

The Insolvency Act 1986

**Administrator's progress report**

Name of Company  
Abacus Trading Co Limited (in  
administration)

Company number  
2546333

In the  
High Court of Justice, Chancery Division,  
Companies Court

[full name of court]

Court case number  
21846 of 2009

(a) Insert full name(s) and  
address(es) of the  
administrator(s)

We (a) Kirstie Jane Provan and Mark Robert Fry, both of Begbies Traynor (Central) LLP, 32 Cornhill,  
London, EC3V 3BT

administrators of the above company attach a progress report for the period

from 11 June 2010 to 6 December 2010

(b) Insert dates

(b) 11 June 2010

(b) 6 December 2010

Signed

Joint Administrator

Dated

6/12/10

**Contact Details**

You do not have to give any contact information in  
the box opposite but if you do it will help Companies  
House to contact you if there is a query on the form.  
The contact information that you give will be visible  
to us.

Begbies Traynor (Central) LLP

32 Cornhill London EC3V 3BT

Tel Number 020 7398 3800

Fax Number 020 7398 3799

DX Number

have completed and signed this form please send it to the Registrar of Companies at

Companies House, Crown Way, Cardiff, CF14 3UZ

DX 33050 Cardiff

THURSDAY



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COMPANIES HOUSE

Kirstie Jane Provan and Mark Robert Fry were appointed Joint Administrators on 11 December 2009

The affairs, business and property of the Company are being managed by the Joint Administrators, who act as the Company's agents and without personal liability

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## **Abacus Trading Co. Limited (in administration)**

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Final Progress Report of the Joint Administrators  
pursuant to Rules 2.47 and 2.110 of The Insolvency  
Rules 1986

Period: 11 June 2010 to 6 December 2010

## **Important Notice**

**This final progress report has been produced by the Administrators solely to comply with their statutory duty to report to creditors on the progress of the administration. The report is private and confidential and may not be relied upon, referred to, reproduced or quoted from, in whole or in part, by creditors for any purpose other than this report to them, or by any other person for any purpose whatsoever.**

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## 1. INTERPRETATION

<u>Expression</u>	<u>Meaning</u>
"the Company"	Abacus Trading Co Limited (in administration)
"the administration"	The appointment of Administrators under Schedule B1 to the Insolvency Act 1986 on 11 December 2009
"the Administrators"	Kirstie Jane Provan and Mark Robert Fry, both of Begbies Traynor (Central) LLP, 32 Cornhill, London, EC3V 3BT
"the Act"	The Insolvency Act 1986 (as amended)
"the Rules"	The Insolvency Rules 1986 (as amended)
"Secured creditor" and "unsecured creditor"	Secured creditor, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and "unsecured creditor" is to be read accordingly (Section 248(1)(a) of the Act)
"security"	<ul style="list-style-type: none"><li>(i) In relation to England and Wales, any mortgage, charge, lien or other security (Section 248(1)(b)(i) of the Act), and</li><li>(ii) In relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off) (Section 248(1)(b)(ii) of the Act)</li></ul>
"Preferential creditor"	Any creditor of the Company whose claim is preferential within Sections 386, 387 and Schedule 6 to the Insolvency Act 1986

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## 2. STATUTORY INFORMATION

Name of Company	Abacus Trading Co Limited (in administration)
Trading name(s)	Abacus Trading Co Limited
Date of Incorporation	05/10/1990
Company registered number	025463333
Company registered office	32 Cornhill, London, EC3V 3BT

## 3. DETAILS OF APPOINTMENT OF ADMINISTRATORS

Names of Administrators	Kirstie Jane Provan and Mark Robert Fry, both Licensed Insolvency Practitioners and both of Begbies Traynor (Central) LLP, 32 Cornhill, London, EC3V 3BT
Date of Administrators' appointment	11 December 2009
Date of Administrators' resignation	N/A
Court	High Court of Justice, Chancery Division, Companies Court
Court Case Number	21846 of 2009
Person(s) making appointment / application	Barclays Bank PLC
Acts of the Administrators	The Administrators act as officers of the court and as agents of the Company without personal liability. Any act required or authorised under any enactment to be done by an Administrator may be done by any one or more persons holding the office of Administrator from time to time.
EC Regulation on Insolvency Proceedings	The EC Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000) applies to these proceedings which are 'main proceedings' within the meaning of Article 3 of the Regulation.

## 4. PROGRESS DURING THE PERIOD

This report should be read in conjunction with the Joint Administrators' proposals, dated 2 February 2010 and the Joint Administrators' progress report, dated 8 July 2010

### Receipts and Payments

Attached at Appendix 1, is our combined final abstract of receipts and payments for the period from 11 June 2010 to 6 December 2010 and 11 December 2009 to 6 December 2010

We summarise below the receipts and payments in the administration since our last report, for the period from 11 June 2010 to 6 December 2010

### RECEIPTS

#### Book Debts

The sum of €5,934 (converted to £4,889) was received as payment in full of a debt due from Aldi Stores (Ireland) Limited. This sum was paid to Barclays Asset Sales Finance ("BASF"), in accordance with their entitlement under their security

#### Contribution to Professional Fees and disbursements from Barclays Bank PLC ("the Bank")

The Bank made a contribution to the estate amounting to £43,691 (inclusive of VAT), to cover an element of professional costs and expenses incurred during the course of the administration as there were insufficient funds in the estate to meet such costs. The contribution was used to discharge the following costs -

