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Details of Filing

Document Lodged:	Outline of Submissions
File Number:	NSD464/2020
File Title:	APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 10/08/2020 9:22:21 AM AEST

Registrar

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In the matters of Virgin Australia Holdings Ltd (Administrators Appointed) & Ors

Federal Court of Australia Proceeding No. NSD 464 of 2020

Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity
as joint and several voluntary administrators of each of Virgin Australia Holdings Ltd
(Administrators Appointed) and the Third to Fortieth Plaintiffs
First Plaintiffs
& Ors

PLAINTIFFS' OUTLINE OF SUBMISSIONS

A. INTRODUCTION

1. These are the submissions of the Plaintiffs, including the First Plaintiffs, Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes of Deloitte (together, **the Administrators**) in their capacity as:
 - (a) administrators of each of the Second to Fortieth Plaintiffs; and
 - (b) the administrators of each of VAH Newco No 2 Pty Ltd (in liquidation) (Administrators Appointed) (**VAH Newco 2**) and VB Investco Pty Ltd (in liquidation) (Administrators Appointed) (**VB Investco**), the proposed Forty-First Plaintiff and Forty-Second Plaintiff respectively,

(together, **the Virgin Companies**), with respect to the Interlocutory Process filed on 6 August 2020.
2. The application seeks, in summary:
 - (a) the joinder to the proceedings of VAH Newco 2 and VB Investco;
 - (b) a further brief extension of the period in which the Administrators are to convene the second meetings of creditors of each of the Virgin Companies (**Convening Period**) for the purposes of section 439A(5)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**); and
 - (c) orders with respect to the Halo Platform, including:

(i) to prescribe the dates by which creditors of the Virgin Companies must lodge proofs of debt or claim, proxies, or attorney forms on the Halo Platform; and

(ii) to clarify that the Halo Platform may be used for voting purposes.

B. JOINDER OF VAH NEWCO 2 AND VB INVESTCO

3. On 26 April 2019, Richard Hughes (one of the Administrators) was appointed as the liquidator of each of VAH Newco 2 and VB Investco pursuant to section 491(1) of the Corporations Act: Affidavit of Vaughan Neil Strawbridge sworn 7 August 2020 (**Eighth Strawbridge Affidavit**) at [10].

4. As explained in the Eighth Strawbridge Affidavit at [11], on 30 July 2020, pursuant to orders made in Federal Court of Australia Proceedings number NSD 818 of 2020 (**the MVL Proceedings**):

(a) leave was granted for the Administrators to be appointed as joint and several administrators of each of VAH Newco 2 and VB Investco; and

(b) the winding up of each of VAH Newco 2 and VB Investco was stayed until further order.

5. As noted in the reasons for judgment in the MVL Proceedings—*Hughes, in the matter of Vah Newco No. 2 Pty Ltd (in liq)* [2020] FCA 1121 at [18]-[20]—each of VAH Newco 2 and VB Investco:

(a) have large (albeit likely contingent) liabilities to creditors, who are also creditors of a number of the other Virgin Companies; and

(b) may be included as part of any deed of company arrangement proposal being advanced by BC Hart Aggregator, L.P. and BC Hart Aggregator (Australia) Pty Ltd, entities associated with Bain Capital Private Equity LP and Bain Capital Credit LP (together, **Bain Capital**).

6. On 3 August 2020, in accordance with the orders made in the MVL Proceedings, the Administrators were appointed as joint and several administrators of each of VAH Newco 2 and VB Investco pursuant to section 436B of the Corporations Act: Eighth Strawbridge Affidavit at [12]. The intention is to hold the second meeting of creditors

of VAH Newco 2 and VB Investco simultaneously with the second meeting of creditors of the other Virgin Companies (together, **the Second Meetings**).

7. In that regard, each of VAH Newco 2 and VB Investco ought to be joined to these proceedings as these entities will be subject to the proposed orders sought with respect to the Halo Platform and any other orders that may be sought in the proceedings in any future applications concerning the Virgin Companies as a whole: Eighth Strawbridge Affidavit at [13].
8. Middleton J observed in *Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed) (No 2)* (2020) 144 ACSR 347; [2020] FCA 717, (**Virgin No 2**), at [33]-[34], with respect to the earlier joinder of another of the Virgin Companies, that:

Rule 9.05(1)(b)(iii) of the Rules (which applies by reason of r 1.3(2)(a) of the *Federal Court (Corporations) Rules 2000* (Cth)), permits the Court to join a person to existing proceedings if the person proposed to be joined 'should be joined as a party in order to enable determination of a related dispute and, as a result, avoid multiplicity of proceedings'.

