

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2023-485-411
[2024] NZHC 419**

IN THE MATTER OF	CRYPTOPIA LIMITED (IN LIQUIDATION)
BETWEEN	DAVID IAN RUSCOE and MALCOLM RUSSELL MOORE Applicants
AND	RYAN HOUCHENS, GIA THANH PHAN, TRISTEN ROBINSON, JOSHUA DAVID STEVENSON, ANDREW ST JOHN ROSS First to Fifth Interested Parties
AND	GNV.IO LIMITED Sixth Interested Party

Hearing:	13 November 2023
Appearances:	S A Barker, B R McKinnon and B E Marriner for the Applicants No appearance for the First to Fifth Interested Parties L C Bercovitch for the Sixth Interested Party P G Watts KC, counsel assisting the Court regarding the interests of account holders J S Cooper KC, counsel assisting the Court regarding the interests of creditors, and J A R Barrow
Judgment:	1 March 2024

**JUDGMENT OF PALMER J
(Distribution)**

Counsel/Solicitors
J S Cooper KC, Auckland
P G Watts KC, Auckland
Buddle Findlay, Wellington
Chapman Tripp, Auckland

What happened?

Summary of the liquidation

[1] In a judgment of 6 September 2023 in related proceedings, I set out the recent history of the liquidation of Cryptopia Ltd (Cryptopia), which ran a cryptocurrency exchange.¹ I subsequently summarised that as follows:²

- (a) In May 2019, after a serious hack of its cryptocurrency in January 2019, the shareholders of Cryptopia appointed Mr David Ruscoe and Mr Malcolm Moore, of Grant Thornton New Zealand Ltd, as liquidators of the company under s 241(2)(a) of the Companies Act 1993.
- (b) The liquidation involves complex arrangements regarding around 370 functioning cryptocurrencies owned by some 960,000 holders of accounts with positive balances in around 180 countries.
- (c) On 8 April 2020, the High Court determined that each type of cryptocurrency is intangible property held by Cryptopia as trustee for the benefit of all the account holders of that currency.³ Cryptopia itself is a beneficiary of some of those trusts.⁴ That judgment sets out a more detailed account of the factual background of the liquidation.
- (d) The liquidators have developed a portal to enable account holders to receive notification of their account balance. Some 40,000 account holders who have completed identity verification have been invited to accept their account balances, to confirm that Cryptopia's reconciled database records were correct. Cryptopia's customer service team has dealt with over 94,000 user queries. There have been over 70 email campaigns to encourage more account holders to participate in the process.
- (e) A significant number of account holders have not registered and a large proportion of those who have registered have not completed the identity verification process. A large number of beneficiaries, in number and by percentage value, are not expected to participate in the distribution process.
- (f) While the current value of the company's assets is being kept confidential for commercial reasons, the liquidators advise that the total costs they have incurred to date remain a very low percentage of the value of the total funds under management.

¹ *Ruscoe v Houchens* [2023] NZHC 2490.

² *Houchens v Ruscoe* [2023] NZHC 2969 at [1].

³ *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728, [2020] 2 NZLR 809 at [120], [133], [187], and [196].

⁴ At [146].

[2] The liquidators took steps to preserve the cryptocurrencies held by moving them to a secure environment following the hack in January 2019. They have also taken steps to recover hacked cryptocurrency, as noted below. The liquidators have designed and built a claims portal to identify the beneficiaries of each trust and verify Cryptopia's holdings. The portal is linked to each account holder's email address registered with Cryptopia. It requires claimants to prove ownership of the relevant Cryptopia account, collects identifying information based on anti-money laundering requirements, and verifies each beneficiary's identity.

[3] There have been significant challenges in assessing the nature and value of the trust assets. That is partly because the cryptocurrencies had been pooled in the exchange's own wallets so any change in beneficial ownership was not recorded by a transaction on the blockchain. Account holders' trades were recorded on Cryptopia's internal ledgers. It is also because Cryptopia had not undertaken any detailed reconciliation between the cryptocurrency balances recorded in its database against each customer's wallets and those cryptocurrencies actually held in Cryptopia's wallets. Accordingly, the liquidators have undertaken a complex reconciliation process between Cryptopia's databases and the cryptocurrencies held.

Application for directions as to distribution

[4] The liquidators have designed and now propose, a distribution process and cost allocation model. On 31 July 2023, the liquidators applied for directions as to distribution of the trust assets. On 9 August 2023, by consent, I made orders as to service of the application and granted an interlocutory application by the liquidators including for orders:⁵

- (a) Appointing Ms Jenny Cooper KC as representative counsel for all known any potential creditors of Cryptopia including trade creditors and any party who might have claims against Cryptopia, this group being potentially adversely affected by the Court's decision relating to the cryptocurrency held on trust.

⁵ *Ruscoe v Houchens* HC Wellington CIV-2019-409-247, 9 August 2023 (Minute of Palmer J) at [4].

- (b) Appointing Mr Peter Watts KC as amicus curiae to assist the Court in providing arguments for and against the liquidators' preferred approach as to distribution sought in the Application for Distribution and any other issues arising from the Application for Distribution that are not dealt with by counsel appointed to represent the creditors of Cryptopia.

[5] On 1 September 2023, I determined that anyone who opposes the liquidators' distribution application should be joined and named as respondents. Those who filed only a notice of appearance would be named as interested parties. No one filed a notice of opposition or application for joinder before the hearing of the distribution application on 13 November 2023.⁶ Epic Trust Ltd did so after that hearing but I declined those applications.⁷ Two notices of appearance were filed, by the first to fifth, and by the sixth, interested parties. Counsel for the sixth interested party appeared at the hearing on 13 November 2023.

[6] I received and heard submissions from Mr Barker for the liquidators, from Mr Watts KC and Ms Cooper KC as counsel assisting the Court, and from Ms Bercovitch for GNY.io Ltd (GNY).

[7] Mr Watts notes it is important to recognise there is a potential conflict of interest amongst account holders in relation to at least some aspects of the directions sought. He has approached the application with a view to the generality of the account holders, or the hypothetical account holder, recognising that he should consider the position from each point of view where there is a clear division between classes of account holder, while not being inhibited from advising the Court on what he believes is the correct, or optimal, solution.

[8] Ms Cooper notes that:

- (a) As well as trade creditors, Cryptopia's creditors include account holders with potential claims against Cryptopia, including those who suffered loss from the hack.

⁶ *Ruscoe v Houchens* [2023] NZHC 3224 at [2].

⁷ *Epic Trust Ltd v Ruscoe* [2024] NZHC 21.

- (b) Based on the liquidators' reports, Cryptopia appears to have insufficient non-trust assets available to meet the creditor claims which have been accepted by the liquidators, let alone to meet the potential claims of account holders.
- (c) Because the assets available for distribution are held on trust for the benefit of account holders, they are not available for distribution to meet creditors' claims. But, because Cryptopia itself held accounts on its own platform, creditors have an indirect interest in its own beneficial interests in the trust assets.
- (d) Creditors also have an interest in ensuring the liquidators' costs are met from trust assets rather than company assets, and that costs attributable to the trusts which have already been met from Cryptopia's assets are reimbursed.
- (e) Finally, and significantly, it appears likely that there will be a significant amount of unclaimed trust assets after distribution.