Contribution to Professional Costs & Disbursements	£Amount including VAT	£Net	£VAT
Legal Fees	13,953	11,885	2,068
Joint Administrators' Fees	25,785	21,945	3,840
Joint Administrators' Disbursements	3,953	3,364	589
<b>TOTAL</b>	<b>43,691</b>	<b>37,194</b>	<b>6,497</b>

The input VAT element of £6,497 is recoverable in the estate and will be repaid in whole or part to the Bank, after accounting for output VAT, once the final VAT Return in the administration has been processed

Legal fees are dealt with in more detail below

#### Bank Interest

An amount of £10 was received during the period, in respect of gross interest earned on deposits held in the administration

## **PAYMENTS**

### **Agents' Fees**

As previously reported, immediately following our appointment we instructed professional agents Edward Symmons LLP ("ES") to assist in dealing with the sale and disposal of all of the Company's stocks and chattel assets. Work done by ES includes the following -

- Valuation of the Company's office furniture and equipment held at the Company's offices at 1138 High Road, Whetstone, London,
- Physical verification and valuation of the Company's stocks at 5 separate warehousing sites,
- Assisting with the evaluation of numerous complex claims made by suppliers for Retention of Title ("ROT") of stocks supplied across the warehousing sites,
- Marshalling and dealing with offers received in respect of the Company's stock received from interested parties

ES were to be remunerated on the basis of a combination of a fixed fee for the valuation work, and on a time cost basis at ES' standard charge-out rates for all other work in the administration. ES incurred total costs of £27,309. However, ES agreed to limit their costs to £10,000, commensurate with and restricted to, the level of realisations achieved in the estate. This amount was agreed with Barclays Trade Finance ("BTF") and Bank de Commerce et de Placements ("BCP"), and paid from stock realisations due to BTF and BCP as follows -

	£Amount
<b>Apportioned to stock realisations due to BTF</b>	
Agents' Charges – financed stocks	1,650
<b>Apportioned to stock realisations due to BCP</b>	
Agents' Charges – financed stocks	3,350
Agents' Charges – unencumbered stocks	5,000
<b>Total</b>	<b>10,000</b>

The stock realisations paid to BTF and BCP is dealt with in more detail below

### **Legal Fees**

As previously reported, immediately following our appointment, we instructed solicitors Lawrence Graham LLP ("LG") to assist us with various matters arising in the administration including the following -

- Assisting with appointment formalities,
- Reviewing the validity of the warehouse liens,
- Reviewing the validity of the ROT claims,
- Advising as regards the relevant ranking and priorities of the Bank, BTF, BASF, BCP, and various warehouse ROT and lien claims over the proceeds of stock realisations

LG were to be remunerated on a time cost basis at discounted Bank panel rates and have incurred total time costs of £23,400, plus disbursements of £185. However, LG agreed to reduce their costs by 50% to £11,885, commensurate with and restricted to, the level of realisations achieved in the estate.

As mentioned above, LG's fees were settled by a contribution from the Bank

### Distribution to BCP

BCP held an all monies Debenture dated 12 March 2001 conferring fixed and floating charges over the whole of the Company's assets, which is subject to a Deed of Priorities dated 10 January 2007. As at 6 January 2010, the Company's indebtedness to BCP amounted to £192,000. The sum of £18,813 was paid to BCP in respect of the proceeds of the sale of stocks to which it was entitled under the terms of its security. In summary, the final return to BCP was as follows -

	£Amount
Gross realisations from sale of stocks available to BCP	47,188
Less:	
Agents' Charges – financed stocks	(3,350)
Agents' Charges – unencumbered stocks	(5,000)
Legal Costs	NONE
Administrators' costs	(20,000)
Net balance payable to BCP	18,838

### Distribution to BTF

The sum of £18,632 was paid to BTF in respect of the proceeds of the Financed Stocks, under the terms of their security, calculated as follows -

	£Amount including VAT	£Net	£VAT
Gross realisations from sale of stocks available to BTF	22,921		
Less:			
Agents' Charges – financed stocks	(1,939)	1,650	289
Joint Administrators' Fees	(2,350)	2,000	350
TOTAL	18,632	3,650	639

The input VAT element of £639 is recoverable in the estate and will be repaid in whole or part to the Bank after accounting for output VAT once the final VAT Return in the administration has been processed.

## 5. OUTCOME FOR CREDITORS

### ANTICIPATED RETURN TO CREDITORS

#### Secured Creditors - Barclays Bank PLC

As previously reported, the majority of the Company's assets were charged to BASF and the Bank. The Company also provided additional security to a Guarantor of the Company's indebtedness to the Bank namely, BCP.

BASF held the following security -

- Debenture dated 24 May 2004 conferring fixed and floating charges over purchased debts, which fail to vest, and on other debts, and floating charge on proceeds of other debts
- Debenture dated 31 May 2006 conferring fixed and floating charges over the whole of the Company's assets ("the Debenture")



- Bank Guarantee dated 14 September 2007 from BCP in favour of the Bank limited to £300,000 ("the BCP Guarantee")
- Deed of Charge over Credit Balances by a Chargor for Own Liabilities dated 8 September 2006 between the Company and the Bank ("the Charge over Credit Balances")
- Unlimited unsecured Cross Guarantee dated 18 August 2009 between The Company and Abacus International Commodities Limited and the Bank ("the Cross Guarantee")
- Additional security in the form of personal guarantees from Messrs Nicholas and Dimitrios Marcou

The indebtedness to the Bank as at the date of our appointment, net of the BCP guarantee and deposits recovered of £400,000, was as follows -