Tiger 1 should be joined to these proceedings as it is part of the group of Virgin Companies now in external administration and common issues have and will continue to arise in the course of the various administrations.

9. For the same reasons, each of VAH Newco 2 and VB Investco should be joined to the proceedings.

C. FURTHER EXTENSION OF THE CONVENING PERIOD

C.1 Principles

10. The Court has power to make orders under section 447A(1) of the Corporations Act to extend, on a subsequent occasion, the convening period for the second meeting of creditors on a company: *Re Lombe; Australian Discount Retail Pty Ltd* (2009) 27 ACLC 115; [2009] NSWSC 110 at [32]; *Chamberlain, Re South Wagga Sports and Bowling Club Ltd (Admin Apptd)* [2009] FCA 25; *Re ABC Learning Centres (No 8)* (2009) 73 ACSR 478; [2009] FCA 994 at [53].

11. There are many occasions in which Courts have granted further extensions of the convening period (that is, after an initial extension): e.g., *Mentha, Re The Griffin Coal Mining Company Pty Ltd (Admin Apptd) (No 2)* [2010] FCA 499 at [36]; *Re Harrisons Pharmacy Pty Ltd (Admin Apptd) (Recs and Mngrs Apptd)* [2013] FCA 1102; *Owen, in the matter of RiverCity Motorway Pty Limited (Administrators Appointed) (Receivers and Managers Appointed) v Madden (No 5)* (2013) 9 BFRA 99; [2013] FCA 1443; *Gothard, in the matter of Sherwin Iron Ltd (Administrators Appointed) (Receivers and Managers Appointed) (No 2)* [2015] FCA 401 at [33]; *Re Acquire Learning & Careers Pty Ltd (administrators appointed)* [2017] VSC 572; *Strawbridge (Administrator), in the matter of CBCH Group Pty Ltd (Administrators Appointed) (No 4)* [2020] FCA 671; *Billingsley (Administrator), in the matter of B K Chemists Pty Ltd (Administrators Appointed) (No 2)* [2020] FCA 1059.
12. The principles that apply when considering a further extension are the same as those that apply for any extension of the convening period: *South Wagga Sports and Bowling Club* (above) at [9]; *Acquire Learning* (above) at [12]; *Kaso, Re Speedpanel Australia Ltd (Administrators Appointed) (No 2)* [2017] FCA 862 at [19]; *CBCH Group* (above) at [25]. These principles were summarised by Middleton J in *Virgin No 2* at [64]-[68].

C.2 The further extension should be granted

13. For the reasons that follow, orders should be made further extending the Convening Period.
14. *First*, the extension is only for a brief period of 13 days from 18 August 2020 (the present expiry date) to 31 August 2020 (the date now sought).
15. *Secondly*, the administration of the Virgin Companies has been complex and the report to creditors in advance of the Second Meeting, pursuant to section 75-225 of the *Insolvency Practice Rules 2016 (Cth) (IPR)*, will be detailed: Eighth Strawbridge Affidavit at [17] and [20]. Consequently, the Administrators wish to ensure that the report to creditors accurately and comprehensively summarises the affairs of the Virgin Companies and the sale process which culminated in the sale and implementation deed concluded between the Virgin Companies and Bain Capital: Eighth Strawbridge Affidavit at [20].

16. *Thirdly*, the extension will permit the Administrators to issue their report to creditors 8 business days ahead of the Second Meeting (which is greater than the statutory minimum of 5 business days likely to be provided in the absence of an extension): Eighth Strawbridge Affidavit at [22]. This will provide the creditors with more time to consider the contents of the report and make an informed decision, at the Second Meeting, on the future of the Virgin Companies: Eighth Strawbridge Affidavit at [30].
17. *Fourthly*, the extension sought will address, in large part, the timing concerns raised by the solicitors for Bank of New York Mellon, the trustee named in the indenture for the USD denominated bonds, and facilitate the timing of voting by the USD Noteholders (which is administered through the Depositary Trustee Company (DTC) process in the United States): Eighth Strawbridge Affidavit at [28].
18. *Fifthly*, given the interaction of the dates by which the Administrators seek to require creditors to lodge, on the Halo Platform, both their proofs of debt or claims and their proxy or attorney forms (as to which, see Section D below), the provision of the report to creditors with more notice in advance of the Second Meetings will provide creditors with greater time, following receipt of the report, to lodge proofs of debt and proxy forms: Eighth Strawbridge Affidavit at [30].
19. *Sixthly*, following the entry into the transaction with Bain Capital, discussions have been ongoing between Bain Capital and its representatives and a range of contractual counterparties and stakeholders, as part of the proposed completion of the transaction. The relatively short extension of the Convening Period sought would assist in enabling these negotiations to be finalised in advance of the Second Meetings: Eighth Strawbridge Affidavit at [21].
20. *Seventhly*, the Committee of Inspection has been notified of the proposed extension sought and no member of the Committee has expressed any disagreement: Eighth Strawbridge Affidavit at [25].
21. *Eighthly*, the Noteholder Consultative Committee (NCC) has been notified of the proposed extension sought and no member of the NCC has expressed any disagreement: Eighth Strawbridge Affidavit at [29].