[9] GNY, incorporated in Jersey, is the developer of Lisk Machine Learning (LML) tokens which it held across two Cryptopia accounts. Accordingly, it is an account holder of Cryptopia. GNY lost over 15 million LML tokens in the 2019 hack, to a total value of around NZD8.56 million at the date of liquidation of Cryptopia. The LML token did not recover its value and has since been withdrawn. GNY issued proceedings against Cryptopia prior to liquidation. Its claim in liquidation, in the amount of NZD27,228,202.35, has been provisionally accepted by the liquidators but its quantum had not been determined at the time of the hearing. So it is also a creditor of Cryptopia. GNY endorses Ms Cooper's submissions.

Relevant law of trusts

[10] This judgment decides the distribution application with reference to four sets of issues canvassed by the liquidators. A key aspect of the liquidation to bear in mind

is that Cryptopia is a bare trustee holding the relevant pool of cryptocurrency on behalf of the beneficiaries — the account holders.⁸ Accordingly:

- (a) As trustee, Cryptopia is obliged to preserve and safeguard the trust property, is subject to a general duty of care, and to other duties of trustees such as to ensure safe custody of the trust property and to preserve and manage the trust property for the benefit of the account holders.⁹ Those duties continue to inhere in Cryptopia in liquidation and the liquidators control and manage the company accordingly.¹⁰
- (b) Cryptopia is obliged to transfer the trust property to the beneficiary who calls for distribution of their entitlement to a proportionate share in the property.¹¹ Where a trustee has a power of sale, their obligation is to obtain the highest possible price and not do anything that would prejudice the sale.¹²
- (c) A trustee must be satisfied beyond doubt as to who is legally and equitably entitled to the property before distribution and is personally liable to distributing to a person who is not so entitled.¹³ If a trustee is uncertain as to whether they have identified all beneficiaries, they may, for example, make inquiries and advertise, retain sufficient assets to accommodate potential beneficiaries, take out insurance, seek *Re Benjamin* orders (as outlined below), or pay the fund into Court as a last resort.¹⁴

⁸ *Ruscoe v Cryptopia Ltd (in liq)*, above n 3, at [184] and [196].

⁹ See Lynton Tucker and others *Lewin on Trusts* (20th ed, Sweet and Maxwell, London, 2020) [*Lewin on Trusts*] at [34-015]–[34-076].

¹⁰ Paul Heath and Michael Whale (eds) *Heath and Whale on Insolvency* (online ed, LexisNexis) at [46.8](c)(ii), citing *Re French Caledonia Travel Service Pty Ltd (in liq)* (2002) 42 ACSR 524 at [12]–[13].

¹¹ *Lewin on Trusts*, above n 9, at [22-006]–[22-009].

¹² Chris Kelly and Greg Kelly *Garrow and Kelly: Law of Trusts and Trustees* (8th ed, LexisNexis, Wellington, 2022) [*Garrow and Kelly*] at [23.39].

¹³ *Lewin on Trusts*, above n 9, at [26-004]–[26-005]

¹⁴ *Re Sheridan* [1959] NZLR 1069 (CA).

1 Method of distribution

Case law

[11] The traditional starting point for apportioning the value of a mixed trust fund amongst innocent contributors is *Clayton's Case*, which adopts a “first in, first out” methodology.¹⁵ But this has come to be honoured more in the exception than the rule. In 1990, in *Re Registered Securities Ltd (in liq)*, the Court of Appeal stated that where it is not practical to trace investors’ moneys or where doing so will involve enormous effort unlikely to produce a reliable result, the rule in *Clayton's Case* should not be applied.¹⁶ Rather, the Court considered a division of assets there, based on the contribution of each investor, was to be viewed as the only “rational mode of distribution” to achieve substantial justice between the parties.¹⁷

[12] The liquidators submit that the New Zealand case law aims to develop “a pragmatic and fair way to share a common misfortune” of a deficient mixed fund as Clifford J characterised it in 2016 in *Priest v Ross Asset Management (in liq)*.¹⁸ In 2018, Mander J accepted a first in, first out approach would cause injustice to later investors inconsistent with the presumed intention of investors.¹⁹ Clifford and Mander JJ each relied on Fogarty J’s decision in *Eaton v LDC Finance Ltd (in rec)* which stated that:²⁰

... to do equity the context and consequential nature of the fiduciary obligations enforced should dominate the selection of the mechanism used to ascertain the beneficiaries’ rightful claims on any assets.

Liquidators’ proposal

[13] Accordingly, the liquidators here submit their proposed approach to distribution is intended to achieve the fairest outcome for all account holders:

- (a) Account holders’ entitlements are determined at a common date, 14 May 2019, the date of liquidation, that does not disadvantage one group

¹⁵ *Devaynes v Noble* (1816) 35 ER 781 (Ch) [*Clayton's Case*].

¹⁶ *Re Registered Securities Ltd (in liq)* [1991] 1 NZLR 545 (CA) at 558.

¹⁷ At 558.

¹⁸ *Priest v Ross Asset Management (in liq)* [2016] NZHC 1803 at [107].

¹⁹ *Graham v Arena Capital Ltd (in liq)* [2017] NZHC 973 at [18].

²⁰ *Eaton v LDC Finance Ltd (in rec)* [2012] NZHC 1105 at [62].

over another. There is an opportunity for account holders to dispute or review that determination.

- (b) Account holders who have not yet participated in the claims portal have a reasonable opportunity to do so but account holders who have assiduously participated to date are able to receive a distribution of their assets as soon as possible.
- (c) The method of distribution is accessible to account holders, not overly complicated, and not unduly expensive.

[14] The liquidators propose that distribution in specie is most consistent with Cryptopia's obligations as bare trustees and with the terms and conditions on which it holds cryptocurrency. Mr Watts agrees with, and reinforces, the submission that Cryptopia's prima facie duty as bare trustee is to distribute cryptocurrency in specie. He can identify no power of sale of cryptocurrency in the written terms and conditions Cryptopia issued to account holders. He submits a Court would not lightly confer one over the opposition of a beneficiary or where the type of trust asset is important to the trust settled.

[15] The liquidators considered three means of transferring cryptocurrency to account holders in specie as well as alternative methods of distribution. There are issues of practicality with some of these. For instance, Cryptopia holds around 125 live cryptocurrencies. Not many exchanges could support a significant enough number of distributable cryptocurrencies and none in New Zealand or Australia support users in the United States (who are 25 per cent of the eligible account holders as at November 2023).

[16] In summary, the proposed distribution process is:

- (a) Account holders would be asked to provide, in the claims portal, a wallet address (their own core wallet, an account with a custodial wallet, or an account with another exchange).