	Amount £
Barclays Asset Sales Finance	10,233,000
Barclays Bank PLC	607,000

In addition, the VAT recoverable in the estate (detailed above) will be paid to the Bank

Debtor receipts paid to BASF totalled £172,255, giving an estimated shortfall of £10,060,745

The Bank's Debenture was created after 15 September 2003 and therefore, a prescribed part is applicable in respect of the net realisations of property subject to the Bank's floating charge pursuant to section 176A of the Insolvency Act 1986 ("the Act") See in more detail below

#### **Other Secured Creditors**

BCP held an all monies Debenture dated 12 March 2001 conferring fixed and floating charges over the whole of the Company's assets subject to a Deed of Priorities dated 10 January 2007 As at 6 January 2010, the Company's indebtedness to BCP amounted to £192,000

#### **Relative Ranking & Priorities of the Bank's Security.**

We instructed LG to advise on the relative ranking and priorities of the Bank's security

The deed of priorities dated 10 January 2007 provided that the Bank will be entitled to be paid in priority to BCP in respect of all assets acquired by the Company with funding received pursuant to a Multi Option Trade Finance Facility dated 7 April 2006 made between the Bank and the Company up to a maximum of £1.5m The remainder would be apportioned on a pro-rata basis between the Bank and BCP in accordance with their respective exposure as at the date of the administration

In respect of stock purchased with funds **not** advanced by the Bank, BCP is entitled to payment in priority to the Bank to the extent that it has paid out under a bankers' guarantee in favour of the Bank We understand that the Bank has received £300,000 from BCP and as such, BCP were entitled to the first £300,000 of realisations Total realisations from the disposal of such stocks were £47,188, significantly less than £300,000, and accordingly there is no surplus available to the Bank

The total return to the Bank and BCP in the administration is as follows -

	£Amount
Indebtedness to the Bank at date of appointment	10,840,000
<b>Return to the Bank</b>	
Realisations from sale of stocks available to BTF (net of Agents' fees and Joint Administrators' fees)	18,632
Realisations in respect of book debts	172,255
Recoverable VAT on costs	7,136
Total payments to the Bank	198,023
<b>Final indebtedness to the Bank</b>	<b>10,641,977</b>
Indebtedness to BCP at date of appointment	192,000
<b>Return to BCP</b>	
Realisations from sale of stocks available to BCP (net of Agents' fees and Joint Administrators' fees)	18,838
Total payments to BCP	18,838
<b>Final indebtedness to BCP</b>	<b>173,162</b>

#### Section 176A Fund for Unsecured Creditors

Section 176A of the Act provides that, where the company has created a floating charge after 15 September 2003, the Administrator must make a *prescribed part* of the Company's *net property* available for the unsecured creditors and not distribute it to the floating charge holder except in so far as it exceeds the amount required for the satisfaction of unsecured claims. *Net property* means the amount which would, were it not for this provision, be available to floating charge holders out of floating charge assets (i.e. after accounting for preferential debts and the costs of realising the floating charge assets). After accounting for the costs of the realisations, there is **no** net property available to unsecured creditors.

#### Preferential creditors

Preferential creditors comprise claims from former employees for arrears of wages up to £800 and accrued holiday pay. To the extent that an employee's contractual arrears of wages are not covered by the statutory limit of £800, the remainder of the claim would rank as an unsecured claim against the Company.

The Redundancy Payments Office ("RPO") processes employee payments for arrears of wages, holiday pay, statutory redundancy pay and statutory notice pay. Where the RPO has advanced funds in respect of employee preferential claims, it will have a subrogated claim for these sums in the liquidation.

The Company made thirteen employees redundant on 30 November 2009, prior to the Company entering into Administration.

Based upon information to date, our estimates of the preferential claims are as follows -

	£ Amount
Employees' arrears of wages & holiday pay	11,177
Redundancy payments office – subrogated claim	41,174
<b>TOTAL</b>	<b>52,351</b>

The employees have been paid all their statutory entitlements by the RPO. There is **no** prospect of a distribution to either the RPO or the employees, in respect of their preferential claims against the Company in administration.

### **Unsecured creditors**

Based upon present information, unsecured creditors' claims amount to circa £9,750,000

As stated above, after accounting for the costs of the realisations, there is **no** net property available to unsecured creditors and **no** likelihood of any other surplus funds available to unsecured creditors

Creditors should consult their own professional advisors as regards VAT bad debt relief

Section 36 of the Value Added Tax Act 1994 incorporates provisions which enable the trader to claim VAT bad debt relief six months after the date of supply, or payment date if later, providing he has written the debt off in his accounts. This procedure does not involve the Joint Administrators and claims should be made directly to HM Revenue & Customs

### **Exit from administration**

As the Notice accompanying this report confirms, once registered by Companies House (which we anticipate shortly), our appointment as Administrators will cease to have effect and, unless the Court makes an order otherwise, the Company will be deemed dissolved at the end of the period of three months from the date of registration of the notice (Form 2 35 B)

## **6. ADMINISTRATOR'S PROPOSALS**

Attached at Appendix 2 is a summary of the Administrators' proposals as deemed approved under Rule 2 33(5) of the Insolvency Rules 1986 in the absence of an initial meeting of creditors

