

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59

Rule 29.02(1)

Affidavit

No. WAD 13 of 2024

Federal Court of Australia

District Registry: Western Australia

Division: General

Australian Securities and Investments Commission

Plaintiff

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

Defendant

Affidavit of: **Linda Methven Smith**

Address: McGrathNicol, Level 19, 2 The Esplanade, Perth 6000

Occupation: Partner, McGrathNicol, Chartered Accountant and Registered Liquidator

Date: 7 October 2025

THIRTIETH AFFIDAVIT OF LINDA METHVEN SMITH

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Filed on behalf of (name & role of party) Linda Smith and Rob Kirman, as joint and several court-appointed receivers and managers

Prepared by (name of person/lawyer) C A L Boothman

Law firm (if applicable) HWL Ebsworth Lawyers

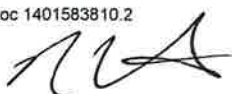
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[Version 3 form approved 02/05/2019]

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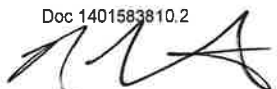



I, Linda Methven Smith, of care of Level 19, 2 The Esplanade, Perth, in the State of Western Australia, Chartered Accountant and Registered Liquidator, affirm:

1. I am a Chartered Accountant, Registered Liquidator and Partner of McGrathNicol.
2. On 13 December 2023 this Honourable Court ordered (in WAD262/2023) that Mr Robert Kirman (**Mr Kirman**) and I be appointed as joint and several receivers and managers of all the 'Property' of Brite Advisors Pty Ltd ACN 135 024 412 (**Brite Advisors**), the defendant in these proceedings.
3. On 6 February 2024, this Honourable Court ordered, in these proceedings, that Mr Kirman and I be appointed:
 - (a) receivers and managers of all the 'Trust Assets', being all property, assets and undertakings held by Brite Advisors on trust for another (**Receivers**); and
 - (b) joint and several liquidators of Brite Advisors (**Liquidators**).
4. I am authorised by Mr Kirman to swear this affidavit on behalf of he and I as the Receivers. A reference to "we" in this affidavit is a reference to Mr Kirman and me in our capacity as Receivers.
5. The facts deposed to in this affidavit are from my own knowledge, except where I have indicated otherwise, in which case the facts deposed to are from information provided to me from the sources I have identified, and which information I believe to be true.
6. I also crave leave to refer to the previous affidavits I have affirmed which have been filed in both WAD262/2023 and these proceedings (together, my **Previous Affidavits**).
7. In this affidavit, defined terms have the meaning ascribed to them in my Previous Affidavits unless I state otherwise.

Introduction and purpose of this affidavit

8. This affidavit is made in support of the minute of proposed orders filed by the Receivers on or around the date of this affidavit, by which the Receivers seek orders relating to the proposed interim distribution of part of the Client AuM (**ID Application**).
9. By the ID Application the Receivers seek to distribute all of the Client AuM except what is absolutely necessary to retain. If the orders sought by the Receivers in the ID




Application are made, the Deficient Mixed Fund will be liquidated to the extent required to fund the interim distribution, with the remainder of the fund retained and designated for certain liabilities and costs to be incurred in dealing with ongoing workstreams or future liabilities of the receivership (**Non-Distributable Amounts**).

10. The Non-Distributable Amounts would be limited to approximately USD\$42.0 million, comprised of USD\$22.5 million (inclusive of the provision for market downturn totalling USD\$10.9 million), AUD\$19.7 million (including GST) and GBP£5.2 million both (converted to USD using foreign exchange rates per the IB statements as at 26 September 2025), as set out in the table below, plus an amount which will be the subject of an application to a Registrar of the Court for approval for payment (of fees and costs incurred up to around the time of the hearing of the ID Application) and which has not yet been approved or paid:

Non-Distributable Amounts					
Item	Ccy	AUD	GBP	USD	Converted USD
<u>Tax and Unresolved Claims</u>					
Australian tax	AUD	9,770,097	-	-	6,396,287
US tax	USD	-	-	10,183,928	10,183,928
Unresolved claims to Client AuM	GBP	-	4,418,636	-	5,575,435
Unresolved claims to Client AuM	USD	-	-	770,854	770,854
Total tax and unresolved claims		9,770,097	4,418,636	10,954,781	22,926,503
<u>Category 1 - Receivers' fees and costs</u>					
Receivers' fees	AUD	5,500,000	-	-	3,600,740
Receivers' disbursements	AUD	55,000	-	-	36,007
Total Receivers' fees and costs		5,555,000	-	-	3,636,747
<u>Category 2 - Legal fees and costs</u>					
Legal fees	AUD	1,472,075	-	-	963,738
Legal disbursements	AUD	13,200	-	-	8,642
Counsel fees	AUD	1,016,400	-	-	665,417
Total legal fees and costs		2,501,675	-	-	1,637,797
<u>Category 3 - Other professional fees</u>					
Crowe Aus	AUD	385,000	-	-	252,052
Crowe US	USD	-	-	300,000	300,000
NRF	USD	-	-	300,000	300,000
Total other professional fees		385,000	-	600,000	852,052
<u>Category 4 - Trading costs</u>					
BML Funds	AUD	795,000	-	-	520,471
Salesforce	AUD	480,000	-	-	314,246
AutoRek	GBP	-	140,000	-	187,656
Ownbackup	AUD	12,000	-	-	7,856
i-Convergence	GBP	-	675,000	-	904,770
Allied Solutions	AUD	50,000	-	-	32,734
Insurance	AUD	190,000	-	-	124,389
Total trading costs		1,527,000	815,000	-	2,092,122
Total Non-Distributable Amounts		19,738,772	5,233,636	11,554,781	31,145,221
Provision for market downturn (35%) - USD					10,900,828
Total					42,046,049




11. The Receivers note that all AUD Non-Distributable Amounts set out above are inclusive of GST. The Receivers have taken this conservative approach having regard to preliminary taxation advice received indicating that it would be prudent to refrain from claiming any refunds for GST paid on receivership costs until the position with the Australian Taxation Office (ATO) has been resolved.