- (b) The wallet address would be screened to identify any risks such as money laundering or terrorist financing.
- (c) The liquidators would create one transaction per cryptocurrency to be transferred to each account holder. It would be signed, broadcast, and confirmed by blockchain.
- (d) Transaction fees, set by the blockchain, would be deducted automatically.
- (e) A receipt would be uploaded to the claims portal.

[17] Mr Watts says he cannot advise that what is proposed is unreasonable or unfair. He considers the liquidators have expended considerable effort to be fair and reasonable. Mr Watts raised a query with the liquidators about the position of deceased account holders. However, he accepts the difficulties Cryptopia and the liquidators face in that regard (as explained in Mr Ruscoe's affidavit of 13 October 2023).

Distribution to Cryptopia

[18] GNY does not formally oppose the liquidators' application. But Ms Bercovitch, for GNY, seeks confirmation that the distribution process also applies to accounts held by Cryptopia itself, so Cryptopia will receive distributions of trust assets. They would therefore be available to Cryptopia's creditors, after due liquidation process. My understanding of the proposal is that that is so.

[19] But Ms Bercovitch also seeks indicative information about the amount of the likely distribution of trust assets to Cryptopia, and seeks an interim distribution to Cryptopia or release now by the Court of funds expected to be distributed to Cryptopia. She seeks information about the number and value of tokens held in each trust, the consideration given to alternative distribution options, any specialist expert advice and other information. That would enable GNY to more fully understand the effect and outcome of the directions sought.

[20] Mr Barker submits that GNY's proposals would cut across the liquidators' duty of impartiality and cause potential difficulty. An early transfer to the company account would happen before assessment of cost allocation and would cause complexities in terms of the treatment of losses from the hack. He also opposes the provision of further information to GNY on the basis of commercial sensitivity. It is unnecessary for any unsecured creditor to have such information. Mr Watts is also opposed, in the interests of account holders, to Cryptopia's share of the assets going back to Cryptopia in advance, for the reasons given by Mr Barker.

[21] I do not favour GNY's proposal as to early distribution or provision of information. It was a nice try. But this is a complex liquidation process which should be taken step by step in an orthodox manner. The distribution to account holders needs to occur before winding up the trusts and subsequent distribution of company property by the liquidators.

Restricted jurisdictions

[22] In certain "restricted jurisdictions", transfer of cryptocurrency could constitute a criminal offence. The liquidators understand that cryptocurrency, or cryptocurrency trading, may be illegal in: Afghanistan, Algeria, Bangladesh, Bolivia, Egypt, Morocco, Nepal, the People's Republic of China, Ecuador, and Vietnam. There are around 1,151 Cryptopia account holders in those countries, with holdings estimated at over USD2 million in value. The liquidators are very concerned that distributing cryptocurrency in any of those jurisdictions might result in serious consequences for them personally.

[23] Accordingly, the liquidators seek directions that they are instead permitted to convert those account holders' holdings to a fiat currency reasonably available in that jurisdiction, using an over-the-counter trader, and transfer that currency to a bank account provided by the account holder, who would also bear the transaction costs.

[24] Mr Watts considers these proposals are sensible. So do I. The order is warranted on the basis of “necessity”, which is a powerful factor in case law.²¹ Mr Watts suggests it would be possible for the Court to reserve leave for individual account holders to apply for some other solution. Mr Barker acknowledges this would be possible but submits it should be on the express understanding that the account holder would meet any additional costs which accrue as a result. I consider the general reservation of leave under Order 11 fulfils that purpose.

2 *Re Benjamin* orders

Re Benjamin law

[25] In *Re Benjamin*, and its subsequent applications in New Zealand, is authority for the Court allowing a trustee to make a distribution on the basis of particular facts, where the true facts are impossible or impracticable to ascertain.²² This is now partly codified in s 136 of the Trusts Act 2019:²³

136 Trustee may apply to court to allow distribution of missing beneficiaries’ shares

- (1) The court may, on application by a trustee, make an order authorising the trustee to distribute trust property—
 - (a) as if a potential beneficiary or a class of potential beneficiaries does not exist or never existed or has died before a date or an event specified; and
 - (b) if, because of the order, it is not possible or practicable to determine whether any condition or requirement affecting a beneficial interest in the property or any part of it has been complied with or fulfilled, as if that condition or requirement had been or had not been complied with or fulfilled.
- (2) The court may make an order only if it is satisfied that—
 - (a) reasonable measures have been taken to bring to the notice of the potential beneficiary or beneficiaries their potential beneficial interest or interests; and

²¹ See for example, *Royal Melbourne Hospital v Equity Trustees Ltd* [2007] VSCA 162, (2007) 18 VR 469 at [184].

²² *Re Benjamin* [1902] 1 Ch 723; and *Re Plato* [1989] 2 NZLR 360 (HC), recently cited in *Re Triple A Trustees Ltd* [2020] NZHC 1314 at [14].

²³ See Te Aka Matua o Te Ture | Law Commission *Review of the Law of Trusts: A Trusts Act for New Zealand* (NZLC R130, 2013) at [12.34]–[12.41].

- (b) at least 60 days have passed since the last of those measures was taken; and
- (c) no potential beneficiary with respect to whom an order is sought has come to the attention of the trustee as a result of those measures, or the claim of any such beneficiary may be disregarded in the circumstances.

[26] A beneficiary who appears later may still make a claim for the trust property but the trustee is protected from liability.²⁴ But in *Re Instant Cash Loans*, the Court permitted a trustee to proceed on the basis that beneficiaries who had started the claims process, but not completed it by providing bank account details, after further payment attempts were made by trustees, had abandoned their claims.²⁵ The company there had taken steps to ensure beneficiaries were provided with a reasonable opportunity to complete the claims process before the order was implemented.²⁶

Claims portal

[27] The liquidators' claims portal process invites account holders to review their account balance, accept it as accurate, or dispute it. Only account holders whose holdings are valued at more than US\$20 are invited to complete the identity verification step. If the liquidators reject a dispute they provide written reasons. Account holders can apply for an independent barrister with commercial and/or trust law experience to review a rejection within 28 days, along the lines of an expert determination process. Every account holder bears the cost of proving their entitlement. Costs incurred by Cryptopia and the liquidators in assessing entitlements, including those occasioned by any review, are met from the relevant trust.

[28] As at 13 October 2023:

- (a) 13.87 per cent of total users had registered in the claims portal;
- (b) 61.12 per cent of account holders who had been invited to identity verification had completed that stage; and

²⁴ *Lewin on Trusts*, above n 9, at [39-031].

²⁵ *Re Instant Cash Loans Ltd* [2021] EWHC 1164 (Ch); and see Dan Butler and Conor McLaughlin "Re Instant Cash Loans Limited (in members' voluntary liquidation) [2021] EWHC 1164 (Ch)" (2021) 18(6) ICR 432.

²⁶ At 434.