22. *Ninthly*, there is not likely to be any prejudice to creditors from a further brief extension as Bain Capital has assumed economic risk for the business conducted by the Virgin Companies on and from 1 July 2020 and is funding the ongoing trading of the business. Accordingly, the net assets realised before that date for the benefit of creditors have been preserved. Accordingly, a modest extension of the convening period will not expose to Virgin Companies to any additional financial risk and are funded to meet all trading liabilities: Eighth Strawbridge Affidavit at [31].
23. *Finally*, the Administrators have given prior notice of this application to all known creditors of the Virgin Companies, and to the Australian Securities and Investments Commission (ASIC): Affidavit of Kassandra Suzann Adams sworn 7 August 2020 at [4]-[7]. Further, and as with previous orders made in the course of the administrations of the Virgin Companies, the Administrators seek orders that notice of the orders be provided to all creditors and the ASIC within 1 business day and that any person who claims to be affected by the orders has liberty to apply to the Court to discharge or set aside the orders (on 3 business days' notice).

D. PROPOSED MODIFICATION OF THE INSOLVENCY PRACTICE RULES AND ASSOCIATED FURTHER DIRECTIONS WITH REGARD TO THE HALO PLATFORM

D.1 Principles

24. Section 90-15 of the *Insolvency Practice Schedule (Corporations) 2016 (IPSC)* (being Schedule 2 to the Corporations Act) confers power to make orders modifying the operation of the IPSC and the IPR and, generally, to give directions to external administrators.
25. *In Re Hawden Property Group Pty Ltd (in liq)* (2018) 125 ACSR 355; [2018] NSWSC 481 at [8], Gleeson JA (sitting at first instance) noted that:

In Walley, In the Matter of Poles & Underground Pty Ltd (Admin Apptd) [2017] FCA 486 at [41], Gleeson J remarked that the question of whether to exercise the power in s 90-15 was "to be answered by reference to the principles applied to the exercise of the discretions previously contained in s 479(3) and s 511 of the Act". That may be accepted insofar as the external administrator seeks the directions of the Court, but the power under s 90-15 to "make such orders as it thinks fit in

relation to the external administration of a company” (s 90-15(1)) including “an order determining any question arising in the external administration of a company” (s 90-15(3)(a)), is wider and accommodates the determination of substantive rights. Of course, the Court would not do so without affording potentially affected parties an opportunity to be heard: *Meadow Springs Fairway Resort Ltd (in liq) v Balance Securities Ltd* [2007] FCA 1443, at [49]-[51] (French J, referring to *Australian Securities Commission v Melbourne Asset Management Nominees Pty Ltd* (1994) 49 FCR 334 at 352 (Northrop J)); *Re Willmott Forests Ltd (No 2)* [2012] VSC 125; (2012) 88 ACSR 18 at [45]-[46] (Davies J); *In the Matter of ICS Real Estate Pty Ltd (in liq)* [2014] NSWSC 479 at [25] (Brereton J).

26. In *Hutson (liquidator), in the matter of WDS Limited (in liq) (Receivers and Managers Appointed)* (2020) 143 ACSR 273; [2020] FCA 299 at [66], Markovic J made similar observations:

The Court’s power to make orders under s 90-15(1) is unconstrained: *Deputy Commissioner of Taxation v Italian Prestige Jewellery Pty Ltd (in liq)* (2018) 129 ACSR 115; [2018] FCA 983 at [36]. The subsection “contains no express words of limitation” and is “intended to facilitate the performance of a liquidator’s functions”: *Re Octaviar Ltd (in liq)* [2019] QSC 235 at [10].

