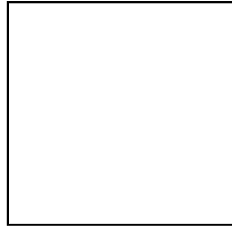

**UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION**

**PETITION**

of

**ABRDN PLC,** a public limited company incorporated under the Companies Acts with company number SC286832, and having its registered office at 1 George Street, Edinburgh EH2 2LL.

**PETITIONER**

for

An order confirming the cancellation of the entirety of its capital redemption reserve account

**HUMBLY SHEWETH THAT:**

## 1. Introduction

1.1 The petitioner (the "Company") was incorporated in Scotland on 30 June 2005 as a private limited company with the company number SC286832. The Company re-registered as a public limited company on 26 May 2006. The Company's registered office is at 1 George Street, Edinburgh EH2 2LL. The Company has previously been named 'SLGC Limited', 'Standard Life plc' and 'Standard Life Aberdeen plc'. The Company changed its name to its present name on 2 July 2021.

1.2 In this application, the Company seeks an order from the Court of Session (the "Court") for confirmation of the cancellation (the "Cancellation") of the entirety of the Company's capital redemption reserve account (the "Capital Redemption Reserve"). The application is made pursuant to Chapter 10 of Part 17 of the Companies Act 2006 (the "Act") – which by section 733(6) of the Act applies to a reduction, and so a cancellation, of a capital redemption reserve.

1.3 The Cancellation was resolved upon by a special resolution of the Company (the "Resolution") which was passed by the members at the Company's annual general meeting held on 18 May 2022 (the "Meeting").

1.4 This Court has jurisdiction over this application in all its aspects by virtue of (i) section 1156(1)(b) of the Act; (ii) section 21(1)(b) of, and paragraph 5 of schedule 9 to, the Civil Jurisdiction and Judgments Act 1982; and (iii) section 120(1) of the Insolvency Act 1986.

1.5 In the rest of this petition, the structure to be adopted will be as follows.

2. The Company.
3. The wider Group.
4. The relevant statutory provisions.
5. The financial position of the Company and the Group.
6. The applicable regulatory regime and the Company's compliance with it.
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10. The effect of the Cancellation and the 2008 Order.
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12. The Reporter.
13. Advertisement and period for answers.
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    - Prayer of petition.
    - Appendix 1 – simplified diagram of the Group as at 30 April 2022.

## 2. The Company

2.1 The Company's objects are unrestricted in accordance with section 31(1) of the Act.

2.2 Moreover, the Company's articles of association (the "Articles") do not restrict the Company from making this application or, subject to the confirmation of the Court, from giving effect to the Resolution. A copy of the Articles is produced herewith.

2.3 As at 17 May 2022 (which was the latest practicable date prior to the date of finalisation and presentation of this petition), the issued share capital of the Company was £305 million divided into 2,180,725,768 ordinary shares of 13 61/63 pence each (the "Ordinary Shares"). All of those issued Ordinary Shares are fully paid up. None of the Ordinary Shares is currently held in Treasury.

2.4 The Ordinary Shares are listed on the Official List of the Financial Conduct Authority ("FCA") and admitted to trading on the main market of the London Stock Exchange.

2.5 As at close of business on 17 May 2022 (which, as noted above, was the latest practicable date prior to the date of finalisation and presentation of this petition), the Company had a market capitalisation of approximately £4.2 billion.

2.6 As at the date of the Resolution, the credit balance on the Capital Redemption Reserve was £1,059 million. The said amount may change during the course of the present petition process. In recognition of that, the Resolution was framed, and was passed at the Meeting, on the basis that it will be the amount of the Capital Redemption Reserve at the date of the final hearing before the Court at which confirmation of the Cancellation is sought which will be the amount sought to be cancelled. The intention was, and is, to have the entire amount of the Capital Redemption Reserve as at that date cancelled, and that is reflected in the Resolution.

2.7 Following the completion of the sale of the Company's UK and European insurance business in 2018, the Company returned value to shareholders through a B share scheme. The B share scheme involved the Company issuing 2,941,738,848 B shares of

33.99 pence each for nil consideration on 22 October 2018, and redeeming them at 33.99 pence each on 24 October 2018. The B shares were cancelled on redemption. Therefore, in accordance with the Act, the Company's issued share capital was diminished by £1 billion (being the aggregate nominal value of the shares redeemed) and this amount was transferred to the Capital Redemption Reserve. Since the issue and redemption of the B shares, an additional amount of £59 million has been credited to the Capital Redemption Reserve relating to the nominal value of shares bought back by the Company during the period from 2018 to close of business on 17 May 2022 (which, as noted above, was the latest practicable date prior to the date of finalisation and presentation of this petition).

## 3. The wider Group

3.1 In 2017, an all-share merger between Aberdeen Asset Management plc and Standard Life plc was completed to form Standard Life Aberdeen plc, one of the world's largest active management investment companies with assets under management and administration ("AUMA") of approximately £542 billion as of 31 December 2021. The Company is the parent company of the group of companies resulting from the said merger (the "Group").