- (c) 81.02 per cent of account holders invited to balance acceptance had completed that stage.
- (d) 81 or 84.7 per cent of account holders by value (based on February 2023 or October 2020 valuations respectively) had interacted with the claims process in some way.

[29] The liquidators note that similar cryptocurrency exchange collapses overseas have similarly elicited low creditor responses to a call for claims.²⁷ They identify several potential reasons, including: that some account holders believe the liquidation is an “exit scam”; some holdings may be used for purposes such as money laundering or fraud; some account holders may not believe the value of their holdings is worth the effort of the claim. The liquidators detail their reasonably extensive efforts to contact account holders at each stage of the claims process. I cannot identify any further reasonable steps required to identify beneficiaries. Mr Watts cannot see any objections to the proposed process of independent review of the liquidators’ decision-making. Neither can I.

Liquidators’ proposal

[30] The liquidators propose:

- (a) An interim distribution will be made to encourage more account holders to register their claims.
- (b) A “soft cut-off”, at least 90 days after the Court’s Orders and more than 60 days after notice of the cut-off date was given. After that, the liquidators can proceed as if the only beneficiaries are those who have registered a claim in the portal. By that time, it will have been almost three and a half years since the claims portal was launched in December 2020.

²⁷ *Re Gatecoin Ltd (in liq)* [2023] HKCFI 914; and *MF Global UK Ltd* [2013] EWHC 1655 (Ch) at [9].

- (c) After that, trust administration costs would be allocated to trusts (as explained below). Holdings of account holders who have not registered will be treated as “unclaimed holdings”. The liquidators can proceed as if those account holders do not exist. Trust administration costs would first be allocated to those unclaimed holdings in each trust. The remainder would be allocated among eligible account holders in each trust. So eligible account holders would receive a distribution of their finalised claim less their allocation of trust administrations. Ms Cooper accepts it is appropriate to apply the unclaimed holdings in respect of each trust to reimburse costs to eligible account holders of the same trusts. That reflects the fact that the costs have been, or otherwise would be, deducted from assets to which those account holders are beneficially entitled.
- (d) A final cut-off date, after which the liquidators can proceed on the factual basis that any account holder, who has engaged with the claims portal but not completed it, has abandoned their claim. The holdings of account holders who have not completed the claims process would be treated as “abandoned holdings” (and part of the pool of unclaimed holdings). The trust administration costs would be reallocated accordingly. Those account holders entitled to receive more cryptocurrency would receive a “top up” (up to a maximum of 100 per cent of their finalised claim) from the pool of unclaimed holdings.
- (e) If, at that stage, unclaimed holdings remain in trusts that suffered losses in the hack, the liquidators would consider distributing a top-up to account holders in those trusts on a pari passu basis and up to a maximum of 100 per cent of their account balance as at 14 January 2019.
- (f) The liquidators seek a direction that any account holder who has been invited to, but not completed, balance acceptance by two months before the final cut-off, will be deemed to have accepted their balance and will have the opportunity to provide their payment details. They submit that

will have been more than an adequate period of time in which to expect account holders who have registered to complete the claims process.

- (g) The Orders sought would not extinguish any account holder's beneficial entitlement but would permit the liquidators to proceed with distribution without retaining assets to accommodate those interests. Neither would those interests bear trust administration costs which would be borne by the "unclaimed" holdings.

[31] Ms Cooper agrees that the orders sought by the liquidators regarding timing, particularly the cut-off periods, are a sensible and fair means to balance the interests of all parties and ensure a relatively efficient and prompt resolution of all claims. She supports it as being in the interests of the creditors. I agree the proposed process and timing is sensible, efficient, and fair to all involved.

3 Allocation of trust administration costs

Costs of this trust

[32] From the appointment of the liquidators in May 2019 until the end of September 2023, the liquidators identify a total of NZD22.85 million as attributable to the administration of the trusts. The costs to date have been realised from the BTC Trust, the DOGE Trust, including NZD5,999,737 from company assets to date. As at 13 October 2023, the liquidators' projected costs to June 2024 are estimated to be NZD5 million with a further NZD3.5 million up to the final cut-off date.

Law of trust costs

[33] The liquidators submit, as s 81 of the Trusts Act now provides, that trustees are entitled to be reimbursed for, or to pay, expenses and liabilities out of trust property when they are incurred in connection with the performance of their duties as trustee, when acting reasonably. Under s 278, and sch 7, of the Companies Act 1993, liquidators can apply the assets of the company to the liquidators' costs, expenses and remuneration incurred in properly carrying out their duties. A liquidator is not entitled to charge the beneficiaries of one trust with the costs and expenses incurred in relation

to another trust. But if an estimate of the costs and expenses relating to each trust is not possible then a *pari passu* distribution of the costs and expenses will be in order.²⁸ *Heath and Whale* states that it may be that much of the work involved in a liquidation of a company that has carried on the business of a trustee might be chargeable against trust assets if it can be shown the liquidation was necessary for the proper administration of the trust.²⁹

[34] Mr Watts does not disagree with the liquidators' submissions on indemnity and remuneration. He believes it is apparent that any costs incurred by Cryptopia before liquidation are not proposed to be met. He submits that there is an insufficient basis for any indemnity in relation to such costs, which I accept. The exact basis of the right to indemnification of trustees' costs after liquidation was not entirely clear to Mr Watts.³⁰ In his written submissions he considered it probable that it lies in implied contract or restitution or otherwise in the inherent equitable jurisdiction of the Court. Ms Cooper does not take issue with the liquidators' entitlement to be indemnified by the trusts for their costs in relation to the trusts, or the Court's jurisdiction to make orders accordingly.

[35] I consider that s 81 of the Trusts Act, *Re Secureland Mortgage Investments Ltd (in liq) (No 2)* and *Finnigan v Yuan Fu Capital Markets Ltd (in liq)* provide sufficient authority for the reimbursement of the liquidators here for their costs and expenses in incurring what are effectively the costs of the trustee, including remuneration, in properly carrying out their duties after liquidation.³¹ To the extent any further authority is required I would rely on the inherent equitable jurisdiction of the Court. None of the assets have been or will be realised here other than in accordance with Court orders.

²⁸ *13 Coromandel Place Pty Ltd v C L Custodians Pty Ltd (in liq)* (1999) 30 ACSR 377 (FCA) at 383, citing *Re Suco Gold Pty Ltd (in liq)* (1983) 7 ACLR 873 (SASC) at 883.

²⁹ *Heath and Whale*, above n 10, at [46.9](c).

³⁰ See Victoria Stace "Recovering the liquidator's costs on the winding up of a corporate trustee" (2019) 50 VUWLR 711.

³¹ *Re Secureland Mortgage Investments Ltd (in liq) (No 2)* (1988) 4 NZCLC 96-208 (HC); and *Finnigan v Yuan Fu Capital Markets Ltd (in liq)* [2013] NZHC 2899.