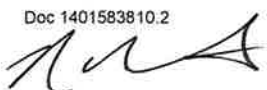
Update on Performance of the Fund

12. I refer to paragraph 11 of the Twenty-Ninth Smith Affidavit, at which I deposed that the value of the Client AuM held on the IB Platform under BML Funds' management, as at close of trade on 5 September 2025 was GBP£562.7 million which is equivalent to approximately USD\$760.2 million or AUD\$1.159 billion.
13. Since affirming the Twenty-Ninth Smith Affidavit, BML Funds has continued to monitor and manage the Client AuM held on the IB Platform. BML Funds also publishes a weekly report on the Creditor Website to keep Beneficiaries and Corporate Trustees informed of the performance of the fund.
14. I am informed by Ted Alexander of BML Funds and verily believe that the value of the Client AuM held on the IB Platform under BML Funds' management as at close of trade on 3 October 2025 was GBP£579.5 million which is equivalent to approximately USD\$781.1 million (or AUD\$1.183 billion). This is an aggregated growth in the portfolio since the Receivers' appointment on 13 December 2023 of approximately 31.09%, as measured in USD.
15. Exhibited hereto behind "Tab-1" is a true and correct copy of the reports prepared by Ted Alexander of BML Funds dated 14 September 2025, 21 September 2025, 28 September 2025 and 5 October 2025 which have been published on the Creditor Website.

Proposal for an Interim Distribution previously advanced

16. At the Distribution Methodology Hearing on the 15 September 2025, the Receivers advised that they intended to make an application to pay an interim distribution of circa 90% of the amounts available for distribution from the Deficient Mixed Fund (excluding certain amounts identified as Non-Distributable Amounts) prior to bringing the Retained Funds Application.

17. The Receivers had previously formed the view that once certain amounts, likely in excess of USD\$200 million, were set aside for future liabilities and as contingencies for unresolved issues (in particular with respect to IBAU and the ATO), it would be appropriate to distribute at least 90% of the Deficient Mixed Fund, to facilitate the expedient release of the majority of the Client AuM, while the Receivers continued to progress the outstanding issues in the receivership.
18. In forming a view that 90% was an appropriate amount, the Receivers considered a number of matters as set out below:
- (a) the Receivers are highly cognisant of the nature of the Trust Assets being predominantly pension assets held for the ultimate benefit of individuals;
 - (b) the application for orders that we be appointed as receivers of the Trust Assets was made by the ASIC as a result of regulatory investigation of Brite Advisors and during the course of the receivership the Receivers have identified many instances of what appears to be systemic misconduct by Brite Advisors and its directors and officers;
 - (c) that suspected misconduct and the nature of the business of Brite Advisors has resulted in a receivership that is highly complex from both a factual and legal perspective, with many stakeholders including Corporate Trustees and corporate regulators from six jurisdictions, and over 2,000 Beneficiaries;
 - (d) the work that we have had to undertake to date has in many cases been unexpected and unpredictable, and has delayed and diverted resources from the key task of developing the distribution methodology;
 - (e) the receivership was yet to reach a point where we could reliably predict what future work we would need to undertake in order to finalise the receivership. Put simply, we continue to regularly deal with unexpected "spot fires" which are properly addressed in the receivership, but which require resourcing; and
 - (f) the Receivers formed the view that considering the history of the receivership, the issues that had arisen to date, and the potential work required to finalise the receivership (including meeting any relevant liabilities), we could safely distribute 90% of the Client AuM (excluding the Non-Distributable Amounts).



19. With the benefit of feedback from the Corporate Trustees, and having feedback from the Court in relation to the preferred approach to resolving outstanding issues, the Receivers have prioritised pressing for a practical resolution of the two most material and complex matters impacting the Non-Distributable Amounts and quantum of the interim distribution as a matter of urgency, being:
- (a) Australian taxation liabilities (refer paragraphs 28 to 42); and
 - (b) obligations relating to the IB Margin Security Assets (refer paragraphs 101 to 114).
20. The Receivers seek to resolve these issues, by seeking orders that distribution payments can be made which treat these issues in the manner proposed by the Receivers. If those orders can be given and acted upon, and as reflected in the orders sought, the Receivers consider that they can distribute the entirety of the Deficient Mixed Fund less Non-Distributable Amounts (which, as mentioned above, would be approximately USD\$42 million and would include the prospective costs of finalising the receivership).

Worked example: Calculating Beneficiaries' interim distribution amount

21. To illustrate how each Deficient Mixed Fund Beneficiary's interim distribution would work in practice, I set out below an example of their operation. The figures are hypothetical and for illustrative purposes only.
22. If the Non-Distributable Amount was USD\$35 million and the current value of the Deficient Mixed Fund was USD\$760 million, the Receivers (with the assistance of the Interim Fund Manager) would identify approximately USD\$725 million of assets to be liquidated.
23. Once liquidated, the proceeds would be in different currencies, but on a single date (the Interim Distribution Valuation Date) the proceeds will be valued in USD and any pension withdrawals previously paid to Beneficiaries will be notionally added to this amount. In the example, I will assume the proceeds are valued at USD\$725 million after liquidation and USD\$5 million of pension withdrawals are added, bringing the total to USD\$730 million. This is what is referred to in the minute of proposed orders as the 'Interim Total Value'.

24. Applying the formula for calculating a Deficient Mixed Fund Beneficiary's interim distribution to this example, I will use the aggregate total Beneficiary Entitlements as at 13 December 2023 of USD\$748 million and total loans made to Beneficiaries of USD\$10 million. The hypothetical Beneficiary in the example I assume has an entitlement of USD\$1 million, received no loan, and has taken no pension withdrawals.
25. Therefore, this Beneficiary's interim distribution, applying the formula in order 7 of the minute of proposed orders, would be equal to the following:

$$(1,000,000 / (748,000,000 - 10,000,000)) * 730,000,000 = \text{USD\$989,159.89}$$

Basis for Identifying Non-Distributable Amounts post 12 November 2025 hearing

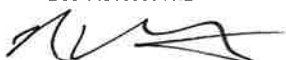
26. Non-Distributable Amounts will be amounts set aside for the unresolved aspects of the receivership (including potential taxation liabilities in both Australia and the USA and unresolved Beneficiary disputes/claims against the Deficient Mixed Fund) in addition to a high-level estimate of the trading costs and the Receivers' costs and disbursements to conduct the receivership following the 12 November 2025 hearing to conclusion.
27. The Non-Distributable Amounts are necessary to ensure that the Receivers can properly discharge their duties to the conclusion of the receivership and to attend to the following workstreams:
- (a) The unresolved and potentially significant tax exposures which may arise from the historical operation and structure of the fund. The quantum and nature of these liabilities are presently uncertain and require further investigation and engagement with relevant tax authorities (**Potential Tax Liabilities**).
 - (b) A number of parties have asserted entitlements to the Client AuM. These claims are currently the subject of ongoing dispute resolution processes in accordance with the Framework Orders, and the Receivers consider it prudent to retain sufficient funds to meet any potential liabilities or adjustments that may arise from the resolution of these disputes (**Unresolved Disputes**).