3.2 The Group's business is structured around three principal vectors: investments, adviser and personal. Firstly, the Group's investments business is an active asset manager which generates investment solutions for its clients, including pension funds, governments, banks, insurers, companies, charities, independent financial advisers and discretionary fund managers. The Group's investments business accounts for over 80% of its revenue. Secondly, the Group's adviser business provides the technology, expertise and support that allow UK wealth managers and financial advisers to create value for their businesses and clients. Thirdly, the Group's personal wealth business integrates a full range of services, including high-quality financial planning, discretionary investment management capabilities and hybrid advice and digital investing tools.

3.3 A simplified diagram of the Group as at 30 April 2022 is included as Appendix 1 to the present petition.

## 4. **The relevant statutory provisions**

4.1 Section 733 of the Act provides *inter alia* as follows:

*"733 The capital redemption reserve*

*(1) In the following circumstances a company must transfer amounts to a reserve, called the 'capital redemption reserve'.*

*(2) Where under this Part shares of a limited company are redeemed or purchased wholly out of the company's profits, the amount by which the company's issued share capital is diminished in accordance with –*

*(a) section 688(b) (on the cancellation of shares redeemed), or*

*(b) section 706(b)(ii) (on the cancellation of shares purchased),*

*must be transferred to the capital redemption reserve.*

…

*(6) Subject to that, the provisions of the Companies Acts relating to the reduction of a company's share capital apply as if the capital redemption reserve were part of its paid up share capital."*

4.2 Sections 641(1) and 645 of the Act provide *inter alia* as follows:

*"641 Circumstances in which a company may reduce its share capital*

*(1) A limited company having a share capital may reduce its share capital –*

...

*(a) in any case, by special resolution confirmed by the court."*

*"645 Application to court for order of confirmation*

*(1) Where a company has passed a resolution for reducing share capital, it may apply to the court for an order confirming the reduction.*

*(2) If the proposed reduction of share capital involves either:*

*(a) diminution of liability in respect of unpaid share capital; or*

*(b) the payment to a shareholder of any paid-up share capital,*

*section 646 (creditors entitled to object to reduction) applies unless the court directs otherwise.*

*(3) The court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that section 646 is not to apply as regards any class or classes of creditors.*

*(4) The court may direct that section 646 is to apply in any other case."*

4.3 Section 646 of the Act provides as follows:

"*646 Creditors entitled to objet reduction*

*(1) Where this section applies (see section 645(2) and (4)), every creditor of the company who –*

*(a) at the date fixed by the court is entitled to any debt or claim that, if that date were the commencement of the winding up of the company would be admissible in proof against the company, and*

*(b) can show that there is a real likelihood that the reduction would result in the company being unable to discharge his debt or claim when it fell due,*

*is entitled to object to the reduction of capital.*

*(2) The court shall settle a list of creditors entitled to object.*

*(3) For that purpose the court –*

*(a) shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and*

(b) *may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.*

(4) *If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may, if it thinks fit, dispense with the consent of that creditor on the company securing payment of his debt or claim.*

(5) *For this purpose the debt or claim must be secured by appropriating (as the court may direct) the following amount –*

(a) *if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, the full amount of the debt or claim;*

(b) *if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, an amount fixed by the court after the like enquiry and adjudication as if the company were being wound up by the court."*

4.4 Sections 648 and 649 of the Act provide *inter alia* as follows:

*"648 Court order confirming reduction*

(1) *The court may make an order confirming the reduction of capital on such terms and conditions as it thinks fit.*

(2) *The court must not confirm the reduction unless it is satisfied, with respect to every creditor of the company who is entitled to object to the reduction of capital that either –*

(a) *his consent to the reduction has been obtained; or*

(b) *his debt or claim has been discharged, or has determined or has been secured."*

*"649 Registration of order and statement of capital*

(1) *The registrar, on production of an order of the court confirming the reduction of a company's share capital and the delivery of a copy of the order and of a*

*statement of capital (approved by the court) shall register the order and statement.*

*This is subject to section 650 (public company reducing capital below authorised minimum).*

(2) *The statement of capital must state with respect to the company's share capital as altered by the order –*

(a) *the total number of shares of the company;*

(b) *the aggregate nominal value of those shares;*

….

(3) *The resolution for reducing share capital, as confirmed by the court's order, takes effect –*

…

(a) *…, on the registration of the order and statement of capital.*

(4) *Notice of the registration of the order and statement of capital must be published in such manner as the court may direct.*

(5) *The registrar must certify the registration of the order and statement of capital.*

(6) *The certificate –*

(a) *must be signed by the registrar or authenticated by the registrar's official seal, and*

(b) *is conclusive evidence –*

(i) *that the requirements of this Act with respect to the reduction of share capital have been complied with, and*

(ii) *that the company's share capital is as stated in the statement of capital."*

## 5. The financial position of the Company and the Group

*The 2021 Accounts*

5.1 The Company's last published, audited accounts were part of the financial statements in the Group's annual report and accounts for the year ending 31 December 2021 (the "2021 Accounts").

5.2 The 2021 Accounts for the Group show, as at 31 December 2021:

5.2.1 International Financial Reporting Standards ("IFRS") profit before tax of £1.115 billion (2020: £838 million);

5.2.2 Surplus regulatory capital of £1.8 billion (on an Investment Firms Prudential Regime ("IFPR") basis);

5.2.3 AUMA of £542 billion (2020: £535 billion);

5.2.4 Adjusted operating profit of £323 million (2020: £219 million); and

5.2.5 Cash and liquid resources of £3.1 billion.

In addition, in respect of the year ending 31 December 2021, the Company paid an interim dividend of 7.30 pence per Ordinary Share and a final dividend of 7.30 pence per Ordinary Share was recommended by the Company's board of directors (the "Directors" and approved by the members at the Meeting.