Proposed allocation of costs

[36] The liquidators submit it is not practicable to calculate accurately or to estimate the actual costs incurred in respect of each trust. The majority of the steps the liquidators have taken are for the benefit of all the trusts. The time they have spent on each step cannot be divided accurately across all of the trusts. In these circumstances, the Court will not insist on a strict apportionment exercise. It would require further expensive work which would have to be borne by account holders for no overall benefit. As in *Re Caledonian Securities Ltd (in liq)*, as long as the cost allocation method is within the bounds of what is fair and reasonable, I accept that a beneficiary's cost contribution would be imprecise and there would be a some element of cross-subsidy between beneficiaries.³² The allocation method accepted there was for each beneficiary to bear a proportionate share of total costs by reference to the total value of all trust assets, subject to a cash to securities adjustment (reflecting the increased cost of dealing with securities compared with cash).

[37] The liquidators have considered and modelled methods of allocating costs: by value; by trust, by value; to each trust with sufficient assets to bear the costs; by account holder; and by trust, by holding. They note that the most significant driver of costs is the number of beneficiaries in a trust. In addition, on average, account holders hold multiple cryptocurrencies, with the number increasing with the value of the holdings. It is clearly desirable that the cost allocation model be administratively simple. Mr Barker submits, for the liquidators, that the most principled, fair, and pragmatic cost allocation is by trust, by holding, as follows:

- (a) Trust administration costs to date and projected costs would be allocated to each trust in proportion to its number of account holders.
- (b) The cryptocurrency equivalent of the dollar value would be removed from the trust.
- (c) Within each trust, the cost would be allocated to account holders evenly.

³² *Re Caledonian Securities Ltd (in liq)* [2016] 1 CILR 309 at [24].

- (d) The cost allocation would be calculated as at the date of any distribution after the soft cut-off date, and recalculated after the final cut-off date.

[38] Mr Barker submits this model, in comparison with the others identified:

- (a) accords with Gendall J's holding that each cryptocurrency is subject to a separate trust;
- (b) allocated costs in line with how actual costs are generated;
- (c) is robust to valuation fluctuations; and
- (d) is administratively simple.

[39] Mr Watts endorses what the liquidators propose and does not consider that account holders can complain. Ms Cooper submits that the orders sought are appropriate and consistent with the interests of creditors. I accept the submissions.

Trusts with a de minimis value

[40] Trusts with no realisable value will not be able to bear their costs of administration. Other trusts, with low realisable values, may not be able to bear all their costs or may have little value available afterwards. The liquidators propose not to take action in respect of those trusts with a de minimis value (which will vary across trusts), while periodically reassessing the realisable value of the cryptocurrencies. Account holders below a de minimis threshold may nonetheless receive a distribution if, for example, projected costs are less than estimated, unclaimed holdings are applied to reimbursing costs, or unclaimed holdings are applied to a shortfall claim for losses arising from the hack. After the final cut-off, the liquidators may apply any unclaimed holding, in priority:

- (a) evenly, to reimburse the difference between projected and actual costs;
- (b) evenly, to reimburse actual costs; or

- (c) *pari passu*, to account for losses arising from the hack, up to 100 per cent of accepted pre-hack holdings, taking into account any post-hack transactions.

[41] Mr Watts has given careful consideration to the proposed treatment of de minimis account holders. Save for one point of uncertainty, he concludes that the proposed methods for allocating costs are “basically just and probably optimal.” The reservation was whether de minimis account holders would share in the any windfall from substantial unclaimed holdings, *pari passu* with ordinary account holders, or only after the costs of the latter had been met. Mr Barker confirms that registered de minimis account holders would be treated like other registered account holders.

[42] The liquidators also seek the following directions, which I grant below:

- (a) A direction permitting them to realise some of the trust assets so that future trust liabilities can be paid directly out of trust assets. I consider that is prudent, given the volatility of cryptocurrency values to date. If actual costs are less than the amount retained by the liquidators in respect of anticipated costs, the liquidators will reimburse the trusts.
- (b) Directions that if, after cost allocation has been calculated, the costs allocated to Bitcoin (BTC) and Dogecoin (DTC) are less than the costs that those trusts have already borne, each other trust will reimburse the BTC and DOGE trusts for their share of those costs.
- (c) The costs of trust administration borne by company assets will be reimbursed.

4 Ancillary orders

Costs of hack and recovery from hack

[43] Pre-liquidation, Cryptopia management could only estimate the amounts of cryptocurrency that had been stolen, and they could not be attributed to any specific account holders. Pre-liquidation, Cryptopia managers assessed the amount of

cryptocurrency that had been stolen in order to determine a percentage loss of the total holding. The managers then issued a coin called “Cryptopia Loss Marker” to the account holders of the hacked trusts and amended the balances of those account holders in the database accordingly.

[44] However, the liquidators’ reconciliation process suggests the percentage of the bitcoin cryptocurrency that was stolen was different from that estimated by pre-liquidation management. It now appears that only nine per cent of the bitcoin holdings were stolen but the loss had previously been estimated at 14 per cent. The difference, 600 BTC, had been treated as company property and spent by pre-liquidation management (256 BTC) or realised by the liquidators to fund trust administration costs in 2019 (344 BTC). The liquidators propose to treat the 344 BTC as having been realised from the BTC trust and to leave open the question of whether account holders have a claim against Cryptopia for the 256 BTC.

[45] The Federal Bureau of Investigation (FBI) of the United States has recovered 17 BTC from the hack albeit they were put through a “mixer” to make them untraceable. The liquidators propose to use those BTC to fund further recovery actions or otherwise, after the hack top-up of unclaimed holdings, to reimburse account holders proportionately on the basis of the valuation as at the date of the hack.

[46] Mr Watts submitted that it may not be justifiable to expend in recovery processes some of the assets of any trust that has not suffered a hack or to attribute part of the costs of such recovery actions to other trusts. He suggested the victims of any breach of duty by a trustee would have claims as unsecured creditors of the trustee but with no more right to seek to have Cryptopia’s remaining property devoted to rectifying the breach than any other creditor would have. There was some suggestion unclaimed cryptocurrency might be used to rectify losses suffered by victims of the hack. He submitted some certainty was required about what is proposed and the legal basis for it.

[47] Mr Barker clarified that there is no proposal to cross-subsidise losses from the hack. The hack targeted the “hot wallets” of cryptocurrencies on the servers, which were maintained to meet requests for outgoing cryptocurrency. Not all of the hot

wallet currencies were stolen, only Bitcoin and those readily exchangeable for Bitcoin. Ms Marriner submits that the liquidators' proposal has changed to propose that only those account holders who suffered losses in the hack will bear the recovery costs. The full amount of costs would be allocated to those trusts ahead of the first distribution and can be reimbursed later if there are further recoveries.

[48] Mr Watts considers that what is now proposed is equivalent to every hacked-currency trust embarking on a joint venture to get as much back as they can, as a group. He considers that is a novel but commendable solution because different exchanges might have different approaches and it will not be possible to tell which account holders the hacked assets came from. Accordingly, it makes sense to treat recovery of all of the hacked currencies as funded by all account holders of those currencies, to refund the costs, and then share in what is left over, rather than going through a tracing exercise which may not be possible.