## **7. SUMMARY OF STEPS TAKEN DURING THE ADMINISTRATION**

### **Pre-packaged Sale of Business and Assets**

As previously reported, immediately prior to our appointment, the merits of a 'pre-pack' sale of the Company's business and assets was considered as an option to enhance the potential overall return to the Company's creditors. However, such a sale was not possible to achieve in the timeframe available. Prior to our appointment, trading had ceased and the whole of the Company's staff including, the financial controller 'walked out', presumably in anticipation of the Company's imminent insolvency. Furthermore, we were unable from the information made available to us, to establish the Company's true asset position, to accurately identify the extent of the business and assets available to sell

### **Book Debts**

As previously advised, the Company entered into a sales ledger finance agreement with BASF, on 24 May 2004. The outstanding indebtedness to BASF secured over the ledger, as at the date of appointment, amounted to £10,233,000

Upon the request of BASF, we instructed specialist debt collection agents Atlantic Risk Management Services Ltd ("Atlantic") to assist BASF and the Joint Administrators in the collection of the Company's debtor ledger

Total collections by Atlantic in the administration amount to £145,420. In addition, we received a total amount of £21,946 through the re-directed mail and the sum of €5,934 (converted to £4,889) in respect of a debt due from Aldi Stores (Ireland) Limited.

Atlantic has informed the Joint Administrators that they expect no further realisations, and have been instructed by BASF to discontinue collections. BASF will suffer a significant shortfall.

Investigations into the sales ledger are being undertaken on behalf of BASF by solicitors Hammonds LLP to establish the reasons behind the significant ledger write off and to investigate the conduct of the operation of the BASF facility by the Company pre-appointment.

### **Stock**

The realisation of the Company's only other known significant asset, being its stocks of nuts and dried fruits stored across five main warehousing sites, was frustrated by multiple retention of title claims ("ROT") both in respect of the raw material stocks and packaging, and liens exercised by all of the respective warehouses for unpaid charges.

Immediately following our appointment, we instructed ES to assist in carrying out a physical verification and valuation of the stocks at all 5 warehousing sites of which we were aware. The process was delayed due to the severe weather conditions experienced in December 2009, resulting in some warehouses not opening, and the Christmas and new-year holiday breaks.

We instructed LG to review the validity of the warehouse liens and the ROT claims and to provide advice as regards the relevant ranking and priorities of the Bank, BCP, ROT and warehouse claims over the proceeds of any stock realisations. This was quite a complex issue given the voluminous competing claims.

Whilst the priorities over the stocks were investigated, ES immediately commenced the marshalling of offers received from interested parties (circa five including one of the Company Directors) of whom we were aware, plus other potential buyers whom ES considered may be interested in purchasing the assets.

#### **a. Stocks Specifically Pledged to the Bank**

Stocks situated at one of the warehouse locations, namely Fanpak, were either subject to the Bank's security under a trade finance facility ("the Financed Stocks") or pledged to the Bank by the Company ("the Pledged Stocks"). The Pledged Stocks were subject to an ROT claim by one supplier which proved to be invalid and unenforceable.

The Joint Administrators received three offers in respect of these stocks which ES advised had a market value of between £77,500 and £65,500. On 20 January 2010, a sale was completed for the sum of £82,000 less storage costs, which were required to be settled under a warehouse lien amounting to £11,891. An equitable apportionment of the realisations based upon ES's valuation was as follows:

Stock realisations at Fanpak	Amount £
Financed Stocks	22,921
Pledged Stocks	47,188
<b>TOTAL</b>	<b>70,109</b>

BCP has priority to the proceeds of the Pledged Stocks and the Bank has priority to the proceeds of the Financed Stocks.

After dealing with all valid ROT claims, final gross realisations are summarised below

Locations	£Realisations	Less. £Storage Costs	£Total
Fanpak	82,000	(11,891)	70,109
Murcotts	21,000	(13,513)	7,487
Tazcopak	6,500	(3,936)	2,564
<b>TOTAL</b>			<b>80,160</b>

The majority of the Joint Administrators' time was spent in dealing with the realisation of the stocks, ROT claims and the secured creditors' entitlements to the realisations, as detailed later in the report

#### Other Assets (Fixtures, Furniture & Computer Equipment)

We instructed ES to carry out a valuation and assist in a disposal of the fixtures, furniture and computer equipment located at the Company's office at 2<sup>nd</sup> Floor, 1138 High Road, London. Their valuation was £4,300 on an in-situ market value basis and £1,000 on an ex-situ market value basis. After inviting tenders from known trade dealers regrettably, the best offer we received was from the Company's director Mr Nicholas Marcou, for an amount of £500, which was accepted. The consideration was never paid by Mr Marcou who subsequently declined to proceed. Given the lease to the premises was surrendered following administration, we were obliged to abandon the assets, on the basis that the costs of removal would exceed their anticipated realisable value.

#### Motor Vehicles

As previously advised, following our appointment, we became aware of a number of vehicles which were subject to finance agreements with the Company. A summary of the position as regards each vehicle is detailed below -

Finance Company	Vehicle	Comments
Paragon Car Finance ("Paragon")	2007 Bentley Continental, registration OYM 8898	Paragon state that the account has been paid in full, settled on or about March 2010. Location of vehicle unknown.
Blackhorse (formerly with Bank of Scotland ("BOS"))	1997 Bentley Turbo registration P31 SYE	BOS confirmed that there was a residual amount outstanding of c £4.8k. We understand that the vehicle is in an unknown location in Italy.
Blackhorse (formerly with BOS)	Bentley T2 Saloon, registration BYR 187T	BOS confirmed that there was a residual amount outstanding of c £3.9k. We understand that the vehicle is in an unknown location in Italy.
Blackhorse	2007 Land Rover Discovery, registration LT57 HSE	Blackhorse confirmed that there was a residual balance outstanding and that it was repossessed in February 2010.
Blackhorse	2000 Bentley Continental Mulliner, registration 4439 FD	Blackhorse confirmed that there was a residual balance outstanding. The location of the vehicle is unknown.