5.3 The 2021 Accounts also show that, as at 31 December 2021, the Company had "retained earnings" of £3.3 billion.

5.4 The whole of that sum represents "accumulated, realised profits" as referred to in section 830(2) of the Act, with £2.8 billion being available for distribution to the Company's shareholders ("distributable profit").

5.5 Since 31 December 2021, there has been no adverse change to the financial position of either the Company or the Group from that shown in the 2021 Accounts that in either

case would be material in the context of the Cancellation. The Company defines a material adverse change as an adverse change that would require the Company to make an announcement under Article 17 of the version of the Market Abuse Regulation 596/2014 as retained with certain modifications into UK domestic law.

***The March Management Accounts***

5.6 In addition, the Company has prepared management accounts for the period from 1 January 2022 to 31 March 2022 (the "March Management Accounts"). The March Management Accounts, together with the dividend income expected to be received by the Company as shown in the projections (referred to in statements of fact 5.18 – 5.21 below), confirm that no material adverse change in the Company's financial position from that shown in the 2021 Accounts is anticipated. The said dividend income – which is expected to be received in May and June 2022 – will result in the Company being in a substantial profit position.

5.7 The March Management Accounts include commercially sensitive financial information. Accordingly, the March Management Accounts will be disclosed only to the reporter appointed by the Court in relation to this petition process (the "Reporter").

***The Company's creditors and due diligence***

5.8 In this section of the petition, the Company will set out the principal categories of the Company's creditors (the "Creditors"), and the total sums which the Company owed in respect of those categories as at 31 December 2021 (being the date of the 2021 Accounts), 31 March 2022 (being the date of the March Management Accounts) or 17 May 2022 (which, as noted above, was the latest practicable date prior to the date of finalisation and presentation of this petition).

5.9 In order to establish those principal categories of Creditors, the Company has carried out a due diligence exercise.

***The first principal category of Creditors***

5.10 The first principal category of Creditors comprises external Creditors.

5.10.1 As at 31 March 2022, the Company's issued subordinated debt and accrued interest was in the amount of circa £667 million (the "Notes" and their holders being "Noteholders"), comprising: $750 million (£573.2 million) of 4.25% US Dollar Fixed Rate Subordinated Notes and £93.4 million of 5.5% Sterling Fixed Rate Subordinated Notes. The currency conversion rate applicable on 31 March 2022 has been used in relation to the foregoing figures.

5.10.2 As at 31 March 2022, the Company has £210 million of 5.25% Sterling Fixed Rate Reset Perpetual Subordinated Contingent Convertible Notes (the "AT1 Notes") in issue, which form part of its Additional Tier 1 capital. These are perpetual notes in respect of which there is no fixed redemption date and interest is only payable at the discretion of the Company. The AT1 Notes may only be redeemed at the Company's option in specified circumstances subject to the satisfaction of certain conditions including receipt of the FCA's approval (or the FCA not expressing any objection) and the Company being solvent at the time of redemption and immediately thereafter. In the event of the Company's winding-up, recoveries in respect of the AT1 Notes are subordinated to all of the Company's liabilities other than in respect of common equity tier 1 ("CET1") instruments and any other instruments ranking below the Company's most senior class of preference shares then in issue (if any). The terms of the AT1 Notes do not otherwise permit holders to require the Company to repay the AT1 Notes.

5.10.3 The Group settles VAT to HMRC via the Company (the Company owed circa £319,000 in VAT and stamp duty as at 31 March 2022).

5.10.4 As at 31 March 2022, dividends totalling £8.2 million are owed to the Company's shareholders.

5.10.5 As at 31 March 2022 the Company has made provisions totalling £35 million for certain de-coupling and commissioning costs relating to the sale of the Company's UK and European insurance business, and restructuring expenses.

5.10.6 As at 31 March 2022, liabilities to counterparties in respect of derivative contracts are circa £15 million. As at 31 March 2022, there was also circa £1.3

million outstanding in relation to the settlement of collateral for the purchase of investment securities, with such settlement having occurred two business days following 31 March 2022.

5.10.7 The Company has committed to certain indemnities with a combined best estimate of loss of £9 million as at 31 March 2022. These indemnities are commercially sensitive and accordingly will be disclosed only to the Reporter.

5.10.8 As at 17 May 2022 (which, as noted above, was the latest practicable date prior to the date of finalisation and presentation of this petition), the Company has an undrawn £400 million committed revolving credit facility provided by a syndicate of banks (the "RCF").

***The second principal category of Creditors***

5.11 The second main category of Creditors comprises intra-Group Creditors.

5.12 There are inter-company balances totalling £111 million as at 31 March 2022 owed by the Company to its subsidiaries, in relation to which the Company is in a net creditor position (in the sense that what is owed by the Company exceeds what is owed to it).