[49] Ms Cooper notes that the claims of account holders against Cryptopia arising from the hack are unsecured claims. She submits it is not clear why the unclaimed holdings should be distributed to meet those claims but not the claims of other creditors. Rather, it would be fairer, and within the scope of the Court's jurisdiction over trusts and liquidations, to allow all creditors' claims to be met from the unclaimed holdings, once all eligible account holders' claims in respect of their balances as at the liquidation date have been met in full and their costs reimbursed. That reflects the Court's attention to "practical probabilities".³³ There has been ample opportunity for account holders to make their claims here. Accordingly, as in *Re Instant Cash Loans Ltd* and *Re Pritchard Stockbrokers Ltd*, claims that have not been made should be treated as abandoned, and the beneficial interest of the relevant account holders extinguished.³⁴ Then remaining cryptocurrencies cease to be the subject of any trust and there can be no objection to them being applied to creditors' claims. Effectively, she submits that all unsecured creditors should be treated in the same way, in light of how unclaimed holdings are dealt with on winding up.

³³ *Re Benjamin*, above n 22; *MF Global UK Ltd*, above n 27, at [26]; and *Re Instant Cash Loans Ltd*, above n 25.

³⁴ *Re Pritchard Stockbrokers Ltd* (2019) EWHC 137 (Ch) at [29]; and *Re Instant Cash Loans Ltd*, above n 25, at [24].

[50] Mr Barker, for the liquidators, understands the principle behind Ms Cooper's point. His pragmatic solution is to defer its consideration, along with consideration of the situation on winding up, as noted below. He amended the directions sought, as a result. I agree with that course of action.

Post-appointment deposits

[51] Post-liquidation, despite requests to account holders not to make deposits, around 12,000 deposits were made into the exchange, totalling some NZD855,000. Because the deposit-tracker software had been switched off, those deposits were not recorded in Cryptopia's databases or pooled with the Cryptopia trust property or included in the liquidators' reconciliation process. The liquidators consider the mistaken deposits are now held on trust by Cryptopia for the relevant account holders. They propose to return these deposits to the relevant account holders upon receipt of proof, and verification, of the deposit transaction (net costs of the return process). If they are not claimed by the soft cut-off date, the liquidators have been proposing to treat unclaimed mistaken deposits in the same way as unclaimed holdings as outlined below. That will now be the subject of further consideration and a further application.

[52] Mr Watts agrees with these proposed steps. Ms Cooper accepts that the post-appointment deposits are held by the liquidators on trust for the depositors, and so should be returned in the timeframes proposed. So do I. However, Ms Cooper disputes the treatment of post-appointment deposits which are unable to be returned to the payers, along with other unclaimed holdings, as already outlined.

Anti-money laundering

[53] Cryptopia ceased to be a reporting entity on entering liquidation, under reg 22(2) of the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011. Nevertheless, as noted, the liquidators say they have designed the identity verification process in line with the standards of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. The liquidators accept that any fiat currency transfer to account holders in restricted jurisdictions is subject to the requirements of the Anti-Money Laundering and Countering Financing of

Terrorism Act. The application was served on the Department of Internal Affairs but it did not seek to be heard. The liquidators do not seek any direction regarding this.

Winding up

[54] The liquidators plan to seek relevant directions to wind up the trusts from the Court around June 2025. They have intended to convert the undistributed trust property into fiat currency and transfer it to the Crown under s 149 of the Trusts Act. Mr Barker submits there is nothing in the terms of the contractual relationship between account holders and Cryptopia that indicates that the surplus would be company property.

[55] However, Ms Cooper submits that there is no good reason why any surplus assets (including unclaimed holdings and mistaken deposits) should be paid to the Crown when creditors' claims remain outstanding. Allowing the surplus to benefit the creditors would not no harm to the account holders (and would be in the interests of those account holders who are creditors). Section 149 of the Trusts Act does not impose any requirement on a trustee to transfer undistributed trust property to the Crown, nor create any right in the Crown over trust property. It is a last resort for a trustee who has no other means to dispose of trust property without incurring personal liability for breach of trust. Ms Cooper's proposed orders would have the effect of treating assets that were part of a trust as no longer subject to the trust and are clearly within the scope of the Court's inherent jurisdiction, as noted above.³⁵

[56] Mr Watts considers there is some useful guidance in the case law but submits there are there is a very live issue as to whether the victims of the hack should be paid out ahead of unsecured creditors. He considers these issues are best left for further consideration and resolution.

[57] The liquidators are in discussion with Ms Cooper and Mr Watts about those matters. That will be the subject of a further application, likely in 2025. Ms Cooper submits that it is in the interests of both the account holders and creditors to achieve

³⁵ And see *Graham v Arena Capital (in liq)* [2016] NZHC 194; *Re Philips New Zealand Ltd* [1997] 1 NZLR 93 (HC).

resolution and payment of claims in as short a time as is reasonably achievable in the circumstances. She accepts it is unlikely to be possible for the liquidators to make a distribution to creditors until the trusts are wound up, which is envisaged to be June 2025.

Orders

[58] I agree that that liquidators' proposed directions, amended as indicated, are appropriate and consistent with the trustee obligations of Cryptopia. I make the following orders:

1.0 Claim valuation date

- 1.1 Pending further order of the Court, and subject to Order 9 below, the Liquidators may adopt 14 May 2019 as the date at which the entitlement of each account holder of the respective cryptocurrency trusts shall be calculated.

2.0 Distribution process

- 2.1 The Liquidators are permitted, and shall procure Cryptopia, to make distributions in specie of cryptocurrency held on trust to account holders, subject to the terms of the following orders described further below:
 - (a) submission of claims before 'cut-off' date (Orders 2.2 and 2.5);
 - (b) completion of identity verification and account balance acceptance / review / resolution (Orders 2.6 and 3);
 - (c) deduction of allocated incurred and projected future costs (Orders 6 and 7);

- (d) reimbursement of BTC and DOGE trusts and Cryptopia Ltd for funding the liquidators' costs (Order 8);
- (e) realisable value of trust property (Order 4.1);
- (f) de minimis value threshold for distribution (Order 5.1);
- (g) distribution in fiat currency/ies for jurisdictions where it is or may be illegal to use or transact cryptocurrency (Orders 2.10 and 2.11).