27. The power to give directions to an administrator under repealed section 447D(1) of the Act is now conferred by section 90-15 of the IPSC: *Reidy, In the Matter of eChoice Limited (Admin Apptd)* [2017] FCA 1582 at [27] (Yates J); *El-Saafin v Franek (No 2)* [2018] VSC 683 at [110] (Lyons J).

28. The function of an application for directions is to give an administrator advice as to the proper course of action to take in the administration. As Goldberg J explained in *Re Ansett Australia Limited and Korda (No 3)* (2002) 115 FCR 409; [2002] FCA 90 at [44]:

When liquidators and administrators seek directions from the Court in relation to any decision they have made, or propose to make, or in relation to any conduct they have undertaken, or propose to undertake, they are not seeking to determine rights and liabilities arising out of particular transactions, but are rather seeking protection against claims that they have acted unreasonably or inappropriately or in breach of their duty in making the decision or undertaking the conduct. They can obtain that protection if they make full and fair disclosure

of all relevant facts and circumstances to the Court. In *Re G B Nathan & Co Pty Ltd* (1991) 24 NSWLR 674, McLelland J said at 679-680:

The historical antecedents of s 479(3) ..., the terms of that subsection and the provisions of s 479 as a whole combine to lead to the conclusion that the only proper subject of a liquidator's application for directions is the manner in which the liquidator should act in carrying out his functions as such, and that the only binding effect of, or arising from, a direction given in pursuance of such an application (other than rendering the liquidator liable to appropriate sanctions if a direction in mandatory or prohibitory form is disobeyed) is that the liquidator, if he has made full and fair disclosure to the court of the material facts, will be protected from liability for any alleged breach of duty as liquidator to a creditor or contributory or to the company in respect of anything done by him in accordance with the direction.

Modern Australian authority confirms the view that s 479(3) 'does not enable the court to make binding orders in the nature of judgments' and that the function of a liquidator's application for directions 'is to give him advice as to his proper course of action in the liquidation; it is not to determine the rights and liabilities arising from the company's transactions before the liquidation'...

29. The applicable principles were most recently summarised by Stewart J in *Krejci, in the matter of Union Standard International Group Pty Ltd (Administrators Appointed) (No 2)* [2020] FCA 1111 as follows, at [7]-[11]:

A court is empowered by s 90-15(1) of the Insolvency Practice Schedule to "make such orders as it thinks fit in relation to the external administration of a company". The power conferred by s 90-15(1) is "very broad": *Kelly (in the matter of Halifax Investment Services Pty Ltd (in liquidation) (No 8)* [2020] FCA 533; 144 ACSR 292 at [51] (Gleeson J). It includes a power to make orders determining any question arising in the external administration of a company: s 90-15(3)(a). An administrator of a company may apply for such an order: s 90-20(1)(d), read with s 9 of the Act (paragraph (d) of the definition of "officer").

The court's power under s 90-15(1) includes a power to give directions about a matter arising in connection with the performance or exercise of an administrator's functions or powers: *Reidy, in the matter of eChoice Ltd (Administrators Appointed)* [2017] FCA 1582 at [26]-[27] (Yates J). In this respect, s

90-15(1) confers a power to give directions that was previously conferred by ss 447D(1) and 479(3) of the Act concerning administrators and liquidators, respectively: see *Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth* [2019] HCA 20; 93 ALJR 807 at [166] (Gordon J); *Reidy* at [27] (Yates J); and *Kelly (liquidator), in the matter of Australian Institute of Professional Education Pty Ltd (in liq)* [2018] FCA 780 at [30] (Gleeson J). The principles governing directions to administrators and those governing directions to liquidators are relevantly analogous: *Re Ansett Australia Ltd (No 3)* [2002] FCA 90; 115 FCR 409 at [43] (Goldberg J).

The function of a judicial direction of this kind is not to determine rights and liabilities arising out of a particular transaction, but to confer a level of protection on the administrator. An administrator who acts in accordance with a judicial direction, having made full and fair disclosure to the court of the material facts, has “protection against claims that they have acted unreasonably or inappropriately or in breach of their duty in making the decision or undertaking the conduct” proposed: *Ansett* at [44].