Potential Tax Liabilities – Australian tax

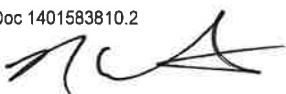
28. The Receivers consider it appropriate to treat Brite Advisors' tax liabilities in accordance with the primary position expressed in the Position Paper, which was prepared by the Receivers' specialist tax advisors (**Position Paper**). That Position Paper was provided

to the Australian Taxation Office (**ATO**) on 28 March 2025. Accordingly, the Receivers have instructed Crowe Australasia (**Crowe Aus**) to calculate Brite Advisors' tax obligations on the basis of the Position Paper and propose to set aside, as part of the Non-Distributable Amount, the amount as calculated by Crowe Aus.

29. As set out in paragraphs 25 to 39 of the Twenty-Seventh Affidavit of Linda Methven Smith affirmed on 8 September 2025 (**Twenty-Seventh Smith Affidavit**) and paragraphs 5 to 33 of the Fourth Affidavit of Carmen Anne Leah Boothman sworn on 16 September 2025, the Receivers have engaged extensively with the ATO regarding the potential tax liabilities of Brite Advisors.
30. In consultation with specialist tax advisers, the Receivers have calculated a conservative estimate of the maximum potential liability of Brite Advisors, as follows:
- (a) For the pre-receivership period, being 1 July 2019 to 13 December 2023 the Receivers have identified a maximum of AUD\$45,607,208 inclusive of estimated interest and penalties.
 - (b) For the post-receivership period, being 14 December 2023 to 30 June 2025, the Receivers have identified a maximum potential liability of up to AUD\$32,439,241, excluding interest and penalties.
 - (c) The Receivers have calculated the maximum potential liability for capital gains tax that might be imposed by the ATO upon the liquidation of the securities comprising the Deficient Mixed Fund to be AUD\$75,401,082 if the liquidation occurs within the 2026 financial year.
31. The estimates above assume that the ATO does not accept the position advanced by the Receivers in the Position Paper.
32. Tab-6 of Exhibit LMS-87 of the Twenty-Seventh Smith Affidavit contains correspondence from the ATO to the solicitors for the Receivers, HWLE, in which the ATO set out its non-binding preliminary view as to the capital gains tax liability of Brite Advisors if the Client AuM were to be liquidated during the financial year ending 30 June 2026 under cover of their letter dated 27 August 2025 (**Preliminary View**). If the Preliminary View is to be accepted, neither the Receivers nor Brite Advisors will be liable to pay Australian income tax on the capital gain arising from the proposed liquidation of the Client AuM.



33. If the Receivers are to rely upon the position contained in the Preliminary View, it would reduce the maximum potential tax liability by approximately AUD\$75.4 million (as referred to at paragraph 30(c) above). It is important to note that the Preliminary View relates to only one aspect of the Australian tax issues that need to be resolved. At the time of affirming this affidavit, the ATO is yet to form a view, preliminary or otherwise, on the other tax issues set out at paragraph 30(a) and 30(b) above nor provide any indication of the time it would take to form a view, or provide a binding ruling once an application was filed.
34. Exhibited hereto behind “**Tab-2**” is a true copy of a letter of instruction that I instructed HWLE to issue to Crowe Aus, specialist tax accounting advisors engaged by the Receivers. By that letter of instruction, Crowe Aus were asked to calculate the tax liability of Brite Advisors on the basis of the propositions advanced by the Receivers in the Position Paper, and to provide a report setting out those calculations.
35. Exhibited hereto behind “**Tab-3**” is a true copy of a report dated 6 October 2025 from Crowe Aus. By that report, Crowe Aus have calculated that the tax liability of Brite Advisors on the basis of the propositions set out in the Position Paper would be in the order of AUD\$9,770,097.
36. The Receivers note that this differs from the AUD\$2 million identified in the update to Corporate Trustees and Beneficiaries issued on 10 September 2025. This is because Crowe Aus’s calculations have been prepared on the basis of the conservative assumption that no beneficiary was, or is, presently entitled to amounts of “broker interest” paid by Interactive Brokers which have not been allocated to Client accounts and therefore Brite will be liable for tax on the net income at 47% pursuant to s 99A of the Income Tax Assessment Act 1936. The “broker interest” was not expressly addressed in the Position Paper and the Receivers are considering the appropriate tax treatment of such amounts. The amount the Receivers seek to retain may reduce once full consideration is given to that issue.
37. The Receivers note that even if the Court makes the orders sought to give effect to the interim distribution, there is the potential for the ATO to disrupt that process, requiring the Receivers to reassess and seek further orders from the Court. That is, the ATO could issue an assessment under section 167 of the *Income Tax Assessment Act 1936* which



is inconsistent with the tax treatment identified in the Receivers' Position Paper. This could occur either (i) prior to payment of the interim distribution, or (ii) once the interim distribution is made and the Receivers only hold the Non-Distributable Amounts. Either case would be disruptive and result in wasted costs.

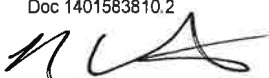
38. Exhibited hereto behind "**Tab-4**" is a true copy of a letter dated 30 September 2025 from the ATO's solicitors, Norton Rose Fullbright (**NRF**) to HWLE. By that letter, NRF said that if the Receivers were to lodge an application for a private binding ruling limited to the issues the subject of the Preliminary View by 6 October 2025, and provided that there are no material changes to the facts and assumptions already submitted to the ATO and relied upon in issuing the Preliminary View, then the Commissioner presently anticipates that a binding ruling could be issued by 31 October 2025.
39. Exhibited hereto behind "**Tab-5**" is a true copy of a letter dated 1 October 2025 from HWLE to NRF confirming that the Receivers would submit an application for a private binding ruling by 6 October 2025. This application would be limited to the issues the subject of the Preliminary View and therefore does not address the entirety of the outstanding Australian tax issues.
40. Exhibited hereto behind "**Tab-6**" is a true copy of an email exchange between Carmen Boothman of HWLE and Kellie Link of NRF regarding the timing of the Receivers' application.
41. Today, on 7 October 2025, the Receivers lodged an application for a private binding ruling on the issues the subject of the Preliminary View with the ATO (**PBR Application**). Exhibited hereto behind "**Tab-7**" is a true copy of the PBR Application with Brite Advisors' Tax File Number redacted. The PBR Application deals only with the issues the subject of the Preliminary View and therefore does not address the entirety of the outstanding Australian tax issues.
42. I am informed by HWLE and verily believe that, despite follow up, the ATO has not provided its views on the balance of the tax issues the subject of the Position Paper, nor provided any indication of the likely timing of the provision of those views.