***The third principal category of Creditors***

5.13 The third main category of Creditors comprises the trustees of the pension schemes (collectively, the "Pension Arrangements")

5.13.1 In 2006, the Company granted a guarantee to the pension trustees of its largest defined benefit pension scheme. The Company revised and extended the guarantee most recently in 2022. The guarantee covers all liabilities of each of the scheme's participating employers owed to the trustee of the scheme, however arising (for example, under the scheme rules or statute). The guarantee, as revised and extended, applies to payments that become due before 1 January 2066. As at 31 December 2021, the Company's liability under the said guarantee was reasonably estimated at nil. That is because the scheme is estimated to be fully funded on a section 75 ('solvency') basis – both at the last funding valuation (31 December 2019) and in more recent exercises performed by both

the scheme's actuarial advisers and the Company's own actuarial advisers. It is expected that this position is highly likely to remain over the long term given the extent of the strength of the scheme's funding position and the level of risk in the investment strategy (including the extent of protection against changes to long term interest rates and inflation expectations as a result of the trustees hedging such risks). Therefore, there is no real likelihood of the trustees being prejudiced by the Cancellation given that it follows, from the stability of the fully funded section 75 valuation, that the trustees need place no real reliance on the Company's covenant.

5.13.2 The Group also operates two other UK defined benefit plans. At the last statutory valuation date (being 30 June 2019), the deficits (on a wind-up basis) of the plans were £27.8 million and £18.7 million, and the Group agreed funding plans with the respective plans' trustees that aimed to eliminate the deficits. These deficits are immaterial in the context of the Group as a whole and could be funded, if required, from available cash resources.

5.13.3 The trustees of the pension schemes would be considered as contingent creditors of the Company because the Company could, in theory, be subject to a contribution notice ("CN") or a financial support direction ("FSD") under sections 38 and 43 of the Pensions Act 2004, even if this risk is unlikely to materialise and even though the Pensions Regulator would need to exercise its discretion to serve a CN or an FSD on the Company.

***The due diligence exercise undertaken by the Company***

5.14 As mentioned above, the Company has conducted a due diligence exercise in connection with the Cancellation. That exercise has considered those of the Company's contracts that are material in the context of the Cancellation, and whether the Cancellation would have any material adverse implications for, or result in the breach of, any of those contracts.

5.15 The due diligence exercise considered the Company's funding arrangements under the Notes, the AT1 Notes, the RCF and the Pension Arrangements. The exercise also considered guarantees, warranties and indemnities.

5.16 The said due diligence exercise has not identified (i) any Creditors, or any other counterparties, whose consent is required, as a matter of contract, to the Cancellation or any contract which would be breached by the Cancellation or (ii) any guarantees, warranties or indemnities, in each case other than those identified in statements of fact 5.10 – 5.13.3, which – on a realistic, non-speculative basis – could give rise to material liabilities affecting the Company.

5.17 For completeness, it would have been in practice impossible for the Company to attempt to obtain the consent to the Cancellation of all the Creditors.

***The Projections***

5.18 In connection with this application, the Company has also prepared financial projections of the cash flows of the Company from April 2022 to December 2023 (referred to, respectively, as the "Projections" and the "Projections Period").

5.19 The Projections show that the Company will have available cash and liquid resources of at least hundreds of millions of pounds sterling throughout the Projections Period. The Projections also show that the Company will have the RCF available throughout the Projections Period.

5.20 Apart from dividends and a return of capital which was first proposed in the announcement of the Company's sale of approximately 4% of the issued share capital of Phoenix Group Holdings plc on 28 January 2022 (the "Phoenix Sale"), the Projections do not show any other distribution to the Company's shareholders. In this connection, the Projections have been prepared on the basis of the general corporate strategy which is, at the present time, intended to be pursued by the Directors over the Projections Period.

5.21 The Projections include financial information which is commercially sensitive. Accordingly, the Projections will be disclosed only to the Reporter.

## 6. The applicable regulatory regime and the Company's compliance with it

6.1 The Group contains a number of investment firms that are authorised by the FCA and which are therefore subject to the FCA's IFPR ("MIFIDPRU Investment Firms"). The IFPR is the applicable regulatory regime.

6.2 The IFPR was introduced with effect from 1 January 2022, and is set out in rules and guidance contained in the 'Prudential sourcebook for MIFID Investment Firms' in the FCA's handbook of rules and guidance ("MIFIDPRU" and the "FCA Handbook", respectively).

6.3 Each of the MIFIDPRU Investment Firms in the Group is required to comply with regulatory capital (or "own funds") requirements made under the IFPR. These are set out in MIFIDPRU 4 and apply to those MIFIDPRU Investment Firms on both an individual and a consolidated basis.

6.4 As the parent undertaking of a group subject to the IFPR, the Company is also required at all times to maintain sufficient consolidated own funds to satisfy the own funds requirement that applies on the basis of the Company's consolidated situation.

6.5 For the purposes of the IFPR, "own funds" comprise the sum of an undertaking's CET1 capital, its additional tier 1 ("AT1") capital and its tier 2 ("T2") capital. Each tier of capital in turn comprises instruments and reserves meeting certain eligibility criteria specified in the retained EU law version of the EU Capital Requirements Regulation (Regulation (EU) 575/2013), as that regulation is applied and modified for the purposes of the IFPR by rules and guidance set out in MIFIDPRU 3 (the "UK CRR").