A court may give a direction on an issue of “substance or procedure” or “of power, propriety or reasonableness”: *Ansett* at [65]. Although a court will not give a direction on a decision that is purely commercial, a direction may be provided where there is a “particular legal issue raised for consideration or attack on the propriety or reasonableness of the decision in respect of which the directions are sought”: *Ansett* at [65]. As Black J observed in *In the matter of RCR Tomlinson Ltd (administrators appointed)* [2018] NSWSC 1859, a decision may have a “commercial character” but nonetheless be amenable to judicial direction. His Honour said (at [14]) of the application before him (which sought a direction as to whether a company should borrow loan funds):

The Court has been prepared to give directions of this kind, where the decision is a complex one, and where it has to be made, as here, under circumstances of time pressure, in respect of a very large corporate group, and by balancing different interests. The Court’s preparedness to grant such a direction in those circumstances reflects the intrinsic unfairness of leaving a voluntary administrator to be at risk of liability, in respect of a complex decision of that kind, where any decision that is made, including making no

decision, will have inevitable risks for some or all of the affected constituencies.

Because the effect of a direction under s 90-15 is to exonerate the liquidator or administrator if full disclosure is made, it will usually necessitate consideration by the court of the liquidator's or administrator's reasons and decision making process: see *Re ONE.TEL Ltd* [2014] NSWSC 457; 99 ACSR 247 at [36] per Brereton J (referring to former s 511 of the Act).

30. The proposed application of the Halo Platform to the administrations (including the adjudication of proofs of debt or claims and the voting process), and the prescription of dates by which proofs of debt and proxies must be lodged, are matters of procedure. This is an appropriate subject matter on which directions may be given by the Court under section 90-15 of the IPS: *El-Saafin* (above) at [113]; *Re Equiticorp Australia Ltd (in liq)* [2020] NSWSC 143 at [45] (Gleeson JA, sitting at first instance);

D.2 Directions should be given that the Administrators are justified in requiring creditors to lodge documents on the Halo Platform by particular dates

31. Details of the Halo Platform are identified in the affidavit of David Michael Orr sworn on 29 July 2020 (**First Orr Affidavit**) and were summarised in the Administrators' written submissions dated 29 July 2020.
32. The earlier application sought orders that the Administrators would be justified in:
- (a) requiring creditors to register on the Halo Platform;
 - (b) utilising the Halo Platform to communicate with creditors as to proofs of debt and the adjudication process; and
 - (c) ascertaining who is a creditor of any of the Virgin Companies for voting purposes at the Second Meetings based on the material provided by persons or otherwise entered in the Halo Platform.
33. This further application concerning the Halo Platform seeks orders that:
- (a) the Administrators would be justified in:
 - (i) permitting only those persons who have lodged, on the Halo Platform, particulars of a debt or claim in the administrations, by 5.00pm on the fifth

- business day before the Second Meetings are held (**POD Lodgement Date**), to participate and vote at the Second Meetings [Prayer 7];
- (ii) otherwise disregarding a debt or claim not lodged on Halo by the POD Lodgement Date [Prayer 8];
- (b) the IPR operate such that persons (or their proxy or attorney) may not at any time after the POD Lodgement Date, without the express written consent of the Administrators, amend or replace any proof of debt lodged on the Halo Platform [Prayer 9];
- (c) the IPR operate such that creditors who wish to participate or vote on resolutions at the Second Meetings (other than persons not voting by proxy or attorney), must lodge, on the Halo Platform, a specific proxy form and / or an appointment of power of attorney by 5.00pm on the third business day before the Second Meetings are held (**Proxy Lodgement Date**) [Prayer 11];
- (d) the Administrators would be justified in:
- (i) permitting only those persons who have lodged, on the Halo Platform, a specific proxy form and / or an appointment of power of attorney by the Proxy Lodgements Date, to participate and vote by proxy or attorney at the Second Meetings [Prayer 12];
 - (ii) entering the proxy or attorney details submitted by a person to the Administrators into the Halo Platform and registering the relevant creditor's details on the Halo Platform [Prayer 14(a)];
 - (iii) otherwise disregarding specific proxy form and / or an appointment of power of attorney not lodged on Halo by the Proxy Lodgement Date [Prayer 14(b)];
- (e) the IPR operate such that persons (or their proxy or attorney) may not at any time after the Proxy Lodgement Date, without the express written consent of the Administrators, amend or replace any appointment of proxy form, power of attorney details or any vote lodged on the Halo Platform [Prayer 15];