Potential tax liabilities – US tax

43. Paragraphs 40 – 47 of the Twenty-Seventh Smith Affidavit set out the steps taken by the Receivers to progress resolution of Brite Advisors' US tax matters, including in respect of

outstanding liabilities for tax years 2020 – 2022 and the potential liabilities for 2023 and 2024, noting that returns for 2020 to 2022 were filed late and remain unpaid and the 2023 and 2024 returns are yet to be lodged.

44. The Receivers consider there to be a requirement to retain sufficient funds to cover the estimated pre-receivership and receivership taxation liabilities owing to the IRS in the event there is a requirement to pay the outstanding pre-receivership liabilities from Client AuM and so that the receivership taxation liabilities can be paid from Client AuM once the returns are filed. In this regard, the Receivers have instructed Crowe US LLP (**Crowe US**) to prepare a conservative estimate of the taxation liabilities payable, which they have done so, using the methodology and assumptions as set out below:
- (a) Assumes that the IRS does not abate penalties, and Brite Advisors pays the base withholding tax liability, penalties, and interest.
 - (b) Taxation liabilities for tax years 2020-2022 are based on the returns submitted by Brite Advisors prior to the Receivers' appointment with a provision included in the event there is a requirement to amend the returns as a result of the information provided by Corporate Trustees (refer paragraph 59 of the Twenty-Second Smith Affidavit).
 - (c) Withholding rate in 2023 and 2024 is based upon the statutory withholding rate of 30% on any US sourced income allocated to a non-U.S. person.
 - (d) Assumes that all amounts due are paid by 30 September 2026 and therefore interest and penalties have been accrued to this date.
 - (e) Assumes that the 2023 and 2024 US tax year returns are filed by 31 March 2026.
45. Based on the matters set out at paragraphs 43 and 44 above, we estimate that the amount required to be retained for Pre-receivership and receivership US Taxation Liabilities will be USD\$10,183,928.
46. The Receivers have instructed Crowe US to prepare and lodge the outstanding returns for 2023 and 2024.
47. As set out at paragraph 42 of the Twenty-Seventh Smith Affidavit, the Receivers have engaged Norton Rose Fulbright US (**NRF US**) as specialist tax legal advisors to assist



the Receivers with resolving Brite Advisors' US tax matters. Refer to paragraphs 74 and 75 for further details of NRF US's engagement.

Unresolved Disputes and other claims to the Client AuM

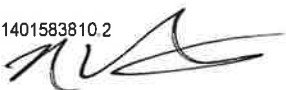
48. Paragraph 49 of Twenty-Seventh Smith Affidavit set out details in relation to eight Beneficiaries whose entitlements are yet to be finalised and two other claims to the Client AuM which are being investigated. Matters in relation to these issues have progressed since the Twenty-Seventh Smith Affidavit, but have not yet been resolved. The aggregate value of these claims is USD\$6.3 million. Until concluded upon, the Receivers intend to set aside this amount in the Non-Distributable Amount.
49. For completeness the Receivers note the following matters, although no amount is proposed to be retained in respect of these matters:
- (a) The Receivers have corresponded with an additional six Beneficiaries in respect to issues they continue to press with their Valuation Notice, primarily in connection with the valuation of their Structured Notes. The Receivers do not propose to set aside any amounts from the Interim Distribution calculation, noting that the Court has already made orders as to the valuation methodology to be applied with respect to the disputes in relation to Structured Notes and the other matters are immaterial to the quantum of the Interim Distribution calculation.
 - (b) Further to the orders made by the Court on 15 September 2025 with respect to the treatment of Surrender Rebates and Interest, the Receivers have corresponded with each Beneficiary with an active dispute in respect of those matters and advised that their dispute in respect of those matters is not well-founded. As a result, the Receivers consider all disputes in relation to Surrender Rebates and Interest have been resolved.
 - (c) In addition to the above, the Receivers are in the process of releasing Valuation Notices to the Trustees and/or Authorised Representatives of 25 Deceased Estates with entitlements above USD\$10,000, which could be subject to Valuation Notices disputes.

Basis for quantifying estimated fees and costs to be retained post 12 November 2025 hearing

50. The Receivers have quantified the amounts to be retained for the estimated fees and costs which they expect will be incurred during the period from 12 November 2025 to the finalisation of the receivership, comprised of:
- (a) Category 1: Receivers' fees and disbursements, estimated at AUD\$5.6 million (including GST) (refer paragraphs 51 to 60);
 - (b) Category 2: Legal fees and disbursements (including Counsel fees), estimated at AUD\$2.5 million (including GST) (refer paragraphs 61 to 67);
 - (c) Category 3: Other professional fees and disbursements, estimated at USD\$852,000 (including GST in relation to the Australian costs) (refer paragraphs 68 to 75); and
 - (d) Category 4: Trading costs, estimated at USD\$2.1 million (including GST in relation to the Australian costs) (refer paragraphs 76 to 95).

