



## FundingSecure Limited ('the Company')

Jonathan Avery-Gee, Edward Avery-Gee and Daniel Richardson ('the Administrators') of CG&Co ('CG') were appointed Administrators of the Company on 23 October 2019.

We have prepared this document of Frequently Asked Questions ("FAQs") to help all investors and creditors to understand what is happening in relation to the formal insolvency procedure affecting the Company.

These FAQs have been prepared to respond to email questions raised by individual creditors and investors. Please note that we are not in a position to respond individually to each enquiry made at this stage but have collated the issues raised and responded by updating the FAQs as below. We will continue to monitor the dedicated email and update the FAQs for the benefit of creditors and investors as matters progress.

***Please note that the information contained in this document is of a general nature and is prepared for the benefit of investors, creditors and borrowers of the Company and does not constitute any form of legal, accountancy or taxation advice on the part of CG or any other party. If you are concerned about your individual circumstances and the impact of the insolvency of the Company on your personal position, you should take appropriate professional advice accordingly.***

The affairs, business and property of the Company are being managed by the Administrators. They act as agents of the Company and without personal liability. The Administrators are licensed as insolvency practitioners in the UK by the Institute of Chartered Accountants in England and Wales and the Insolvency Practitioners Association. FundingSecure Limited ('FSL') is incorporated in England and Wales under the Company Act 2006 with registered number 08120200. The Company is authorised and regulated by the Financial Conduct Authority with FRN 698305.

FAQs – 6 March 2020

## Loan Updates

### *Please can we get more updates on loans?*

The Administrators have a team working on providing regular updates on loans. When providing updates the Administrators need to ensure that they do not disclose information which may prejudice realisations. In some instances, this prevents updates being provided on a regular basis.

## Withdrawal of Funds

### ISA

### *When can we transfer ISA balances?*

The requests for the transfer originate from the new ISA provider.

There is a 30-day transfer window, once the requested has been issued, for the transfer to completed. We need to get the e-wallets re-opened before we would encourage transfers in order to avoid applications expiring.

Please note that the Administrators are not in a position to give any tax advice nor are they able to comment on the tax status of Investors.

## Loan Calculations/Fees

### *How are loan repayments / deductions being calculated?*

The loan calculations/ fees are being calculated in accordance with 6.2.4 and 6.2.5 of the Company's terms and conditions with the additional deduction of 2.5% (+VAT and expenses) in respect of the Administrators' fees. This is in accordance with the fee basis as set out on the Proposals and which was approved by the Creditors Committee as set out below. The basis for the Administrators fees being payable as a percentage of realisations is provided for by Rules 18.16 and 18.18 of the Insolvency Rules 2016.

### *Why are lenders the ones paying the admins?*

The basis of remuneration is set out in the Proposals which was approved by Creditors at the Creditors' Meeting on 28 November 2019.

The establishment of the Creditors' Committee was approved at the same time and at the First Creditors Committee Meeting which took place on 17 December 2019. The Committee approved the basis of the Administrators' Fees and Expenses on the same terms that the Creditors in the Creditors' Meeting had done so.

## Creditors' Committee

The Administrators note that there are a number of questions around the Creditors Committee. Some of these questions are answered in the R3 Guide to Creditors Committees which can be found at the following link: <https://www.r3.org.uk/technical-library/england-wales/technical-guidance/creditor-guides/more/29111/page/1/liquidation-creditors-committees-and-commissioners/>

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The obligations on an Administrator in connection with the Creditors Committee are to attend on the Creditors Committee at any reasonable time (on at least seven days' notice) and to provide the committee with information about the exercise of his function.

The function of the creditors Committee per *Brilliant Media Specialists Ltd Case 2015 BCC* is as follows:

*"Whilst the views of a creditors' committee should be taken into account during an administration and will frequently be taken as reflecting the views of the creditors as a whole, it is not for the committee to determine how the administration should be conducted. That is a decision for the office holder in performance of the duties and powers Parliament has thought fit to entrust to administrators. The outcome of such decision making, which will be made from time to time on both macro and/or micro bases (as appropriate), will depend upon the office holder's assessment of how best to achieve the purpose of the administration in accordance with the powers conferred upon them by paragraph 5 9 of Schedule B1 and within Schedule 1 to the Act."*

### **How are the administrators providing updates to the CC?**

The Administrators are in regular communication with the Creditors' Committee and the individual members and provide updates as requested. There have also been two Creditors' Committee meetings to date.

### **Can we get a copy of the CC NDA?**

The Administrators will not be providing a copy of the NDA to Investors.

### **Why was an NDA needed at all?**

The NDA allows the Administrators to be open and transparent with the information that is shared with the Creditors Committee free from the concern that such information may enter into the public domain which may result in the same prejudicing the progress of the Administration, the recovery of loans and the realisation of assets.