6.6 In particular, CET1 capital comprises ordinary share capital (where the terms of those shares meet the relevant eligibility criteria in the UK CRR), together with retained earnings, accumulated other comprehensive income, other reserves and funds for general banking risk (to the extent that those items are available to the relevant undertaking for unrestricted and immediate use to cover losses as soon as these occur).

6.7 The own funds requirement that applies on the basis of the Company's consolidated situation is calculated in accordance with detailed rules set out in MIFIDPRU 4. These

provide for a minimum capital requirement equal to the higher of the fixed overheads requirement ("FOR") and the so-called 'K-factor requirement'. The FOR is calculated as one quarter of consolidated "relevant expenditure" (as defined in MIFIDPRU 4.5.3) in the preceding year. The K-factor requirement is calculated according to the activities and consolidated risk profile of the undertakings forming part of the Company's consolidated situation pursuant to detailed rules that are set out in MIFIDPRU 4.6 to 4.16. The Group is also required to maintain own funds and liquid assets which are adequate, both as to their amount and their quality, to ensure that: (i) the Group is able to remain financially viable throughout the economic cycle, with the ability to address any material potential harm that may result from its ongoing activities; and (ii) the Group's business can be wound down in an orderly manner, minimising harm to consumers or to other market participants (the so-called "overall financial adequacy rule"). The FCA may also impose additional capital requirements on the Group, based on its evaluation of the risks in the Group.

6.8 As at 31 December 2021, the Group maintained own funds of £2.9 billion against total regulatory capital requirements of £1.1 billion calculated in each case on the Group's pro forma position under the IFPR at that date. Hence the Group exceeds the own funds regulatory requirement by a material margin. In addition, at 31 December 2021, the Group's pro forma capital surplus, prior to the return of capital referred to in statement of fact 5.20 above, was expected to be circa £0.7 billion following the Phoenix Sale and completion of the acquisition of interactive investor (the UK's leading subscription-based investment platform) for £1.49 billion in cash (subject to certain adjustments).

6.9 Furthermore, the Company is required to report to the FCA on the Group's consolidated own funds position on a quarterly basis, and the FCA also monitors the Group's own funds position on an ongoing basis.

6.10 The regulatory regime which has been narrated above, together with the fact that the Company exceeds its key requirement by a material margin, provide significant protection for the Company's creditors.

6.11 The credit balance on the Capital Redemption Reserve qualifies as CET1 capital. The credit balance on the retained earnings created by the Cancellation will also qualify as

CET1 capital. Accordingly, the Cancellation will have no effect on the Company's consolidated own funds position.

6.12 For completeness, the IFPR does not require the consent of the FCA as a condition of the Cancellation. However, the Company informed the FCA in March 2022 of the proposed Cancellation and its intention to proceed with the present application. As at the date of presentation of this petition, the FCA had not raised any objection to the proposed Cancellation. No objection from the FCA is anticipated.

6.13 The FCA has broad discretion under Part 12A of the Financial Services and Markets Act 2000 ("FSMA") to direct the Company to take a specified action, or to refrain from taking a specified action (the "FCA Power of Direction"). The FCA's statement of policy on the use of the FCA Power of Direction expressly contemplates that the FCA Power of Direction could be used to restrict the payment of dividends by a holding company in order to retain capital in its group. Accordingly, the FCA could in principle use the FCA Power of Direction to restrict the payment of any dividends which the Company may propose, if the FCA considers that the sums that would otherwise be distributed should be retained within the Group. The FCA Power of Direction provides significant protection for the Company's creditors.

6.14 That power under FSMA has been reinforced by article 113 of the Articles ("Article 113") which was introduced in 2015 and which provides that the Directors may at any point before its payment cancel a distribution if they consider that such cancellation is appropriate as a result of any applicable law or regulation or to meet any applicable capital or solvency requirement.

6.15 Rules set out in MIFIDPRU 6 also require the Company to ensure that the Group holds "core liquid assets" at least equal to the sum of one third of the consolidated FOR and 1.6% of the total consolidated amount of any guarantees provided to clients. This provides further protection for the Company's creditors.

6.16 As at 31 December 2021, the Group had core liquid assets of £2.7 billion, comprising cash in bank accounts (netted down for overdrafts), money market instruments and holdings in money market funds. The Company's consolidated core liquid assets requirement at that date was £0.1 billion.

6.17 It is also convenient to refer here to the Company's liquidity management.

6.18 As at 31 December 2021, the Company itself had £1.8 billion of cash and liquid resources, inclusive of the core liquid assets described above. Cash and liquid resources are IFRS cash and cash equivalents (netted down for overdrafts), money market instruments and holdings in money market funds. Such resources also include surplus cash that has been invested in liquid assets such as high quality corporate bonds, gilts and pooled investment funds.