Category 1: Estimated Receivers' fees – known workstreams from 12 November 2025 to completion of receivership

51. Exhibited hereto behind "**Tab-8**" is a detailed schedule of known prospective work streams that Receivers will be required to attend to following the 12 November 2025 hearing. Importantly, the estimate has been prepared on the assumption that the Court makes orders in line with the minute of proposed orders in support of the ID Application. If the orders made depart from those orders, the Receivers would need to consider the new trajectory of the Receivership and reassess the likely costs.
52. The known prospective workstreams are summarised below:
- (a) Subject to the Court making the proposed interim distribution orders, implementation of the distribution methodology including:
 - (i) instructing the Interim Fund Manager in relation to the liquidation of the Client AuM for the purposes of making an interim distribution and effecting payment to Corporate Trustees and Beneficiaries;




- (ii) drawdown of cash from the Interactive Brokers Platform (once liquidated) and withdrawing funds from term deposits to the Receivers' bank accounts to make the interim distribution;
 - (iii) updating the distribution model to calculate interim distribution amounts to be paid to Corporate Trustees and Beneficiaries;
 - (iv) attending to the payment of the interim distribution to Corporate Trustees and Direct Beneficiaries, including verifying bank accounts prior to payment; and
 - (v) preparing correspondence to Corporate Trustees and Beneficiaries in relation to the interim distribution paid.
- (b) reporting to the Court on an ongoing basis regarding matters relating to the distributions and conduct of the receivership generally;
 - (c) providing ongoing updates to Corporate Trustees and Beneficiaries in relation to the progress of the receivership;
 - (d) progressing investigations and recovery in respect of claims, including considering funding options for commercial claims;
 - (e) undertaking work on an ongoing basis to comply with the Receivers' statutory obligations, including preparation of returns and other lodgements;
 - (f) declaration and payment of a final distribution to Corporate Trustees and Beneficiaries (in accordance with payment orders); and
 - (g) finalising the receivership.
53. The amounts that the Receivers propose be retained on account of their remuneration by reference to outstanding known workstreams and tasks contained at Tab-8, total AUD\$5.6 million (including GST).
54. The Receivers stress that the above estimate at paragraph 5353 is reliant on there being no deviation from the Receivers' proposed approach set out in the ID Application, and that only the tasks outlined in the schedule at Tab-8 are required to be undertaken to the conclusion of the receivership.

55. Specifically, and importantly, the Receivers note that the above estimate does **not** include provisions for tasks associated with the following:
- (a) Participating in a dispute or any legal proceedings with Interactive Brokers regarding the repayment of the margin loan and seeking to have the 5 June 2024 orders dispensed with (see paragraphs 101 to 114 below);
 - (b) Dealing with the ATO if significant work is required following the ID Application to resolve the Australian taxation position, including where the ATO issues an assessment which would disrupt the Receivers' ability to make a distribution in accordance with the orders sought;
 - (c) Participating in a substantive dispute or negotiation with the IRS regarding the US tax position;
 - (d) Continuation of assessing and facilitating pension withdrawal requests if an interim distribution is delayed beyond December 2025;
 - (e) Continuation of management of the entirety of the Client AuM if an interim distribution is delayed (and therefore, no part of the Client AuM is liquidated) beyond December 2025;
 - (f) Requirement for the Receivers to respond to or participate in the AFCA complaints referral process;
 - (g) Compliance with significant information requests from ASIC or other Australian or overseas regulators; and
 - (h) Further work required for any other reason which has not been anticipated by the Receivers at this stage of the receivership, noting there have been a number of matters which have unexpectedly arisen over the course of the receivership to date.
56. If the Receivers are required to deal with any tasks which fall outside of the known tasks and workstreams set out at Tab-8 and summarised above at paragraph 5251, the Receivers' estimate of the amount to be retained (at paragraph 5353 above) will likely be insufficient to meet the Receivers' future remuneration incurred to the conclusion of the receivership.

57. For the avoidance of doubt, the Receivers are not seeking any form of prospective approval for estimated remuneration following the 12 November 2025 hearing. The Receivers consider it is important and appropriate to continue to be required to submit remuneration and cost reports for the Court's consideration in accordance with the orders made by the Court on 21 December 2023.

Estimated Receivers' disbursements from 12 November 2025 to completion of receivership

58. In the course of performing professional services the Receivers have incurred, and will continue to incur, administrative disbursements including:
- (a) subscription fees for Xero, being electronic accounting software;
 - (b) fees to conduct searches of registers including company searches conducted of ASIC's registers; and
 - (c) costs associated with backing up data held and maintained by the Receivers in systems controlled by McGrathNicol.
59. Based on the professional disbursements incurred during the course of the receivership to date and allowing for a conservative estimate of future potential costs, the Receivers propose to retain the sum of AUD\$55,000 (including GST) on account of further professional disbursements to be incurred for the remaining duration of the receivership.
60. The Receivers have not included any provisions for unexpected disbursements which could arise, including but not limited to, travel costs if it became necessary for the Receivers or their legal advisers to travel to participate in court hearings in person or to attend meetings with other stakeholders with respect to claims funding.

Category 2: Legal fees and disbursements

Estimated legal fees – HWLE from 12 November 2025 to completion of receivership

61. Exhibited hereto behind "Tab-9" is a detailed schedule of known prospective legal work streams that the Receivers will require HWLE to attend to following the 12 November 2025 hearing. Importantly, the estimate has been prepared on the assumption that the Court makes orders in line with the minute of proposed orders in support of the ID Application. If the orders made depart from those orders, the Receivers would need to




consider the new trajectory of the receivership and reassess the likely costs associated with the prospective legal work streams.

62. The amount that the Receivers propose be retained on account of their legal fees by reference to outstanding known workstreams and tasks contained at Tab-9, total AUD\$1.5 million (including GST).
63. The prospective legal work streams are aligned with the Receivers' workstreams detailed at paragraphs 51 and 52 above. If HWLE are required to deal with any tasks which fall outside of the known tasks and workstreams set out at Tab-1051, the Receivers' estimate of the amount to be retained (at paragraph 6253 above) will likely be insufficient to meet the Receivers' future legal fees to be incurred to the conclusion of the receivership.

Estimated legal disbursements – HWLE from 12 November 2025 to completion of receivership

64. In the course of performing professional legal services for the Receivers, HWLE have incurred, and will continue to incur, administrative disbursements including:
 - (a) fees to conduct searches of registers including company searches conducted of ASIC's registers;
 - (b) Court filing fees and other costs relating to Court lodgements;
 - (c) Court transcript fees; and
 - (d) printing costs associated with Court materials.
65. Based on the professional legal disbursements incurred during the course of the receivership to date and allowing for a conservative estimate of future potential costs, the Receivers propose to retain the sum of AUD\$13,200 (including GST) on account of further administrative legal disbursements to be incurred for the remaining duration of the receivership.

Estimated Counsel fees from 12 November 2025 to completion of receivership

66. The schedule contained at Tab-9 contains the known prospective legal work streams that the Receivers will require Counsel to attend to following the 12 November 2025

hearing and I repeat the matters contained at paragraphs 61 and 63 as they relate to fees to be incurred by Counsel.