Investors should note that the provision of certain information around issues encountered or around strategy could prejudice the progress of the Administration if it was to enter into the public domain and so the Administrators have to control the flow of information insofar as possible.

### **Are CC meetings minuted and can we get them?**

Yes the meetings are minuted and signed by the Chair and members/proxies in accordance with the requirements of the Insolvency Rules. There is no requirement nor is there any intention to share these minutes with the creditors as a whole. One of the Creditors Committee members requested a redacted version of the first committee meeting minutes for circulation and this was provided.

### **Who is on the committee / why did some sign NDA and some not?**

As nominated and voted for at the Creditors Meeting on 28 November the committee members are Spencer Tarring, Marc Mason, Craig Goodfellow, Alan Jones and Paul Mundy. In order to confirm that the interest of Investors is represented within the Creditors' Committee, the Administrators can confirm that four of the five Creditors' Committee members are Investors.

The Administrators cannot speak for the individual committee members in relation to the questions around their signing of the NDA, however the Administrators can confirm that all of the Creditors Committee members have signed an NDA.

***On what basis in law are CC members only allowed to represent themselves?***

Please see the link to the R3 Creditors' Committee guide.

***Can we get more details on the CC members themselves / their exposure?***

The exposure of the CC members is not a determining factor here: Creditors' Committee Members were nominated by the Creditors and were voted for by the Creditors at the meeting which took place on 28 November 2019. When the Investors / Creditors voted for the members, the value of their proof of debt was taken for voting purposes and therefore the majority of Investors / Creditors (in value both at the meeting and in nominations received beforehand) voted for these members to join the Committee.

***Why are lawyers at the CC meetings?***

The Administrators have a right for legal representation throughout their roles as Administrators. At the creditor committee meetings to date there have been important legal points in discussion and therefore the Administrators' legal representation has been present at the meetings which have taken place to date to ensure that these points are discussed and documented correctly.

**Realisations**

There are a number of questions around the processes that the Administrators are undertaking when realising an asset and the Administrators consider that it would be helpful for them to set out the process that they undertake when realising an asset. Investors should note that Administrators are seeking to maximise returns for all Investors when taking the steps below in respect of any asset realisation.

In addition, in a number of cases, the Administrators have appointed Receivers to Receive and manage properties. It is likely that the Administrators will also be appointing Trustees' in Bankruptcy and Liquidators in Compulsory Liquidations where necessary.

1. When a loan is becoming overdue the Administrators write to the borrower advising of the same and requesting proposals to exit the loan
2. A drop box is created with all documentation relating to that loan including correspondence to and from the company, details of the security, valuation advice and any other pertinent information
3. The security is reviewed by independent solicitors, this includes any personal guarantee given
4. The Administrators obtain an independent and up to date valuation(s) from RICS valuers.
5. Where appropriate the Administrators are also seeking advice from Building Surveyors/ Quantity Surveyors
6. Demand is served
7. Consideration is made as to whether a 3<sup>rd</sup> party Receiver is required or whether the Company can go mortgagee in possession/ apply to Court for possession without the additional expense of a 3<sup>rd</sup> party.

8. Properties are marketed by local qualified agents with the requisite knowledge of local markets. A cross section of agents' opinions are sought before a formal appointment is made. Similarly, if an asset is best suited for auction then various appraisals are obtained

There are also instances where the Administrators are allowing borrowers to find third party finance to fund a project to completion (subject to the Administrators instructing Quantity Surveyors to verify the costs needed to bring a project to completion and receiving valuation advice on the property as is and when complete) where allowing completion will result in a higher asset valuation and accordingly a higher realisation for Investors.

Some borrowers are themselves in an insolvency process where the borrower company is in Administration. In these cases, it is not the Administrators of Fundingsecure who are in control of the realisation process, but the appointed Administrators of the Borrower. The Administrators of Fundingsecure take additional steps outside of the realisation process to confirm that they are satisfied with the recommendations of the appointed Administrator.

There are a number of loans where Receivers were appointed by Fundingsecure prior to the appointment of Administrators. The Administrators are reviewing the actions taken by the Receivers and requesting updates.

***Have the Administrators documented what their obligations are? Especially with regards to 'fire sales'***

The Administrators are keeping records of all realisations. The Administrators do not engage in "fire sales" but will agree to sales/ refinance when this, in their opinion, maximises recoveries for the Investors.

***Valuations:***

The Administrators are pulling together evidence to see whether there are valid and viable claims against valuers for flawed advice. They are taking advice from specialist professional negligence solicitors in relation to this. The Creditors' Committee are being consulted and involved in this process.

It is important that the Administrators do not rely on potentially flawed valuations as a method of collection as in some instances there may have been contributory negligence by the Company which could dilute a recovery.