2.2 The Liquidators are permitted, and shall procure Cryptopia, to make a distribution of cryptocurrency which is held by Cryptopia on bare trust in accordance with Gendall J's judgment of 8 April 2020 in CIV 2019-404-544, on the basis that those account holders who have not registered their claim with the Liquidators prior to a given date (which must be at least 90 days from the date of Notice referred to below) (the **Soft Cut-off Date** or the **Cut-off Date**), are not in existence, even when that account holder is shown in Cryptopia's records as having a beneficial entitlement, provided that no fewer than 90 days before the Cut-off Date the Liquidators:

- (a) Give notice by email to all account holders who have not registered with the Liquidators via the Cryptopia Claims Portal, explaining the consequences of failing to do so before the Cut-off Date.
- (b) The email shall be in the form of the draft attached as Schedule 1 to the application for these Orders.
- (c) Place a notice in a prominent position on www.grantthornton.co.nz/cryptopia-limited (the **Website**), which the Liquidators use to communicate

with Cryptopia's account holders. The notice shall be in the form of the draft attached as Schedule 2 to the application for these Orders (the **Notice**). The Liquidators shall ensure that the Notice remains on the Website until (at the earliest) the date on which they have paid the dividend to participating account holders.

- (d) Place the Notice on Cryptopia's social media channels, or any successor channels.

2.3 Nothing in Order 2.2 above shall prevent the Liquidators, in the exercise of their discretion, from receiving, considering, resolving and/or accepting a claim after the passing of the Soft Cut-off Date.

2.4 The Liquidators may accept an account holder's claim either for the whole amount claimed, or for part of that amount.

2.5 If any account holder who has taken any step in, but has not fully completed, the process in the Cryptopia Claims Portal, including providing valid payment details by 31 December 2024 (**Final Cut-off Date**), then the Liquidators are permitted, and shall procure Cryptopia, to treat any such account holder as having abandoned their claim with consequent loss of entitlement to receive a distribution (**non-eligible account holder**).

2.6 Any account holder who has fully completed the process in the Cryptopia Claims Portal, including providing valid payment details, by the Final Cut-off Date shall be categorised as an **eligible account holder**.

2.7 Following the Final Cut-off Date the Liquidators shall calculate the:

- (a) quantum of unclaimed Cryptocurrencies in each trust **(Unclaimed Holding)**;
- (b) actual trust administration costs up to the Final Cut-off date borne by each account holder in each trust; and
- (c) quantum, if any, of any shortfall in distribution(s) to each account holder in any trust for which there is an Unclaimed Holding.

2.8 In relation to any trust for which there is an Unclaimed Holding, and to the extent available from any such Unclaimed Holding, the Liquidators are permitted, and shall procure Cryptopia, to distribute to all eligible account holders an amount (in fiat or cryptocurrency) by way of reimbursement of costs charged to such account holders in that trust (ie, to 100% of their holdings as at 14 May 2019). **(top-up distribution)**

2.9 If the Unclaimed Holding in any given trust is insufficient to make a top-up distribution to 100% of accepted claims, then the Liquidators shall, and shall procure Cryptopia, first to apply the Unclaimed Holdings to reimburse charged costs on a per account holder basis and then make a top-up distribution on a pari passu basis in relation to any remaining shortfall.

2.10 Notwithstanding any other orders or directions, the Liquidators Cryptopia are not required to make a distribution of cryptocurrency to any account holder who resides in a country or territory, where, at the date of the proposed distribution, it would or may be a criminal offence for the Liquidators or Cryptopia to be a party to the transfer of cryptocurrency to that country or territory **(Restricted Jurisdiction)**.

- 2.11 Notwithstanding any other orders or directions, the Liquidators are permitted to convert the cryptocurrency holdings of account holders residing in Restricted Jurisdictions to a fiat currency reasonably available in that account holder's jurisdiction, and to procure Cryptopia to make a distribution of fiat to those account holders.

3.0 Review process

- 3.1 If the Liquidators reject a claim in whole or in part, the Liquidators shall prepare a written statement of reasons for doing so, and send it as soon as reasonably practicable to the account holder.
- 3.2 If an account holder is dissatisfied with the Liquidators' decision with respect to their claim, the account holder may, at any time up until the Final Cut-off Date, request a review to determine if the decision should be reversed or varied (**Review**):
- (a) an application must be filed with the Liquidators within 20 days of the account holder receiving the statement under Order 3.1.
 - (b) One of either Rachel Pinny or Paul Chisnall, barristers of Wellington or any substitute barrister appointed by the Liquidators and approved by the Court, provided that the substitute has at least 7 years' experience in commercial disputes and/or trust law (the **Reviewer**) may be selected to carry out a review of the Liquidators' decision to decline the claim or decline the claim in part. Any review will be conducted pursuant to the provisions of Schedule 2 to the application for these Orders.

- (c) neither the Company nor the Liquidators shall be personally liable for costs incurred by an account holder or any other person in respect of such an application.

3.3 Unless the Court otherwise orders:

- (a) every account holder shall bear the cost of proving their own entitlement, including costs incurred in providing documents or evidence; and
- (b) costs incurred by the Company and by the Liquidators, in assessing an account holder's entitlement, including the costs of and occasioned by any review, are payable from the relevant trust as costs properly attributable to the distribution of the trust.

3.4 A claim may be varied as to the amount claimed at any time prior to the distribution from the trusts, by agreement between the account holder and the Liquidators or by Review.

3.5 If any account holder who has:

- (a) been invited to accept their balance more than 20 days prior to the Soft Cut-off Date and has not by the Soft Cut-off Date disputed that balance;
- (b) been invited to accept their balance and has not by the Final Cut-off Date disputed that balance; or
- (c) disputed their balance, and has not provided any substantiating evidence within 20 days of disputing that balance

then the Liquidators and Cryptopia are justified in treating any such account holder as having accepted their balance as

assessed by the Liquidators, and that account holder will be deemed an eligible account holder for the purposes of balance acceptance.

3.6 The Liquidators have the power, at their discretion, to agree to extend the 20-day period for providing evidence to substantiate an account holder's dispute.

3.7 If the Liquidators cause the Company to act in accordance with these directions, neither the Company nor the Liquidators shall be liable, in respect to any distribution made in accordance with these directions, to any account holder of the Company:

(a) of whom the Liquidators were not aware as at the Soft Cut-off Date (and, for these purposes, the Liquidators shall be entitled to proceed on the footing that they are not aware of any account holders who failed to submit an account holder money claim by the Soft Cut-off Date);

(b) who it is later established (by agreement or by the Reviewer) has an entitlement, but who failed to file an application to review the rejection of their claim within the time specified above (being the Cut-off Dates); or

(c) whose entitlement is later agreed or established by the Reviewer as being greater than the accepted part of its claim, but who failed to file an application with the Liquidators to review the rejection of its claim within the time specified above (being the Cut-off Dates).

3.8 Nothing in this Order shall prejudice the right of an account holder to prove in the liquidation as an unsecured creditor.

- 3.9 The Liquidators shall act in accordance with this Order solely as agents of the Company in its capacity as trustee of the bare trusts, and nothing in this Order or in determining account holder money claims or distributing the money held in the bare trusts in accordance with this Order shall result in the Liquidators assuming personal liability as trustees.