In addition, we discovered that the following vehicles may have either been financed or owned by the Company at some time but for which we have been unable to obtain further information -

- 2004 Land Rover Range Rover, registration LA53 EXU,
- A vehicle with the registration EO57 LUJ, which we believed to be a 2007 Ford Transit Conn T200 L75 (Panel Van)

Mr Marcou maintained that these vehicles did not belong to the Company, nor were financed using the Company's funds. Where the vehicles were owned by him, he advised that he would be selling them to meet his obligations under his personal guarantee to the Bank.

## Trade Marks

We received an offer of £600 to acquire three trademarks owned by the Company namely, "The Mutts Nuts", "Golden Grove" and "Autumn Gold" The offer subsequently was withdrawn The trade marks will become *bona vacantia* once the Company is dissolved

## 8. THE ADMINISTRATORS' REMUNERATION AND DISBURSEMENTS

### Joint Administrators' Time Costs

As previously reported the Joint Administrators' remuneration is fixed by reference to the time properly given by the Joint Administrators (as Administrators) and the various grades of their staff calculated at a 'discounted Bank panel rate' of £195 per hour, instead of the prevailing hourly charge out rates of Begbies Traynor (Central) LLP, for attending to matters arising in the administration and they are authorised to draw disbursements, including disbursements for services provided by their firm (defined as Category 2 disbursements in Statement of Insolvency Practice 9), in accordance with their firm's policy, details of which accompanied the *Statement of Proposals of the Joint Administrators for Achieving the Purpose of the Administration pursuant to Paragraph 49 of Schedule B1 to the Insolvency Act 1986 and Rule 2.33 of the Insolvency Rules 1986*

The relevant resolutions were approved by a resolution of the Secured creditor, Barclays Bank PLC, on 9 February 2010 pursuant to Rule 2.106 of the Insolvency Rules 1986

Total time spent to 2 December 2010 on this assignment amounts to 597 hours at an average composite rate of £195 per hour resulting in total time costs to date of £116,474 Total remuneration drawn in accordance with the above approval amounts to £51,109 plus disbursements of £3,364 totalling £54,473 A summary of the fees drawn is as follows -

Joint Administrators' Fees Drawn	£Net Amount
<b>Paid by Barclays</b>	
In respect of the Joint Administrators' costs of dealing with the Financed Stocks	21,946
In respect of the Joint Administrators' disbursements	3,364
<b>Paid from gross realisations from sale of stocks available to BTF</b>	
In respect of the Joint Administrators' costs of dealing with the Financed Stocks	2,000
<b>Paid from gross realisations from sale of stocks available to BCP</b>	
Joint Administrators' fees	20,000
<b>Paid from surplus funds in the administration and recoverable VAT on costs</b>	
Joint Administrators' fees	7,163
<b>Total</b>	<b>54,473</b>

The following further information as regards time costs and expenses is set out at Appendix 3

- ☐ Begbies Traynor (Central) LLP's policy for re-charging expenses/disbursements
- ☐ Begbies Traynor (Central) LLP's charge-out rates
- ☐ Narrative summary of time costs incurred
- ☐ Table of time spent and charge-out value

#### **Joint Administrators' Disbursements**

The sum of £3,364 has been drawn in accordance with the above resolution, in order to pay for the following Category 1 disbursements costs incurred

- The Joint Administrators' bordereau,
- Storage costs,
- Travel costs,
- Companies House searches,
- Subsistence costs,
- Royal Mail redirection,
- Insurance of assets (in the sum of £1,593),
- Statutory advertising,
- Photocopying

There are no Category 2 disbursements

## **9. OTHER RELEVANT INFORMATION**

#### **Report on Directors' conduct**

As detailed in the Administrators' statement of proposals, the Administrators have a duty to submit a report to the Department for Business, Innovation and Skills on the conduct of the directors. The Administrators have complied with their duties in this respect, although the content of such reports are confidential

#### **Actions taken by Barclays Bank PLC**

On 2 February 2010, the Bank obtained freezing orders against Mr Nick Marcou, Mr Dimitrios Marcou and Abacus International Commodities Limited in respect of an alleged manipulation of the invoice discounting/factoring facility provided by the Bank to the Company

#### **Joint Administrators' Discharge**

The consent of the Secured creditor Barclays Bank PLC has been obtained to our discharge as Administrators by a resolution passed pursuant to Paragraph 98 of Schedule B1 to the Act. The date of our discharge will coincide with the date on which our appointment as Administrators ceases to have effect