67. The amount that the Receivers propose be retained on account of Counsel fees by reference to outstanding known workstreams and tasks contained at Tab-9, total AUD\$1.0 million (including GST).

Category 3: Other professional fees and disbursements

Estimated Crowe Aus fees from 12 November 2025 to completion of receivership

68. The Receivers have recently engaged specialist taxation legal advisors at Crowe Aus to resolve Brite Advisors' Australian taxation matters.
69. The further work that the Receivers need to continue to engage Crowe Aus on include:
- (a) assisting with technical accounting matters relating to the ongoing engagement with the ATO in order to ascertain Brite Advisors' Australian tax liability;
 - (b) providing tax calculations for future assessments of the adequacy and appropriateness of the Non-Distributable Amounts in relation to Brite Advisors' Australian tax liability;
 - (c) preparation and lodgement of trust tax returns for the relevant income years, in Brite Advisors' capacity as trustee, including the preparation of trustee beneficiary statements;
 - (d) preparation of payment summaries for beneficiary distributions and reporting to the Commissioner in relation to withholding payments;
 - (e) preparation and lodgement of income tax returns in Brite Advisors' own capacity (if it is determined that Brite Advisors carried on a business or derived income in its own capacity during an income year); and
 - (f) preparation and lodgement of annual non-resident interest and dividend withholding tax reports.
70. The amount that the Receivers propose to retain on account of Crowe Aus's future anticipated costs is AUD\$385,000 (including GST).

Estimated Crowe US fees from 12 November 2025 to completion of receivership

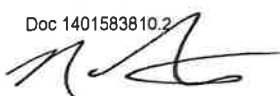
71. The Receivers have engaged specialist taxation legal advisors at Crowe US to assist with resolving Brite Advisors' US taxation matters.
72. The further work that the Receivers need to continue to engage Crowe US on include:
 - (a) attending to preparation and lodgement of the 2023 and 2024 tax returns with the United States Internal Revenue Service (**IRS**);
 - (b) amending already filed tax returns for 2020 to 2022 (if required);
 - (c) making application for and negotiating remission of interest and penalties imposed by the IRS on Brite Advisors;
 - (d) working with US solicitors, NRF US, in relation to the US taxation matters; and
 - (e) documenting processes in relation to the above.
73. The amount that the Receivers propose to retain on account of Crowe US's future anticipated costs is USD\$300,000.

Estimated NRF US from 12 November 2025 to completion of receivership

74. The Receivers have recently engaged specialist taxation legal advisors at NRF US to assist Crowe US with resolving Brite Advisors' US taxation matters.
75. The amount that the Receivers propose to retain on account of NRF's future anticipated costs is USD\$300,000.

Category 4: Estimated trading costs from 12 November 2025 to completion of receivership

76. Pursuant to orders of the Court originally made on 21 December 2023, as varied from time to time, the following trading costs have been incurred by Brite Advisors:
 - (a) the engagement of the Interim Fund Manager, BML Funds Management Pty Ltd (**BML Funds**), to act as interim fund manager and to provide the Receivers with specialist advice in relation to preserving and protecting the Client AuM;
 - (b) subscription and service fees associated with:




- i. hosting data on the Salesforce platform;
 - ii. performing and storing back-ups of the data held on the Salesforce platform;
 - iii. use of AutoRek software to enable market trading data to be fed into Salesforce;
- (c) maintaining insurances associated with Business Personal Property cover and Professional Indemnity cover; and
- (d) the engagement of contractors to support the receivership, including:
 - i. i-Convergence to provide the Receivers with technical support with the Salesforce and AutoRek systems and software; and
 - ii. Allied Solutions to provide the Receivers with support in relation to the extensive communications received from Beneficiaries and other parties.

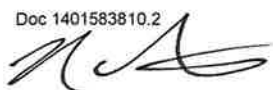
77. These trading costs are subject to the Court's approval and will continue to be incurred for the duration of the receivership. However, the Receivers note that the necessity of these systems and contractors will be assessed on an ongoing basis throughout the course of the receivership in case any of the systems or contractors can be wound down prior to the completion of the receivership to save costs.

Interim Fund Manager fees

78. The management fees payable to BML Funds in respect of its role as Interim Fund Manager are calculated as a percentage of the funds under management. The management fees are charged fortnightly at 0.15% p.a. of the total funds under management, plus GST. Since the value of the Client AuM fluctuates with market movements, we are unable to calculate precisely the management fees that will ultimately be payable.

79. For the purposes of calculating the proposed quantum of the trading costs component of the Retained Fund, the Receivers have made the following assumptions:

- (a) the vast majority of the assets held on the IB Platform (i.e. being managed by the Interim Fund Manager) will be liquidated and transferred off the IB Platform by 31 December 2025 for the purposes of paying an Interim Distribution;
 - (b) the Interim Fund Manager has proposed fees of 3 basis points for the liquidation of the Client AuM;
 - (c) those assets that will remain on the IB Platform are conservatively estimated to be approximately 10% in value of the total Client AuM held on the IB Platform presently (although in reality our proposal would involve retention below this proportion, for the purposes of providing a conservative estimate of fees I have used 10%); and
 - (d) following liquidation, BML Funds will continue to manage those remaining assets.
80. On my instruction, my staff have calculated the average fortnightly management fees incurred for the last six invoices received and submitted to the Court for approval which relate to the period from 14 July 2025 to 22 September 2025, by reference to the cost reports which have been submitted to and approved by Registrar Parkyn.
81. Based on those calculations, I note that the Receivers have paid average fund management fees of approximately AUD\$73,000 (including GST) per fortnight.
82. Following liquidation of that portion of the Client AuM as contemplated by the Interim Distribution Orders, the Client AuM under management by BML Funds will reduce to a conservative estimate of approximately 10% in value of what is presently held by 31 December 2025. We have assumed a corresponding reduction in the ongoing management fees that will be payable to BML Funds.
83. By reference to the views formed as set out above, the Receivers have calculated that an amount totalling AUD\$795,000 (including GST) be retained with respect of the Interim Fund Manager fees, calculated as follows:
- (a) fund management fees will continue to be incurred at the average fortnightly rate set out at paragraph 7881 above for a period of approximately 1.5 months between 12 November 2025 and 31 December 2025, until a significant portion of the Deficient Mixed Fund is liquidated and distributed;



- (b) the Interim Fund Manager will charge fees totalling approximately AUD\$345,000 (including GST) (calculated as 3 basis points of the funds to be liquidated totalling USD\$745 million or AUD\$1.14 billion as at 26 September 2025) for the liquidation of the Client AuM; and
- (c) the Interim Fund Manager's fund management services would be required for a period of one year, calculated as 10% of the average fortnightly rate set out at paragraph 81.78 above for a period of one year to 31 December 2026.