- (f) the requirements of sections 75-25 and 75-35(2) of the IPR will be satisfied by the Administrators including a link, in their report, to an electronic appointment of proxy or attorney form on the Halo Platform [Prayer 11];
 - (g) a poll is to be taken at the Second Meetings by tallying votes lodged on the Halo Platform (as being suitable technology to take such a poll) [Prayers 16-17]; and
 - (h) the Second Meetings be held by Microsoft Teams technology and the creation of an event on the Halo Platform [Prayer 18].
34. The evidentiary basis for these orders is set out in the First Orr Affidavit and the further affidavit of David Michael Orr sworn on 6 August 2020 (**Second Orr Affidavit**).
35. For the reasons that follow, the orders should be made.
36. *First*, the Halo Platform is a practical way of assisting the Administrators to manage the very large number of creditors in the administrations: First Orr Affidavit at [10]-[11].
37. *Secondly*, in circumstances where customers whose flights were cancelled due to the COVID-19 pandemic may also seek to lodge claims or proofs in the administrations, the Administrators could confront a situation of hundreds of thousands of creditors in total: First Orr Affidavit at [13]-[15]. In order to manage a creditor pool of that size, it is necessary to impose cut-off dates by which both proofs and proxy and / or attorney forms must be lodged (otherwise the Administrators may be unable to cope with a significant number of proofs or proxies lodged immediately prior to the Second Meetings): First Orr Affidavit at [27]-[30].
38. In that regard, section 75-225(2)(b)(vii) of the IPR envisages that the report to creditors may specify the date by which such proofs and proxies are to be submitted. The orders sought are in conformity with this principle, in that they require creditors to take these steps by lodging the claim or form, on the Halo Platform, by a particular date (and otherwise disregarding the proofs or proxies). Such a direction was provided by Brereton J (as his Honour then was) in *Re SurfStitch Group Limited* [2018] NSWSC 164, where his Honour noted at [13]:

In my view, it is implicit in clause 2(g) [Corporations Regulation, reg 5.3A.03AB(2)(g), the then equivalent of section 75-225(2)(b)(vii) of the IPR] that proofs and proxies submitted after the specified time are not validly submitted and may be disregarded. While I do not consider it appropriate to engage s 447A to modify the operation of Part 5.3A in this respect, lest there be doubt I am prepared to advise the administrators, under (former) s 447D, that they would be justified in rejecting proofs and proxies received after the date and time so specified.

39. *Thirdly*, the proposed POD Lodgement Date and Proxy Lodgement Date provide sufficient time for the creditors to lodge requisite forms on Halo after receipt of the report to creditors (which is envisaged to be issued 8 business days before the Second Meetings (assuming that the Convening Period is further extended)). In the case of the POD Lodgement Date, creditors will have 3 business days from receipt of the report to lodge their proofs of debt or claims (which will enable them to register as a creditor). In the case of the Proxy Lodgement Date, creditors will have 5 business days from receipt of the report to lodge their proxy and / or attorney forms (which will enable them to vote on their preferred resolutions).
40. *Fourthly*, and a corollary of the above, given the size of the potential creditor pool, creditors ought not be permitted to amend their proof of debt or claim, or their appointment of proxy or attorney, or their vote (which can be undertaken in advance of the Second Meetings through the Halo Platform), once lodged on the Halo Platform, without the consent of the Administrators. Otherwise, the Administrators will face an unjustifiable burden of having to re-review proofs, proxies or votes after they have already been considered. The practical operation of the Halo Platform means that votes cannot be altered other than by request to the Administrators: Second Orr Affidavit at [14] and [20].
41. *Fifthly*, the evidence establishes that the combination of Microsoft Teams technology and the Halo Platform permits the Second Meetings to be adequately conducted and carried on by audio-visual means: Second Orr Affidavit at [16]. Such electronic platforms are necessary in the light of the current COVID-19 pandemic which will preclude the possibility of a physical meeting. There is no reason for the Court not to endorse that approach.

42. *Sixthly*, and as noted above, creditors have the liberty to apply to the Court to discharge or set aside the orders.
43. *Finally*, although the orders prescribe a process to give stakeholders certainty, the Administrators will continue to work cooperatively and in a common sense way with any creditor or potential creditor, as and when the need arises, to ensure that the lodgement of proofs, ruling on proofs and voting at meetings is conducted in an orderly way.

E. CONCLUSION

44. The Court should make orders in the form of the short minutes of order provided together with these submissions.

10 August 2020

Ruth C A Higgins SC

David R Sulan

Daniel Krochmalik

Counsel for the Plaintiffs