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## ADMINISTRATORS' ACCOUNT OF RECEIPTS AND PAYMENTS

Period: 11 June 2010 to 6 December 2010



## JOINT ADMINISTRATORS' ACCOUNT OF RECEIPTS AND PAYMENTS

Period 11 June 2010 to 6 December 2010

	Receipts & Payments from 11 June 2010 to 6 December 2010 £	Receipts & Payments from 11 December 2009 to 6 December 2010 £	Anticipated Receipts & Payments £	Final Outcome £
<b>ASSETS SPECIFICALLY PLEDGED</b>				
Book debts	4 889	172 255	-	172,255
Paid to BSF		(172 255)		(172,255)
Estimated deficit to BSF under fixed charge c/d	4 889	-	-	-
 Financed and pledged stocks at Fanpak to BTF & BCP charges	82 000	82 000	-	82 000
Less warehouse lien	(11 891)	(11 891)	-	(11 891)
	70 109	70 109		70 109
Less Stocks subject to Deed of Priorities in favour of BCP	(47 188)	(47 188)		(47 188)
Stock subject to Barclays Trade Facility fixed charge	22,921	22 921	-	22 921
Less Agents Costs	(1,939)	(1,650)		(1 650)
Less Administrators Fees	(2 350)	(2 000)		(2 000)
Net Realisations	18 632	19 271	-	19 271
Paid to BTF	(18 632)	(18 632)	(639)	(19,271)
	-	639	(639)	-
 Stocks subject to Deed of Priorities in favour of BCP	47 188	47 188		47 188
Less Agents Costs	(8 350)	(8 350)		(8 350)
Less Administrators Fees	(20 000)	(20 000)		(20 000)
Net Realisations	18 838	18 838		18 838
Paid to BCP	(18 838)	(18 838)		(18 838)
	-	-	-	-
 <b>ASSETS NOT SPECIFICALLY PLEDGED</b>				
Stocks - unencumbered	-	23 825	-	23,825
Less Warehouse Lien	-	(17,449)	-	(17 449)
Net Realisations		6 376	-	6 376
Insurance Refund		42	-	42
Rates Refund	-	813	-	813
Sundries	-	20	-	20
Bank interest	10	11	-	11
Office furniture and equipment	-	NIL	-	NIL
	10	7 283	-	7 283
 <b>Other Receipts</b>				
Contribution from Barclays Bank to Professional Fees	43 691	43 691	-	43 691
VAT repayable to Barclays on contribution	-	-	(8 497)	(6,497)
Less Payments - Professional Payments				
Administrators Fees	(21 945)	(21 945)	(7 183)	(29 108)
Administrators Disbursements	(3,364)	(3 364)	-	(3 364)
Legal Fees	(11 885)	(11 885)	-	(11 885)
	6 508	13 760	(13 660)	100
Less Payments - Other				
Accountant's Fees	-	(100)	-	(100)
	13 015	13 660	(13 660)	-

## Notes

Anticipated receipts and payments show the final payments to close the administration estate account

## SUMMARY OF ADMINISTRATORS' PROPOSALS, INCLUDING MAJOR AMENDMENTS TO AND DEVIATIONS FROM THEM

### **Proposals deemed approved under Rule 2.33(5) of the Insolvency Rules 1986**

In accordance with paragraphs 3 and 49 of Schedule B1 of the Act, the Joint Administrators proposed that

- (a) The Joint Administrators take all necessary actions to preserve the value of the Company's assets
- (b) The Joint Administrators realise the assets of the Company for the benefit of the creditors and instigate any Court actions deemed of value to the Company and its stakeholders
- (c) The Joint Administrators propose to make application to Court as they deem fit at any time for directions in relation to any particular matter arising in connection with the carrying on of their functions
- (d) The Joint Administrators investigate any antecedent transactions which may have detrimentally affected the Company's financial position.
- (e) The Joint Administrators may make a distribution to Secured or Preferential creditors in accordance with the requirements of the Act, and if appropriate, may make an application to the Court for payments to unsecured creditors
- (f) The Joint Administrators exit the administration by way of either dissolution, compulsory liquidation or a creditors' voluntary liquidation at such time as the Joint Administrators consider that one or more of the purposes of the administration as set out in paragraph 3 above have been achieved. If the exit route is by way of a creditors' voluntary liquidation, it is proposed that Kirstie Provan and Mark Robert Fry be appointed joint liquidators of the Company
- (g) These proposals shall be subject to such modifications or conditions as the Court may approve or impose, or any modification approved by creditors
- (h) That, if no creditors' committee is formed, fees be fixed in accordance with Rule 2.106 of the Rules by reference to time properly given by the Joint Administrators and their staff in attending to matters arising during the administration and that they may draw their remuneration on account as and when funds permit. (Further detail is outlined later in this respect)
- (i) That the Joint Administrators be authorised to draw disbursements in accordance with the explanatory note on the subject, which accompanies this report

- (j) Should the Company later enter into creditors' voluntary liquidation that the joint liquidators' fees be based on time costs
- (k) That, if necessary, the Joint Administrators may apply to creditors or to Court for an extension of the administration.

In order that the purpose of the administration may be fully achieved, the Joint Administrators proposed to remain in office as Administrators in order to conclude the realisation of the Company's property. The principal matters to be dealt with in this respect are

- Achieving a sale of the Company's stocks in conjunction with dealing with numerous suppliers claiming retention of title in respect goods supplied together with, warehouse liens claimed for storage charges across all stock holding sites.
- Assisting in the realisation of the book debts
- Dealing with the Joint Administrators' residual statutory obligations

Following these events we proposed to finalise distributions to the Secured creditors and if after the costs and disbursements of the administration there are surplus funds are available, to the Preferential creditors

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## ADMINISTRATORS' TIME COSTS AND EXPENSES

- a Begbies Traynor (Central) LLP's policy for re-charging expenses,
- b Begbies Traynor (Central) LLP's charge-out rates,
- c Narrative summary of time costs incurred, and
- d Table of time spent and charge-out value

## POLICY FOR RE-CHARGING EXPENSES INCURRED BY OFFICE HOLDERS IN RESPECT OF THE ADMINISTRATION OF INSOLVENT ESTATES

### INTRODUCTION

This note applies where a licensed insolvency practitioner in the firm is acting as an office holder of an insolvent estate and seeks creditor approval to make a separate charge by way of expenses or disbursements to recover the cost of facilities provided by the firm. Standard professional practice<sup>1</sup> requires that such charges should be disclosed to those who are responsible for approving his remuneration, together with an explanation of how those charges are made up and the basis on which they are arrived at.

