of the aggregate principle amount of SUNs for which PTNs have been submitted, as set out in the table at paragraph 25 of the First Witness Statement of Christian Halász dated 16 March 2023 filed on behalf of the AHG, contains certain inaccuracies. The correct figures are reflected in the tables at paragraph 34 of this Witness Statement.

€400,000,000 3.250 per cent. notes due 2025	500,000	0.125%
€700,000,000 1.875 per cent. notes due 2026	3,500,000	0.5%
€400,000,000 2.750 per cent. notes due 2026	2,500,000	0.625%
€500,000,000 2.250 per cent. notes due 2027	10,500,000	2.1%
€800,000,000 2.250 per cent. notes due 2029	29,000,000	3.625%

35 I am advised that none of the PTNs were accompanied by the formally required power of attorney or letter of authorisation that identified the signatory of the notice as an authorised representative. The PTNs were therefore procedurally invalid.

36 Accordingly, the Plan Company and the Group sent rejection notices on 27 February 2023, rejecting the PTNs pursuant to s. 174, sentence 1, of the German Civil Code [AT2/01774]. Those notices also objected to any reliance on a purported power of agency under section 180, sentence 2, of the German Civil Code by which a representative, who claims to be authorised to act as agent, may rely on deemed agency if their counterparty does not question their purported authority at the time of the representation.

37 SVP and one DWS fund served further purported termination notices (each notice dated 7 or 9 March 2023) in respect of the relevant SUNs held by them (the “**Second PTNs**”) [AT2/1840/1845]. The Second PTN served by DWS – [AT2/1840] – remained procedurally invalid for failing to provide a letter of authorisation or power of attorney and was rejected by the Plan Company and the Group by its letter dated 16 March 2023.

38 The remainder of the Second PTNs, each served by SVP on 13 March 2023 [, were rejected by letters dated 16 March 2023 [AT2/1945] on the basis that there were no valid

substantive grounds for termination. Specifically, the Plan Company and the Group have been advised that the ongoing restructuring plan proceedings pursuant to Part 26A of the Companies Act 2006 do not constitute an “insolvency proceeding” within the meaning of s. 10(1)(e) of the Terms and Conditions of the SUNs (and therefore do not amount, or give rise, to an Event of Default under those terms and conditions), and no other valid ground for termination exists.

39 By letter dated 21 March 2023, Gleiss Lutz (on behalf of the AHG) wrote to White & Case outlining their position as to the purported validity of the Second PTNs [AT2/[1987]. [On [23] March 2023, White & Case responded to Gleiss Lutz indicating that the Plan Company’s position relied on the invalidity of the First and Second PTNs (as has been set out in the Second Expert Report of Professor Dr. Christoph Thole dated 23 March 2023, as filed in these proceedings. [AT2/1989]).

## **VI UPDATE ON THE FINANCIAL POSITION OF THE PLAN COMPANY AND THE GROUP**

40 I confirm that the financial position of the Plan Company and the Group remains as I described in Section III of my First Statement (summarised in paragraph 65). In particular, the Group’s most recent liquidity forecasts as at 20 March 2023 continue to project a liquidity shortfall at the end of April 2023.

41 The Group continues to be without an auditor and is therefore unlikely to be able to deliver audited financial statements by the end of April 2023. However, conversations with prospective auditors remain ongoing and should the Restructuring Plan be sanctioned, the Plan Company believes that it will be in a position to deliver audited financial statements by the end of September 2024.

42 In the Convening Hearing, Leading Counsel for the Plan Company explained that there were bilateral conversations taking place with other Group lenders to ensure that the non-provision of audited financial statements for the Financial Year 2022 (following the implementation of the Restructuring Plan) will not trigger cross-defaults under separate

loan instruments under which certain Group companies are borrowers – see transcript, page 22, lines 16-18 [AT2/1995].

43 By way of update, the status of those discussions are currently as follows:

- (a) Commerzbank and LBBW have indicated that they will revert on granting a waiver by the end of this month (and the latter has indicated that it will provide a letter of support, which the Plan Company expects will be issued in late April 2023).
- (b) The remaining lenders, DZ Hyp, Berlin Hyp, have each indicated separately that they do not consider that the non-provision of 2022 audited statements before end of April 2023 would constitute an Event of Default under their respective loan instruments and so no waiver is necessary.

44 The Court should also note that the Group continues to explore potential disposals on an ongoing basis. Notably, the Group is in active discussions with separate purchasers in respect certain of its portfolios of assets.

45 The potential disposals remain subject to ongoing due diligence, and the negotiation and agreement of satisfactory binding terms. None of the potential transactions would be finalised prior to sanction of the Restructuring Plan, given that the respective purchasers each wish to ensure that they have the certainty that the Plan will go ahead before they complete any acquisition. The Group does not expect the acquisitions to proceed in the event that the Plan fails and the Group companies which own the relevant assets enter into insolvency proceedings.

46 For completeness, I should add that the anticipated proceeds of the disposals would not be sufficient to enable the Group to fund repayment of the Adler RE 2023 SUNs on their imminent maturity.

## **VII CONCLUSION**

47 It remains my view that the Restructuring Plan is in the best interests of the Plan Creditors and other stakeholders. I am not aware of any matters that might call into question the

fairness of the Restructuring Plan or the validity of the Plan Meetings and their results, as confirmed in the Chair's Report, a copy of which is exhibited hereto at [AT2/2044].

48 I therefore respectfully request that the Court make an order in the form of the draft order filed on 23 March 2023 [AT2/2041].

**Statement of Truth**

I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

A handwritten signature in blue ink, appearing to read "Andrea Trozzi".

**Andrea Trozzi**

23 March 2023