## 7. <u>The commercial rationale for the Cancellation</u>

7.1 The Company's reasons for seeking to cancel the Capital Redemption Reserve were set out in the explanatory document (the "AGM Guide") accompanying the notice issued to the Company's shareholders relative to the Meeting (the "Notice"). At page 21 of the AGM Guide, it was stated that:

> "*Under the Companies Act 2006, the capital redemption reserve is treated as if it were part of the share capital of the Company and it is not available for distribution to shareholders. We are proposing to effect a cancellation of the entire capital redemption reserve as a matter of balance sheet management and in order to create additional distributable reserves. This will be achieved through a court-approved reduction of capital (the 'Capital Reduction').*
>
> *If the Capital Reduction becomes effective, it would increase the amount of funds that are available for distribution to shareholders. We do not intend to use these additional funds to make dividend payments in the short term, or to deviate from our established dividend policy. Our intention is to ensure that the Company maintains a position of flexibility as regards dividends in the longer term. Please note that the Capital Reduction itself will not involve any return of capital to shareholders or any reduction of the Company's net assets.*"

7.2 Thus, as a matter of balance sheet management, the Company proposes, subject to confirmation of Your Lordships' Court, to cancel the entire amount of its Capital Redemption Reserve account and credit it to retained earnings.

## 8. <u>The Meeting and the Resolution</u>

8.1 The Meeting was properly convened and held, in accordance with the provisions of the Act, the Articles and the relevant Listing Rules produced by the FCA.

8.2 In particular, the AGM Guide accompanying the Notice included a sufficient explanation of the Cancellation and of its purpose and effect, and, in particular, contained all the necessary information to allow shareholders to make a properly informed decision as to whether to vote in favour of the Resolution. Reference is made to the averments in statement 7 above. Such an explanation is required by the Listing Rules, as well as general company law. The Notice complied with the requirements of both the Listing Rules and general company law.

8.3 At the Meeting, the Resolution was passed by the requisite majority in the following terms:

> *"That, subject to the confirmation of the Court of Session (the "Court"),*
>
> *(a) the share capital of the Company be reduced by cancelling the Company's entire capital redemption reserve account as at the date of the final hearing before the Court at which confirmation of the said cancellation is sought (the 'Cancellation'); and*
>
> *(b) the credit thereby arising in the Company's books of account from the Cancellation be applied in crediting a distributable reserve in the Company's books of account which shall be able to be applied in any manner in which the Company's profits available for distribution (as determined in accordance with the Companies Act 2006) are able to be applied."*

8.4 A copy of the Resolution has been registered with the Registrar of Companies in Scotland (the "Registrar"), as required by Chapter 3 of Part 3 of the Act.

8.5 The Resolution having been passed, the Company seeks, under section 645(1) of the Act, confirmation of the Reduction.

## 9. The effect of the Cancellation on the Company's Creditors

***General***

9.1 On a correct interpretation of section 645(2)(b) of the Act, the Cancellation involves, to the extent that it creates a distributable reserve, the payment to the Company's shareholders of what is to be treated as part of its paid-up share capital.

9.2 That is so because the effect of the Cancellation would be to increase the Company's distributable profit and so may enable the Company to make distributions, subject to the provisions of the Act and the applicable regulatory regime.

9.3 Accordingly, section 646 of the Act applies, to that extent, to the Cancellation, unless the Court makes a direction under sections 645(2) and (3) of the Act that it does not apply.

9.4 As applied to the Cancellation, section 646(1) of the Act defines those of the Company's Creditors who have the right to object to the Cancellation and the right to have their claims paid or secured under sections 646(2) to (5) of the Act. Section 646(3) of the Act sets out a procedure for settling a list of those creditors.

9.5 In order to have those rights, a creditor must satisfy two requirements.

9.6 The first, which is under section 646(1)(a), is that a creditor is, at a date fixed by the Court, entitled to a debt or claim which, if that date were the commencement of a winding up of the Company, would be admissible in proof against the Company.

9.7 The second requirement which a creditor must satisfy, and which arises by virtue of section 646(1)(b) of the Act, is that the creditor can show that there is a real likelihood that the Cancellation would result in the Company being unable to discharge its debt or claim to the creditor when it falls due.

9.8 Section 646 of the Act is amplified by section 648(2), which provides that the Court cannot confirm the Cancellation unless it is satisfied, with respect to every creditor who is entitled to object to the Cancellation, that either: (a) his consent has been obtained; or (b) his debt or claim has been discharged, determined or secured.

9.9 As stated at statement of fact 9.3, section 646 of the Act is subject to the Court making a direction, under section 645(2) and (3) of the Act, that section 646 is not to apply to the creditors or any class of them.

9.10 As was the case under the Companies Acts 1929 to 1985, the only practical course is to seek such a direction at the final determination of this application rather than to follow the procedure under section 646.

9.11 Accordingly, the Company seeks such a direction in relation to the Cancellation. It is appropriate to make such a direction in respect of the Cancellation.

***The 'real likelihood' test is satisfied in the present case***

9.12 The financial position of the Company, its compliance with the relevant regulatory regime, the FCA oversight to which it is subject, as well as the fiduciary duties to which the Directors are subject, mean that there is no real likelihood that the Cancellation would result in the Company being unable to discharge, in full and when they are payable, the debts which it owes to its Creditors.

9.13 The principal categories of Creditors are set out at statements of fact 5.10 – 5.13 above.

9.14 As at 31 March 2022, the total sum which the Company owed to its Creditors was approximately £847 million.

9.15 The interests of the Creditors are, first of all, adequately protected by the application to the Group, and so to the Company, of the present regulatory regime described in statement 6 above. The FCA has been advised of the Company's intention to proceed with the proposed Cancellation and the present application. The FCA has not indicated that it has any objection in relation thereto.

