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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Before Mrs Justice Asplin DBE

31 August 2017



CR-2017-003913

IN THE MATTER OF MONITISE PLC
- and -
IN THE MATTER OF THE COMPANIES ACT 2006

ORDER

UPON THE APPLICATION by Part 8 Claim Form issued on 13 June 2017 of the above-named Monitise plc (the "**Company**") whose registered office is Medius House, 2 Sheraton Street, London, England, W1F 8BH

AND UPON HEARING Stephen Horan of Counsel for the Company

AND UPON READING the Claim Form and the evidence

AND UPON Fiserv UK Limited, by Counsel for the Company being its counsel for this purpose, consenting to the scheme of arrangement as set forth in the Schedule (the "**Scheme**") hereinafter sanctioned and undertaking to be bound by the Scheme and to execute and do, or procure to be executed and done, all such documents, acts and things as may be necessary or desirable to be executed or done by them or on their behalf for the purpose of giving effect to the Scheme

THE COURT HEREBY sanctions the Scheme set out in the Schedule to this Order

AND THIS COURT ORDERS that this Order be produced by the Company to the Registrar of Companies and that an office copy of it be delivered to the Registrar of Companies



FRIDAY



SPE 01/09/2017 #42
COMPANIES HOUSE



PART FOUR

THE SCHEME OF ARRANGEMENT

CR-2017-003913

THE SCHEME OF ARRANGEMENT

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

CR-2017-003913

IN THE MATTER OF MONITISE PLC

and

IN THE MATTER OF THE COMPANIES ACT 2006

SCHEME OF ARRANGEMENT

(under Part 26 of the Companies Act 2006)

between

MONITISE PLC

AND

THE HOLDERS OF THE SCHEME SHARES

(as hereinafter defined)

PRELIMINARY

- (A) In this Scheme, unless inconsistent with the subject or context, the following expressions bear the following meanings:

"Announcement"	the announcement by Bidco of a firm intention to make an offer for the Company made on 13 June 2017;
"Articles"	the articles of association of Monitise;
"Bidco"	Fiserv UK Limited, a company incorporated in England and Wales registered with company number 10801276;
"Business Day"	a day on which banks are generally open for business in the City of London (excluding Saturdays, Sundays and public and bank holidays);
"certificated form" or "in certificated form"	a share or other security which is not in uncertificated form (that is, not in CREST);
"Code"	the City Code on Takeovers and Mergers;
"Company"	Monitise plc, a company incorporated in England and Wales registered with company number 06011822;
"Court"	the High Court of Justice in England and Wales;
"Court Hearing"	the hearing at which the Court Order is made;
"Court Meeting"	the meeting of Scheme Shareholders convened pursuant to order of the Court under section 896 of the 2006



	consider and, if thought fit, approve this Scheme (with or without modification), and any adjournment thereof;
"Court Order"	the order of the Court sanctioning the Scheme under Part 26 of the 2006 Act;
"CREST"	the system for the paperless settlement of trades in securities and the holding of securities in uncertificated form of which Euroclear is the Operator (as defined in the Regulations);
"Effective Date"	the date on which this Scheme becomes effective in accordance with its terms;
"Euroclear"	Euroclear UK & Ireland Limited, the Operator of CREST;
"Excluded Shares"	any Monitise Shares legally or beneficially held by any member of the Fiserv Group;
"Fiserv"	Fiserv, Inc., a Wisconsin corporation whose registered office is 255 Fiserv Drive, Brookfield, WI 53045, USA or, if the context so requires, its indirect wholly-owned subsidiary Bidco;
"Fiserv Group"	Fiserv and its subsidiary undertakings;
"holder"	a registered holder and includes any person(s) entitled by transmission;
"Long Stop Date"	15 September 2017 or such later date (if any) as Bidco and the Company may, with the consent of the Takeover Panel, agree and (if required) the Court may allow;
"Monitise Shareholders"	holders of Monitise Shares;
"Monitise Shares"	ordinary shares of 1 pence each in the capital of the Company;
"Monitise Share Schemes"	the Monitise approved SAYE Scheme, the Monitise Performance Share Plan, the Monitise Enterprise Management Incentive Plan and the Clairmail, Inc. 2004 Stock Plan;
"Regulations"	the Uncertificated Securities Regulations 2001 (SI 2001/3755), as amended;
"Scheme"	this scheme of arrangement in its present form or with or subject to any modification, addition or condition which Bidco and the Company may agree, and if required, the Court may approve or impose;
"Scheme Record Time"	6:00 pm on date of the Court Hearing;
"Scheme Shareholders"	holders of Scheme Shares;
"Scheme Shares"	the Monitise Shares: <ul style="list-style-type: none"> (i) in issue at the date of this document; (ii) (if any) issued after the date of this document and prior to the Voting Record Time; and