4.0 Low/no value trusts

- 4.1 The Liquidators, and Cryptopia are not required to take any steps in connection with distribution of any cryptocurrency that has no or low realisable value and thus no basis for contribution to the costs of distribution.
- 4.2 The first date at which the Liquidators are to assess realisable value for the purposes of Order 4.1 is fixed at no later than 4 weeks before the proposed date of commencement of the first distribution to account holders pursuant to Order 2.1.
- 4.3 The Liquidators and Cryptopia are permitted to allocate trust administration costs to any low value trusts and to apply the realisable value of any such trusts towards the share of the costs for such trusts as calculated in accordance with Order 6.
- 4.4 The Liquidators are permitted to review and revise their assessment of the realisable value of any cryptocurrency before undertaking any further distributions to account holders.

5.0 Low account balances

- 5.1 The Liquidators, and Cryptopia, are entitled to treat account holders who have an account balance equivalent to or less than the actual or anticipated cost of the trust administration as at the date of any proposed distribution as having no right to

participate in the distribution of cryptocurrencies by the Liquidators.

6.0 Allocation of trust administration costs to account holders

- 6.1 The Liquidators and Cryptopia, are permitted to allocate the incurred and future costs and expenses of and incidental to the recovery, preservation, protection and distribution of the cryptocurrency available for distribution by trust and, within each trust, by each account holder contributing the same value towards such costs.

Illustrative example: Costs are allocated to each trust in proportion to the number of users in that trust. For example: if Trust A has two account holders, Trust B has eight account holders, and Costs to Date relating to both trusts totalled \$10, then Trust A would be allocated \$2 of trust administration costs, and Trust B would be allocated \$8. This cost allocation is to be applied regardless of the value of each account holder's holding in each trust.

- 6.2 Order 6.1 shall apply notwithstanding that the allocation and payment of such costs may result in the realisable value of cryptocurrency in a trust all being applied towards the costs allocation and no cryptocurrency is then available for distribution from that trust to account holders.
- 6.3 The Liquidators are permitted to allocate the costs incurred to date in tracing and attempting to recover cryptocurrencies stolen in the Hack only to those trusts that suffered losses in the Hack.

7.0 Providing for future trust administration costs

7.1 The Liquidators and Cryptopia are permitted to:

- (a) withdraw from each trust holding cryptocurrency of realisable value a quantity of cryptocurrency sufficient in value in the aggregate to meet the Liquidators' projected costs and expenses to complete (further) distributions of cryptocurrency and to dispose of any Unclaimed Holding as directed by the Court; and
- (b) convert to fiat currency the cryptocurrency withdrawn pursuant to the above Order and:
 - (i) hold the fiat proceeds of sale on interest bearing deposit; and
 - (ii) apply such fiat proceeds to costs incurred and payable by or on behalf of the Liquidators in relation to the trust administration costs;
 - (iii) refund to the relevant trusts any surplus available at the conclusion of the trusts' administration, pro rata according to their respective contributions.

7.2 The allocation of the Liquidators' projected costs and expenses to account holders shall be the same as for incurred trust administration costs; namely by trust and by each account holder in number (as provided for in Order 6.1).

8.0 Cost reimbursement to BTC and DOGE trusts (and the Company)

8.1 After calculating the allocation of trust administration costs and expenses to each trust, the Liquidators and Cryptopia are

permitted to deduct from each trust holding cryptocurrency of realisable value, other than the BTC and DOGE trusts respectively, a quantity of cryptocurrency to reimburse the BTC and DOGE trusts and Cryptopia Ltd (in part or in full, as available Cryptocurrency in each trust allows) for the trust administration costs incurred to the date of the making of this direction that had been funded from sales of BTC and DOGE pursuant to the Court orders dated 29 May 2019, 19 February 2021, 16 February 2022, and 10 August 2023; and funds advanced by Cryptopia Ltd.

- 8.2 The allocation of the incurred trust costs and expenses for the purposes of reimbursement to the BTC and DOGE trusts shall be the same as for incurred trust administration costs; namely by trust and by each account holder in number (as provided for in Order 6.1), or such other cost allocation model as the Court directs.
- 8.3 In calculating the value to be reimbursed, the Liquidators shall take into account the respective contributions to the trust administration costs that are to be allocated to the BTC and DOGE trusts respectively, for which no recovery from other trusts shall be made.

***Illustrative example:** Total trust administration etc costs are \$100, funded from BTC (\$40) and DOGE (\$40) and \$20 from Cryptopia Ltd. Contributions to trust administration etc costs are calculated as:*

BTC - \$45

DOGE - \$30

The other trusts - \$25.

Then \$25 will be recovered from the rest of the Cryptocurrency trusts and \$20 will be repaid to Cryptopia, the other \$5 will be paid to the DOGE trust.

Finally, the BTC trust will pay the DOGE trust a further \$5.

9.0 Recoveries of stolen cryptocurrency

9.1 The Liquidators and Cryptopia are permitted to apply the cryptocurrency recovered by the FBI (~17 BTC) to further tracing and recovery action.

9.2 If there are any recoveries of stolen cryptocurrencies, the Liquidators and Cryptopia are permitted to apply those recoveries, after the Final Cut-off Date and after any top-up distribution, in the following order:

- (a) The trusts that contributed to hack recovery costs and the account holders within those trusts will receive a reimbursement of recovery costs proportionate to the amount contributed to the hack recovery costs;
- (b) Account holders will receive a further distribution (**recovery distribution**) in fiat or in a cryptocurrency, proportionate to the amount they lost in the hack and up to a maximum of 100% of the value of an account holder's holding in the stolen cryptocurrency as at the date of the hack, taking into account any later withdrawals;
- (c) Any remaining balance is to form part of the Unclaimed Holdings.

10.0 Post-appointment deposits

10.1 The Liquidators, and Cryptopia, are permitted to treat deposits of cryptocurrency to Cryptopia after the commencement of the liquidation as mistaken deposits that are held separately from

the other cryptocurrencies held on trust for the benefit of the account holder those deposits were intended for.

10.2 Orders 2.10, 2.11 and 4.1 to 4.4 apply equally to post-appointment deposits.

10.3 The Liquidators, and Cryptopia, are, after giving notice of the existence of post-appointment deposits and the following directions:

- (a) Permitted to distribute post appointment deposits to the account holder for whom those deposits were intended, upon receipt of proof of the deposit and receipt of valid payment details, and in the same manner as otherwise set out in this application;
- (b) Permitted to deduct transaction costs from any distribution of post-appointment deposits;
- (c) Not required to distribute post-appointment deposits to account holders who are not eligible account holders (Orders 2.5 and 2.6); and
- (d) Are otherwise not required to take any steps in respect of post-appointment deposits.

11.0 Leave reserved

11.1 Leave is reserved for the Liquidators, any account holder or unsecured creditor (including counsel appointed by the Court to represent the interests of either stakeholder group) to apply to the Court to set aside or vary any of the directions and orders made pursuant to this Application, on not less than 72 hours' notice.

12.0 Costs

- 12.1 The costs of and incidental to this application for the Applicants and counsel appointed by the Court to represent the interests of account holders and unsecured creditors, are to be paid as trust administration expenses.

Palmer J