9.16 In particular, those Creditors are protected by the clear compliance by the Group with the requirements, under the present regulatory regime, for the Group to maintain adequate regulatory capital at that Group level. Indeed, the Group (and thus, more particularly, the Company) significantly exceeds the relevant regulatory requirement narrated previously. Furthermore, the FCA has the power to restrict any proposed dividend by the Company if the FCA considered that the regulatory capital which would

be distributed should be retained within the Group. This could be the case if, for example, the Company proposed to pay a dividend that would cause the Company to breach its consolidated capital requirements under the IFPR.

9.17 The effect of the Group's (and thus the Company's) ongoing compliance with those requirements is that there is no real likelihood that the Cancellation would result in the Company being unable to discharge, in full and when they are payable, the sums owed to the Creditors. As such, the Company's compliance with its regulatory capital requirements provides further practical evidence of its ability to meet its debts as and when they fall due.

9.18 Even if the Company were otherwise able to distribute the whole of the increase in its distributable profit immediately after the Cancellation took effect (which is not the Company's intention), it is reasonably believed - on a realistic, non-speculative basis - that the Company would still, by a comfortable margin, have sufficient assets to meet its liabilities.

9.19 In addition, the absence of any real likelihood that the Cancellation would result in the relevant Creditors not being paid is confirmed by five related considerations.

9.20 The first consideration is the liquidity resources of the Group, which are described at statements of fact 6.16 – 6.18 above. The Group also has significant listed investments in HDFC Asset Management Company Limited, HDFC Life Insurance Company Limited and Phoenix Group Holdings plc with a combined value of £1.8 billion as at 31 March 2022. This value is not included in the reported capital surplus or liquid resources, with any disposal of these assets being accretive to capital and liquid resources. This additional source of capital and cash provides robust support to ensuring that the Company is able to meet its obligations. For example, over the last three years the Group has generated total cash proceeds of £3.5 billion through disposals of non-core listed investments.

9.21 The second consideration is the Projections which are described at statements of fact 5.18 – 5.21 above and which show a very significant excess of cash for each of the months of the Projections Period.

9.22 The third consideration is that the Company had net assets of £6.1 billion at 31 December 2021.

9.23 Hence even if the Company were, immediately after the Cancellation took effect, to distribute the whole of the increase in its distributable profit which resulted from the Cancellation (which, for the avoidance of doubt, is not the Company's intention) the Company would still retain very significant net assets.

9.24 The fourth consideration is that the Company could pay any dividend, or make any other distribution, to its shareholders only to the extent that it continued to comply with the general rule of law that no distribution can be lawfully paid if, and to the extent that, it would prejudice the Company's ability to pay its debts in full and when due for payment. The payment of dividends is also subject to the FCA Power of Direction under the regulatory regime operated by the FCA, as narrated previously.

9.25 As set out at statement of fact 6.14 above, those restrictions under the general law and in terms of the relevant regulatory regime are amplified by Article 113 of the Articles.

9.26 The fifth and final consideration is that the Court is entitled, when considering the risk to Creditors, to take into account the general financial strength of the Company, the commercial realities of its business and the valuation of the Company's shares. In this connection, the financial strength of the Company can reasonably be considered to be very significant. The commercial realities of its business are such that there is no real likelihood that the Cancellation would result in the Company being unable to discharge, in full and when they are payable, the sums owed to the Creditors. Furthermore, as previously averred, as at close of business on 17 May 2022 (which, as noted above, was the latest practicable date prior to the date of finalisation and presentation of this petition), the Company had a market capitalisation of approximately £4.2 billion.

9.27 Thus, it is respectfully submitted that the Company is of sufficient substance and solvency that its creditors will not be prejudiced by the proposed Cancellation. In all the circumstances, there is no real likelihood that the Cancellation would result in the Company being unable to discharge the debts and claims of any of its creditors as and when they fall due. Hence on a realistic and sensible view of matters, there is no possibility of any creditor of the Company being able to establish a real likelihood that

the Cancellation would result in the Company being unable to discharge its debts as and when they fall due. It is therefore respectfully submitted that, subject to the giving of any undertaking which the Court may require, the provisions of sub-sections (2) to (5) of section 646 of the Act do not apply as regards the Company's creditors, and that, accordingly, it is appropriate for Your Lordships to pronounce a direction to that effect.

## 10. The effect of the Cancellation and the 2008 Order

10.1 Article 3(3) of the Companies (Reduction of Share Capital) Order 2008 (SI 2008/1915) (the "2008 Order"), which was made under section 654(1) of the Act, provides that, if the court confirms a reduction of the share capital of a limited company, a reserve arising from that reduction is to be treated for the purposes of Part 23 of the Act as a realised profit (and so forms part of its distributable profits), unless the court orders otherwise under section 648(1) of the Act.

10.2 There is no reason why the order confirming the Cancellation should provide – pursuant to the 2008 Order – that the reserve which is created by the Cancellation is not to be added to the Company's realised/distributable profits.

10.3 Such a provision has never been included in any order which has been made by this Court confirming either a reduction of share capital or a cancellation of share premium account or capital redemption reserve. Nor, so far as the Company's English solicitors have been able to ascertain, has the Companies Court in London made such an order in circumstances where a company has shareholder authority to credit the reserve to the Company's realised/distributable profits.