### DEFINITIONS

Required professional practice classifies expenses into two broad categories

- *Category 1 expenses (approval not required)* – specific expenditure that is directly related to a particular insolvency case, where the cost of the expense incurred is referable against an independent external supplier's invoice or published tariff of charges.
- *Category 2 expenses (approval required)* – all other items of expenditure
  - Which cannot, or cannot easily, be directly related to a particular insolvency case because there is an element of shared or allocated cost, and/or
  - Where the cost of the expense incurred is an estimated, unitised cost with the estimate based on external costs or opportunity cost

### CHARGING POLICY

- *Category 1 expenses (approval not required)* – with the exception of any items referred to below, all such items are re-charged to the case as they are incurred
- *Category 2 expenses (approval required)*
  - (A) The following items of expenditure are re-charged as described
    - Internal meeting room usage for the purpose of statutory meetings of creditors is re-charged at the rate of £100 (London £150) per meeting,
    - Car mileage is re-charged at the rate of 40 pence per mile,
    - Storage of books and records (when not rechargeable as a *Category 1 expense*) is recharged on the basis that the number of standard archive boxes held in storage for a particular case bears to the total of all archive boxes for all cases in respect of the period for which the storage charge relates,
  - (B) The following items of expenditure will normally be treated as general office overheads not subject to a re-charge
    - Telephone and facsimile
    - Printing and photocopying
    - Stationery

A re-charge may be made, however, where the precise cost to the case can be determined because the item satisfies the test of a *Category 1 expense*

<sup>1</sup> Statement of Insolvency Practice 9 (SIP 9) effective from April 2007

## **BEGBIES TRAYNOR CHARGE-OUT RATES**

Begbies Traynor is a national firm. The rates charged by the various grades of staff that may work on a case are set nationally, but vary to suit local market conditions.

The rates applying to the London office as at the date of this report are as follows:

<b>Grade of staff</b>	<b>Charge-out Rate (£ per hour)</b>
Partner 1	495
Partner 2	450
Director	375
Senior Manager	350
Manager	300
Assistant Manager	250
Senior Administrator	220
Administrator	180

Time spent by support staff for carrying out shorter tasks, such as typing or dealing with post, is not charged to cases but is carried as an overhead. Only where a significant amount of time is spent at one time on a case is a charge made for support staff.

Time is recorded in units of 0.10 of an hour (i.e. 6 minute units).

## SUMMARY OF OFFICE HOLDERS' TIME COSTS

CASE NAME Abacus Trading Co Limited  
CASE TYPE ADMINISTRATION  
OFFICE HOLDERS Kirstie Jane Provan and Mark Robert Fry  
DATE OF APPOINTMENT 11 December 2009

### 1 CASE OVERVIEW

1.1 This overview and the time costs analysis attached is intended to provide sufficient information to enable the body responsible for the approval of the office holders' fees to consider the level of those fees in the context of the case

#### 1.2 Complexity of the case

Complexities of this case include the realisation of the Company's significant assets, stocks, which was frustrated by the initial lack of co-operation of the warehouse facilities as regards access, multiple retention of title claims ("ROT") both in respect of the raw material stocks and packaging and liens exercised by all of the respective warehouses for unpaid charges. In addition, the acute lack of information available as a result of the sudden departure prior to our appointment of the former financial controller and the Director's lack of detailed knowledge of the operations of the Company, the financials and the debtor ledger

#### 1.3 Exceptional responsibilities

As mentioned above, the case involved multiple ROT claims by domestic and foreign creditors, both in respect of the raw material stocks, mixed stocks and packaging. Furthermore, dealing with liens exercised by all of the respective warehouses for unpaid charges. In addition, because of the perishable nature of the Company stocks, it was necessary to expedite realisations as far as possible, before the expiry of its shelf life and /or saleability.

#### 1.4 The office holders' effectiveness

The Joint Administrators have achieved total realisations to date of circa £129k. To all intents and purposes asset realisations are complete and the purpose of administration has been sufficiently achieved.

#### 1.5 Nature and value of property dealt with by the office holders

The Company's principal assets other than book debts, were stocks of mixed nuts and dried fruits which were to be packaged for sale to Lidl, Aldi and others. The book value of these stocks on appointment was circa £1.5m. Total realisations net of warehouse liens amount to £80.2k.