- (iii) (if any) issued at or after the Voting Record Time and prior to the Scheme Record Time in respect of which the original or any subsequent holder thereof shall be bound by this Scheme or shall by such time have agreed in writing to be bound by this Scheme,

in each case other than any Excluded Shares;

“subsidiary undertaking” has the meaning given in section 1162 of the 2006 Act;

“uncertificated form” or **“in uncertificated form”** a share or other security recorded on the relevant register as being held in uncertificated form in CREST and title to which, by virtue of the Regulations, may be transferred by means of CREST;

“Voting Record Time” 6:30 pm on the day which is two Business Days prior to the date of the Court Meeting or, if the Court Meeting is adjourned, 6:30 pm on the day which is two Business Days before the date of such adjourned meeting; and

“2006 Act” the Companies Act 2006, as amended.

- (B) The issued share capital of the Company as at the close of business on 30 June 2017 (the latest practicable date prior to the publication of this document) was £23,178,653, divided into 2,317,865,290 Monitise Shares, all of which were credited as fully paid.
- (C) As at 30 June 2017 (the latest practicable date prior to the publication of this document), no member of the Fiserv Group held any Monitise Shares.
- (D) Bidco has agreed to appear by Counsel at the Court Hearing to sanction this Scheme and to undertake to the Court to be bound by the provisions of this Scheme and to execute and do or procure to be executed and done all such documents, acts and things as may be necessary or desirable to be executed or done by it to give effect to this Scheme.

1. Transfer of Scheme Shares

- (A) Upon and with effect from the Effective Date, Bidco shall acquire all the Scheme Shares fully paid and free from all liens, equities, charges, encumbrances, rights of pre-emption and any other third party rights or interests of any nature whatsoever and together with all rights now or hereafter attaching or accruing to them including voting rights and the right to receive and retain in full all dividends and other distributions (if any), declared, made or paid after the date of the Announcement and not deducted from the consideration in accordance with Clause 2(B).
- (B) For the purposes of such acquisition, the Scheme Shares shall be transferred to Bidco by execution of an instrument of transfer and to give effect to such transfer any person may be appointed by Bidco to execute as transferor such instrument of transfer of, or give any instructions to transfer, any Scheme Shares and every instrument of transfer so executed or instruction so given shall be as effective as if it had been executed or given by the holder or holders of the Scheme Shares thereby transferred.
- (C) Pending the transfer of Scheme Shares pursuant to Clause 1(B), each Scheme Shareholder irrevocably appoints Bidco as the Scheme Shareholder’s attorney to exercise any voting rights attached to the Scheme Shares and any or all rights and privileges attaching to the Scheme Shares, to sign any consent to short notice of a general or separate class meeting and on its behalf to execute a form of proxy in respect of such shares appointing any person nominated by Bidco to attend general and separate class meetings of the Company and authorises the

Company to send to Bidco any notice, circular, warrant or other document or communication which may be required to be sent to them as a member of the Company.

2. Consideration for the transfer of Scheme Shares

- (A) In consideration for the transfer of the Scheme Shares to Bidco, Bidco shall, subject as hereinafter provided, pay or procure that there shall be paid to or for the account of each Scheme Shareholder whose name appears in the register of members of the Company at the Scheme Record Time:

for each Scheme Share 3.1 pence in cash

- (B) If any dividend or other distribution (including any return of capital) is authorised, declared, made or paid by the Company in respect of Monitise shares on or after 13 June 2017 and prior to the Effective Date, Bidco may reduce the amount of consideration payable in respect of such Monitise Share by the amount of all or part of any such dividend or distribution.
- (C) If as a result of the calculation of the consideration for the transfer of the Scheme Shares, the aggregate consideration payable to a Scheme Shareholder does not equal to a "whole" pence, the consideration of such transfer shall be rounded down to the nearest "whole" pence.