Costs associated with data systems – Salesforce, AutoRek, and Ownbackup

84. The Receivers have engaged the following services associated with the data systems relevant for the Valuation Notice process, set out below:
- (a) Salesforce – platform utilised by the Receivers to communicate Valuation Notices to Beneficiaries and Corporate Trustees;
 - (b) AutoRek – system which feeds transactional data into Salesforce; and
 - (c) Ownbackup – system which takes and stores a backup file of the data and metadata in Salesforce (including the test environment) daily.
85. For the purposes of calculating the proposed quantum of amounts to be retained for the trading costs associated with data systems, the Receivers have made the following assumptions:
- (a) services associated with data systems will be retained for a period of one year following the interim distribution (i.e. retained until December 2026) to allow for the utilisation of these integral systems for payment of future and final distributions, after which they can be decommissioned;
 - (b) Salesforce will be charged at the current quarterly rates of AUD\$101,645 (including GST) per quarter for the period from 12 November 2025 to 31 December 2026, with an annual 9% increase at 30 June 2025;
 - (c) AutoRek will be charged at the current annual rate of GBP£119,568 per year for the period from 12 November 2025 to 31 December 2026; and

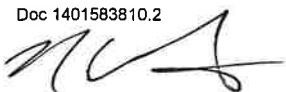
- (d) Ownbackup will be charged at the current annual rate of AUD\$10,010 (including GST) per year for the period from 12 November 2025 to 31 December 2026, with an annual 9% increase at 30 June 2026.

86. By reference to the views formed as set out above, the Receivers have calculated that the following amounts ought to be retained with respect of the trading costs of data systems:

- (a) Salesforce – AUD\$480,000;
- (b) AutoRek – GBP£140,000; and
- (c) Ownbackup – AUD\$12,000.

Insurance

- 87. The Receivers have been maintaining insurances associated with Business Personal Property cover and Professional Indemnity cover throughout the course of the receivership.
- 88. On my instruction, my staff have calculated the average annual costs of maintaining these insurance policies, including the annual insurance premiums, stamp duty, and insurance broker fees.
- 89. Based on those calculations, I note that the Receivers have paid average insurance costs of approximately AUD\$72,000 (including GST) per year.
- 90. The Receivers anticipate that these insurance policies will be required to be maintained for the duration of time which they hold Client AuM. The Receivers expect that this will be for a period of up to 12 months after any Interim Distribution (i.e. for the period from 12 November 2025 to 31 December 2026).
- 91. Following 31 December 2026, the Receivers have anticipated that the maximum run-off period for the Professional Indemnity cover (i.e. 6 years to 31 December 2031) will be purchased, at an estimated cost of 360% of the current annual premium. The Receivers note that a 3 year run-off period is already built into the Business Personal Property policy, and therefore no additional costs will be incurred in relation to the run-off cover for that policy.



92. By reference to the views formed as set out above, the Receivers have calculated that the amount which ought to be retained with respect of insurance costs totals AUD\$190,000 (including GST).

Contractors – i-Convergence and Allied Solutions

93. The Receivers have engaged the following contractors to assist the Receivers, set out below:
- (a) i-Convergence – service provider of technical support in relation to Salesforce and AutoRek systems; and
 - (b) Allied Solutions – service provider of support in relation to Beneficiary communications.
94. For the purposes of calculating the proposed quantum of amounts to be retained for the trading costs associated with data systems, the Receivers have made the following assumptions:
- (a) the contractors' services will be retained for a period of one year following the interim distribution (i.e. retained from 12 November 2025 to December 2026) to allow for the utilisation of their services during vital stages of the receivership including the interim and final distributions;
 - (b) i-Convergence will be charged at the current monthly rate of GBP 50,000 for the period from 12 November 2025 to 31 December 2026; and
 - (c) Allied Solutions will be charged at the average weekly rate of approximately AUD\$800 per week (including GST) for the period from 12 November 2025 to 31 December 2026.
95. By reference to the views formed as set out above, the Receivers have calculated that the following amounts ought to be retained with respect of the trading costs of the contractors:
- (a) i-Convergence – GBP£675,000; and
 - (b) Allied Solutions – AUD\$50,000.

Provision for market downturn

96. The Receivers consider that it would be appropriate to retain a provision as part of the Non-Distributable Amount in case there is a market downturn impacting the value of the assets retained.
97. The Receivers have consulted with the Interim Fund Manager in relation to the figure which would be appropriate to retain in the event a significant market correction would be required.
98. In estimating the percentage to be retained as a provision for a market downturn, the Interim Fund Manager has referenced two significant market downturn events in recent history:
 - (a) The most significant market downturn in the past 10 years was the COVID-19 downturn in the year 2020 – based on a portfolio holding 60% stocks and 40% bonds, this downturn saw portfolios drawing down 27.9%; and
 - (b) Prior to the COVID-19 downturn, the Global Financial Crisis in the year 2008 – based on a portfolio holding 60% stocks and 40% bonds, this downturn saw portfolios drawing down 38.5%.
99. By reference to the above market downturns in recent history and in consultation with the Interim Fund Manager, the Receivers consider it appropriate to retain the value of 35% of the sum of the Non-Distributable Amounts set out at paragraphs 26 to 95 above.
100. The Receivers have calculated this amount to total approximately USD\$10.9 million.

Proposed repayment of IB Margin Loan

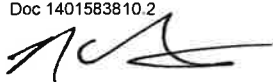
101. Presently, the arrangements set forth by the orders of the Court made on 5 June 2024 ringfence, until such further order of the Court, the IB Margin Loan Security Assets, being:
 - (a) approximately USD\$14.7 million in cash in master accounts I5876295, I6075976 and I1246925, being amounts equal to the short cash balances in those accounts plus 24 months to cover projected interest charges and foreign exchange changes for the 24 months from 5 June 2024; and

(b) securities with a value equivalent to not less than USD\$20.0 million, which the Receivers have undertaken to maintain in account U3214940.