#### 1.6 Anticipated return to creditors

##### **Secured Creditors**

The indebtedness to Barclays Bank PLC, Barclays Trade Finance ("BTF") and Barclays Asset Sales Finance ("BASF") (collectively termed as "the Bank") as at the date of our appointment, net of the Bank de Commerce et de Placements ("BCP") guarantee and deposits recovered of £400,000, was as follows -

	Amount £
Barclays Sales Finance	10,233,000
Barclays Bank PLC	607,000

The total return to the Bank and BCP in the administration is as follows:-

	£Amount
Indebtedness to the Bank at date of appointment	10,840,000
<b>Return to the Bank</b>	
Realisations from sale of stocks available to BTF (net of Agents' fees and Joint Administrators' fees)	18,632
Realisations in respect of book debts	172,255
Recoverable VAT on costs	7,136
Total payments to the Bank	198,023
<b>Final indebtedness to the Bank</b>	<b>10,641,977</b>
<b>Indebtedness to BCP at date of appointment</b>	<b>192,000</b>
<b>Return to BCP</b>	
Realisations from sale of stocks available to BCP (net of Agents' fees and Joint Administrators' fees)	18,838
Total payments to BCP	18,838
<b>Final indebtedness to BCP</b>	<b>173,162</b>

#### **Preferential Creditors**

Based upon information to date, our estimates of the preferential claims are as follows -

	£Amount
Employees' arrears of wages & holiday pay	11,177
Redundancy payments office – subrogated claim	41,174
<b>TOTAL</b>	<b>52,351</b>

The employees have been paid all their statutory entitlements by the RPO. There is *no* prospect of a distribution to either the RPO or the employees, in respect of their preferential claims against the Company in administration.

#### **Unsecured Creditors - Section 176A Fund for Unsecured Creditors**

Section 176A of the Act provides that, where the company has created a floating charge after 15 September 2003, the Administrator must make a *prescribed part* of the Company's *net property* available for the unsecured creditors and not distribute it to the floating charge holder except in so far as it exceeds the amount required for the satisfaction of unsecured claims. *Net property* means the amount which would, were it not for this provision, be available to floating charge holders out of floating charge assets (i.e. after accounting for preferential debts and the costs of realising the floating charge assets). After accounting for the costs of the realisations, there is *no* net property available to unsecured creditors.

As stated above, after accounting for the costs of the realisations, there is *no* net property available to unsecured creditors and no likelihood of any other surplus funds available to unsecured creditors.

#### **17 Time costs analysis**

An analysis of time costs incurred between 11 December 2009 and 2 December 2010 prepared in accordance with Statement of Insolvency Practice 9 is attached showing the number of hours spent by each grade of staff on the different types of work involved in the case, and giving the average hourly rate charged for each work type.

The time costs analysis provides details of work undertaken by the office holders and their staff following their appointment only.



**1 8 The views of the creditors**

The Joint Administrators have a duty to investigate the affairs of the insolvent Company, and to consider the conduct of the directors. We have welcomed any correspondence or information from creditors to assist with our investigations into the affairs of the Company. Our report must be submitted to the Department for Business, Innovation and Skills within 6 months of our appointment. We confirm that we have satisfied our duties in this regard. The Secured creditors have been kept fully apprised of developments during the administration.

**1 9 Approval of fees**

The Joint Administrators requested the consent of the Secured and Preferential creditors to draw fees on a time-cost basis. The relevant resolutions were approved by a resolution of the Secured creditor, Barclays Bank PLC, on 9 February 2010 pursuant to Rule 2.106 of the Insolvency Rules 1986. All amounts drawn in accordance with the resolutions have been agreed with the Secured creditors, the Bank and BCP.

**1 10 Approval of Expenses and Disbursements**

The Joint Administrators requested the consent of the Secured and Preferential creditors to draw costs in respect of expenses and disbursements. The relevant resolutions were approved by a resolution of the Secured creditor, Barclays Bank PLC, on 9 February 2010 pursuant to Rule 2.106 of the Insolvency Rules 1986. As above, all amounts drawn have been agreed with the Secured creditors, the Bank and BCP.

**1 11 Other professionals employed & their costs**

We instructed professional agents Edward Symmons LLP ("ES"), to assist in dealing with the sale and disposal of all of the Company's stocks and chattel assets.

We instructed solicitors Lawrence Graham LLP ("LG") to assist us with various matters arising in the administration.

Upon the request of BASF, we instructed specialist debt collection agents Atlantic Risk Management Services Ltd ("Atlantic") to assist the Joint Administrators and BASF in the collection of the Company's debtor ledger. Atlantic has been remunerated by the BASF direct.

**1 12 Staffing and management**

Appropriately experienced staff undertook the various tasks arising, to ensure matters were properly dealt with at the least cost to the administration. It is the policy of Begbies Traynor (Central) LLP that all grades of staff charge time which solely relates to the case. The analysis in the report seeks to give some indication of the various tasks undertaken by the Joint Administrators and their staff but is not intended to be, nor should be viewed as, an exhaustive list.

**2 SUMMARY OF WORK CARRIED OUT**

Since the date of our last report, dated 8 July 2010, the following work has been carried out:

- Ensuring compliance with all statutory obligations in the administration,
- Dealing with residual asset realisations,
- Dealing with all necessary statutory matters,
- Dealing with all payments receipts and banking in the administration,
- Enquiring into the affairs of the Company to determine its property and liabilities and to identify any actions which could lead to the recovery of funds,
- Reporting to the Bank and BCP on the recovery of the assets subject to their respective security,
- Liaising with LG, who were instructed to provide advice in relation to all retention of title claims, review and validity of security and appointment, sale and other sundry issues;

- Liaising with ES, who were instructed to deal with all matters relating to the realisation of the stocks and office equipment,
- Liaising with Atlantic, who were instructed to deal with the collection of the Company's debtor ledger,
- Investigation of motor vehicles subject to finance purportedly belonging to the Company,
- Preparing the final report to creditors;
- Dealing with voluminous enquires from creditors,
- Investigations into the tax affairs of the Company and whether it may be possible to make a VAT bad debt relief claim,
- Meeting with director Mr. Marcou to discuss outstanding matters in relation to the Company,
- Dealing with the sale of the Company's three trademarks,
- Dealing with sundry debtors