3. Share certificates and cancellation of CREST entitlements

With effect from and including the Effective Date:

- (A) all certificates representing Scheme Shares shall cease to have effect as documents of title to the Scheme Shares comprised therein and every holder of Scheme Shares shall be bound by the request of the Company to deliver up the same to the Company, or, as it may direct, to destroy the same;
- (B) Euroclear shall be instructed to cancel the entitlements to Scheme Shares of holders of Scheme Shares in uncertificated form; and
- (C) in respect of the certificated Scheme Shares, appropriate entries will be made in the register of members of the Company to reflect their transfer.

4. Despatch of consideration

- (A) As soon as reasonably practicable after the Effective Date, and in any event not more than 14 days after the Effective Date, against the execution of any instrument or instruction of transfer referred to in Clause 1, Bidco shall:
- (i) in the case of the Scheme Shares which at the Scheme Record Time are in certificated form, despatch or procure the despatch to the persons entitled thereto, or as they may direct, in accordance with the provisions of Clause 4(C), cheques for the sums payable to them respectively in accordance with Clause 2; and
 - (ii) in the case of the Scheme Shares which at the Scheme Record Time are in uncertificated form, ensure that an assured payment obligation is created in respect of the sums payable in accordance with the CREST assured payment arrangements, provided that Bidco reserves the right to make payment of the said consideration by cheque as referred to in Clause 4(A)(i) if, for any reason, it wishes to do so.
- (B) If as a result of the calculation of the consideration for the transfer of the Scheme Shares, the aggregate consideration payable to a Scheme Shareholder does not equal to a "whole" pence, the consideration of such transfer shall be rounded down to the nearest "whole" pence.

- (C) All deliveries of cheques required to be made pursuant to this Scheme shall be effected by sending the same by first class post (or international standard (formerly airmail) post, if to an address outside the United Kingdom) in pre-paid envelopes addressed to the persons entitled thereto at their respective registered addresses as appearing in the register of members of the Company at the Scheme Record Time (or in the case of any joint holders, at the address of the joint holder whose name stands first in the register of members of the Company in respect of such joint holding) and none of the Company, Bidco or their respective agents or nominees shall be responsible for any loss or delay in the transmission of any cheques sent in accordance with this Clause 4(A), which cheques shall be sent at the risk of the person or persons entitled thereto.
- (D) All cheques shall be in pounds Sterling and shall be made payable to the person or persons to whom, in accordance with the foregoing provisions of this Clause 4, the envelope containing the same is addressed and the encashment of any such cheque shall be a complete discharge of Bidco's obligation under this Scheme to pay the monies represented thereby.
- (E) In respect of payments made through CREST, Bidco shall ensure that an assured payment obligation is created in accordance with the CREST assured payment arrangements. The creation of such an assured payment obligation shall be a complete discharge of Bidco's obligation under this Scheme with reference to the payments made through CREST.
- (F) In the case of any Scheme Shares issued or transferred under the Monitise Share Scheme after the Court Hearing and before the Scheme Record Time, Bidco may satisfy the consideration due to the relevant Scheme Shareholders under Clause 2 by the payment to the Company of the aggregate consideration no later than 14 days after the Effective Date and the Company will procure that any such sums paid to it are paid to the relevant Scheme Shareholders through the payroll of the relevant Scheme Shareholders' employing company as soon as practicable and subject to all deductions or withholdings required by law (including applicable income tax and social security contributions).
- (G) The preceding paragraphs of this Clause 4 shall take effect subject to any prohibition or condition imposed by law.

5. Operation of this Scheme

- (A) This Scheme shall become effective upon a copy of the Court Order being delivered to the Registrar of Companies in England and Wales for registration.
- (B) Unless this Scheme has become effective on or before the Long Stop Date, or such later date, if any, as the Company and Bidco may agree and the Court and the Panel on Takeovers and Mergers may allow, this Scheme shall never become effective.
- (C) The Company and Bidco may jointly consent on behalf of all persons concerned to any modification of or addition to this Scheme or to any condition that the Court may approve or impose. Any such modification or addition may require the consent of the Panel on Takeovers and Mergers.

6. Governing law

This Scheme is governed by English law and is subject to the jurisdiction of English courts. The rules of the Code will apply to this Scheme.

Dated 3 July 2017