***How were developments valued?***

FS instructed valuers verbally but did not always instruct the basis of the valuation in writing.

There are a number of instances where valuations were provided on the basis of a completed development (GDV or gross development value) as well as the current value of the collateral itself. It appears that the GDV was used as a yardstick for expressing a view on loan to value.

***Can we have more info on litigation about incorrect valuations?***

Where the Administrators have reason to believe that original valuations were incorrect they will engage chartered surveyors to provide a retrospective valuation, in addition to the current valuation in order that a loss can be quantified.

***Status of claims against valuers?***

***Can we get details of who the valuers were?***

***Were progress checks done on developments before each tranche?***

These questions are being explored as part of the investigations into the potential professional negligence claims. The Administrators are not in a position to comment further on this at the present time.

**Reporting an Events prior to the Administration**

***Can the administrators provide a report detailing the failings of FS?***

Details around the failings of Fundingsecure can be found in Annex 1 of the Administrators' Proposals which were circulated to all known investors on 12 November 2019 and which can be found on the Website [www.ips-docs.com](http://www.ips-docs.com) (using login code **F0017** and, where prompted, enter password **F0017X** (case sensitive) and login)).

The Administrators are under an obligation to provide progress reports every six months and the next progress report will be filed within one month of the six-month anniversary (23 April 2020) of the Administration.

***Why did Funding Secure continue to accept deposits via the "e-wallet" system when the directors knew about the imminent administration?***

The events around the director's conduct in the lead-up to the Administration are being examined as part of the Administration. Where deposits were received (and not invested) these will be released back to individual Investors as part of the release of funds through the e-wallet system.

***Why were no FS funds available for the wind-down policy?***

FS' wind-down plan was designed to allow the firm to wind down solvently; it is not relevant in an insolvency situation.

**One Off User Case**

***Will users who made deposits after the Administration be able to get these funds back***

Yes.

**Specific Loans**

***Will the statement from FS that they would guarantee the Barnoldswick/Burnley loans be honoured?***

The Administrators are informed that Fundingsecure Ltd made statements advising that Fundingsecure Ltd would making good any shortfall in certain loans. As FundingSecure Ltd is now in administration, the Administrators are unable to honour these promises made prior to their appointment.

## ***Will Personal Guarantees on the Dell be chased.***

The Administrators are exploring pursuing Personal Guarantees where possible. This is an area that the Administrators are working with the Creditors' Committee to discuss and agree strategy.

## ***No further recovery on the Art Loans (as the Borrower is Bankrupt)***

The detail in this question refers to the Borrower's alleged Pension Fund. The issue of the recovery of the Pension Fund asset (if it exists) is something that was considered too speculative to include in the report/update to Investors. Such an action would necessitate proceedings being brought outside the bankruptcy for the civil fraud debt and then attaching to the Pension Fund which has certain protections attaching to it – so it is not readily available for enforcement. All such action is additionally predicated upon the borrower's return to the jurisdiction which we have knowledge of or control over.

In light of these issues, the update was submitted in the form of the platform update in order to provide a current realistic position/statement in respect of this case.

The update also advised that the Administrators were seeking offers to purchase the litigation against the borrower (the date for such offers has now passed).

## **Website**

### ***Why was the past loans section removed?***

This section has not been removed from the system. Access has been restricted to only loans that investors are currently participating in.

## **FCA**

### ***"The FCA are said to be in daily contact with the Administrators. How can we trust that FCA input and influence is in Investor interests rather than their own interests?"***

Where a regulated company goes into an insolvency, the FCA has certain rights to be involved and to be kept informed in line with the provisions of the Financial Services and Markets Act 2000. The Administrators are in contact with the FCA in line with these legislative requirements.

### ***Did Fundingsecure have any insurance which would cover "mismanagement, misrepresentation, miss-selling, cock-ups or fraud"?***

No.

### ***When repayments are made that the system can't handle properly, an update should be posted at the same time as the payment is made explaining any differences between what's displayed and reality. For example, last Friday's Llandudno part payment showed a capital repayment but reduced the accrued interest figure shown alongside the remaining capital owed. People realise this is due to a system limitation, but would appreciate an explanation by way of a concurrent update that they have not instantly lost a load of interest***

The comments here have been noted by the Administrators and they are looking to include an explanatory note where there are such discrepancies.



## Contact Information

### *Email us:*

If you wish to contact us, please email us at: **[fundingsecure@cg-recovery.com](mailto:fundingsecure@cg-recovery.com)**

### *Website:*

The following website will be updated (including with this FAQ document):  
**[www.cg-recovery.com/fundingsecure](http://www.cg-recovery.com/fundingsecure)**

The FCA will also be updating their website with information.

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