## 11. The statement of capital

11.1 Section 649(3)(b) of the Act provides that a resolution reducing share capital, as confirmed by the court, takes effect on the registration by the Registrar of the order confirming the reduction and of a statement of capital in respect of the reduction, which is approved by the court. Section 649(3) of the Act applies to a reduction of a capital redemption reserve as well as to a reduction of share capital.

11.2 The statement of capital must contain the information which is required by section 649(2) of the Act and relates to the effect of the reduction. The statement of capital is made in the statutory form, Form SH19.

11.3 Section 649(1) of the Act provides that the Registrar, on production of the order and the statement of capital, shall register those documents.

11.4 However, the Form SH19 cannot, in fact, be completed so as to refer to the effect of any reduction or cancellation of capital redemption reserve.

11.5 That was recognised by this Court in a previous application by the Company in 2016 in terms of which its relevant capital redemption reserve at the time was cancelled by this Court.

11.6 Accordingly, although it is necessary for the Cancellation to take effect that this Court approves a statement of capital for the Cancellation, that statement cannot refer in fact to the effect of the Cancellation.

11.7 The difficulties with the Form SH19 in a situation such as the present one have been recognised in the amendment to section 649(2) of the Act by section 97 of, and paragraph 11 of Schedule 6 to, the Small Business, Enterprise and Employment Act 2015.

11.8 As so amended, section 649(2) of the Act requires the statement of capital to include only the aggregate amount unpaid on the company’s share capital after the reduction. As so amended, section 649(2) of the Act therefore does not apply to a reduction or cancellation of capital redemption reserve, and thus will not apply to the Cancellation, as the Company will have no such unpaid capital.

## 12. <u>The Reporter</u>

12.1 The Company also seeks the appointment of a reporter to the process.

12.2 The appointment of Mr Adrian Bell, solicitor, of Morton Fraser in Edinburgh, is sought as reporter to this process in accordance with the prayer of this petition.

12.3 Mr Bell is a very experienced and able practitioner and reporter. Mr Bell's appointment would, therefore, assist the Court in its consideration of this application.

12.4 Should Your Lordships see fit to appoint him, Mr Bell has confirmed that he is able and willing to act, on terms which are acceptable to the Company.

## 13. Advertisement and period for answers

13.1 The Company seeks an order to advertise this application in *inter alia* the international and UK editions of *The Financial Times*.

13.2 The effect of that advertisement would, under Rule of Court 14.6(1)(a), be that the period for answers to this application was 21 days.

13.3 Creditors would not be prejudiced by this application not being advertised more widely. The main category of Creditor, which might be based (or might have offices only) outside of the UK, comprises owners of the Notes. Those Creditors are, however, institutional investors, who are sophisticated counterparties and are therefore likely to consult the international and/or UK editions of *The Financial Times*.

13.4 Copies of that advertisement of this application, and of the application itself, will also be available on the Company's website www.abrdn.com/corporate/investors.

13.5 For completeness, the advertisements of this application are to refer, as is now conventional, to the practice of this Court to consider any informal objection to this application, whether in writing or in person.

## 14. General

This application is made under section 641(1)(b), sections 645 to 649 and section 733(6) of the Act and the relevant Rules of this Court.

**MAY IT THEREFORE** please Your Lordships:

(i) to order this petition by abrdn plc (company number SC 286832; the "Company"), under the Companies Act 2006 (the "Act"), for confirmation of the cancellation of the Company's entire capital redemption reserve which was resolved upon by a special resolution passed on 18 May 2022 (the "Cancellation"), be intimated on the Walls in common form and be advertised once in each of *The Edinburgh Gazette*, *The Scotsman* and *The Financial Times* (international and UK editions);

(ii) to appoint any person claiming an interest to lodge answers to the petition, if so advised, within 21 days after that intimation and advertisement;

(iii) to appoint Mr Adrian Bell, solicitor, Morton Fraser Edinburgh, or any other person whom the Court considers appropriate, as the reporter to the process (the "Reporter"); and to remit to the Reporter to enquire into the facts and circumstances set out in the petition and the regularity of the procedure;

thereafter, upon resuming consideration of the petition, with or without answers,

(iv) to approve the report of the Reporter;

(v) to direct, under section 645(3) of the Act, that the provisions of sections 646(2) to (5) of the Act do not

apply as regards the creditors of the Company or any classes of them;

(vi) to pronounce an order confirming the Cancellation;

(vii) to approve the statement of capital in respect of the Cancellation, which statement is to be on Form SH19 (the "Statement of Capital");

(viii) to direct that a copy of the Court's order confirming the Cancellation and approving the Statement of Capital (the "Court Order"), together with a copy of the Statement of Capital, be delivered to the Registrar of Companies in Scotland (the "Registrar") for registration;

(ix) to direct the Registrar to register the Court Order and the Statement of Capital;

(x) on the Court Order and the accompanying Statement of Capital being so registered by the Registrar, to direct that notice of that registration be given once in each of *The Edinburgh Gazette*, *The Scotsman* and *The Financial Times* (international and UK editions); and

(xi) to decern;

or to do otherwise in the premises as to Your Lordships shall seem proper.

**ACCORDING TO JUSTICE, ETC.**