102. I understand that the margin loan facility was made available to Brite Advisors by IBAU pursuant to a document entitled 'Addendum [X]: Leverage Facility Agreement', which incorporates the General Terms and Conditions. Exhibited hereto behind "**Tab-10**" is a true copy of the Leverage Facility Agreement. The General Terms and Conditions are included in the Tenth Smith Affidavit at Tab-1 to Exhibit LMS-71.
103. Exhibited hereto behind "**Tab-11**" is a true copy of a letter issued by HWLE to IBAU's solicitors, Ashurst, on 3 October 2025. By that letter, the Receivers indicated our intention to terminate the arrangements by which IBAU advanced or made available funds to Brite Advisors and sought confirmation of the level of indebtedness of Brite Advisors to IBAU. As at the time of affirming this affidavit, I am informed by HWLE and verily believe that they have not received a response to that letter.
104. As at the 26 September 2025, the cumulative total of the short cash balances (i.e. the margin loan) in Brite Advisor's IBAU master accounts I5876295, I6075976 and I1246925 was USD\$14.6 million.
105. The Receivers have formed the view that paying out Brite Advisors' indebtedness to IBAU will enable the 5 June 2024 orders described at paragraph 101 above to be discharged, and in turn, enable the balance of the IB Margin Loan Security Assets to be available for the interim distribution. In seeking directions to payout this indebtedness, the Receivers are not and do not intend to release or otherwise prejudice any claims that Brite Advisors, the Receivers or the Liquidators may have against IBAU.
106. I have deposed previously to the status of the Receivers' investigations into these claims. The Receivers are not presently in a position to recommend to the Court whether they ought to be directed to pursue those potential claims. The Receivers intend to shortly make an application for orders that public examination summonses be issued and document production orders be made in order to gather more evidence relating to the potential claims against IBAU. In any case, we only intend to bring any such claim with the benefit of litigation funding and do not propose to finance any such claims from the Client AuM.



107. Exhibited hereto behind "Tab-12" is a true copy of a letter dated 4 October 2025 from Ashurst to HWLE.
108. I understand from my attendance at the hearing in these proceedings on 15 September 2025, that IBAU has expressed concern that, until it has an understanding of the potential claims that may be pursued against it, it has no way of knowing whether it may have countervailing claims and that the Receivers should provision for potential outcomes that would increase Brite Advisors' indebtedness to IBAU.
109. The nature of the potential claims being considered against IBAU are claims in knowing receipt of trust property and/or knowing assistance in a breach of trust, together with ancillary claims to set aside transaction documents which are impugned by the improper conduct.
110. The quantum of these potential claims could be for an amount up to the full amount of the shortfall between Beneficiaries' entitlements and the value of the Client AuM as at 13 December 2023, and compensation for losses caused by the shortfall. In this regard, I note that:
- (a) The shortfall as at 13 December 2023 was USD\$94.3 million: Receivers' Supplementary Report regarding growth of Client AuM since 13 December 2023, [2.2.2]; and
 - (b) Since 13 December 2023, the portfolio held by Brite Advisors and managed by the Interim Fund Manager has returned approximately 31%. A 31% gain on USD\$94.3 million is USD\$29.2 million.
111. Having regard to the above, my current high-level estimate of the maximum quantum of the potential claim against IBAU at the time of swearing this affidavit is USD\$123.5 million.
112. I am aware that order 21(c) of the Orders made in this matter on 15 September 2025 relating to the distribution methodology require that any application for a Retained Fund needs to be supported with evidence of: "An amount reflecting the Receivers' reasonable remuneration, costs and expenses to resolve any other outstanding matter and a conservative estimate of any potential liability identified at the time of determining the amount of any distribution, including without limitation, any potential adverse costs order that may be made against the Receivers or Brite Advisors".



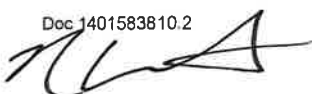
113. Although the Receivers are not bringing an application for a Retained Fund at this stage, the Receivers are conscious that the Court noted order 21 in the Orders made in this matter on 15 September 2025 relating to the directions regarding the ID Application.
114. I am not aware of any prospective claim by IBAU against Brite Advisors for which I consider an amount must be retained in the Non-Distributable Amount.

Receivers' Process for the Interim Distribution

115. The Receivers have developed a process for the Interim Distribution and intend to make the Interim Distribution in the manner set out in the ID Application Orders.
116. The Receivers' process for Interim Distribution includes four key steps as set out below and detailed in the sections that follow:
- (a) Preparation, planning and design of the Interim Distribution process;
 - (b) Determining the quantum of the Non-Distributable Amounts, and following from that, the Interim Distribution Amount;
 - (c) Liquidation of the Client AuM by the Interim Fund Manager on instructions from the Receiver over a period of 21 business days, known as the Liquidation Window; and
 - (d) Payment of the Interim Distribution immediately upon cessation of the Liquidation Window over a period of 20 business days, known as the Distribution Window.

Timing

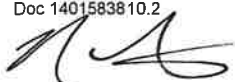
117. The ID Application Orders set out the timing of the Interim Distribution as follows:
- (a) The ID Application hearing is heard at the 12 November 2025 Hearing;
 - (b) If the ID Application Orders are granted, the Liquidation Window of twenty-one business days commences from the date those Orders are granted;
 - (c) The Distribution Window of twenty business days commences once the Liquidation Window has ceased, which is comprised of:




- (i) Notifying all Corporate Trustees that the Liquidation Window has concluded;
- (ii) Calculating the amount payable to each Corporate Trustee and Beneficiary;
- (iii) Requesting IBAU to transfer the Interim Distributable Amount from the IB Accounts to the Receivers' bank accounts;
- (iv) Seeking and obtaining Payment Orders from the Court to pay each Corporate Trustee for the benefit of a Beneficiary, a Beneficiary directly (as applicable), identifying the specific amount to be paid and the currency of that payment;
- (v) Making payment of the interim distribution before the conclusion of the Distribution Window; and
- (vi) Reporting to Corporate Trustees and Beneficiaries on the liquidation process and the payments made.

118. For the purpose of the Liquidation Window and the Distribution Window, the Receivers have defined 'business days' in the proposed orders to exclude 24, 29, 30, and 31 December 2025, and 2 January 2026. This is for the following reasons:

- (a) I have received advice from the Interim Fund Manager that liquidity is lower in financial markets during the period from Christmas to New Year and that it would be best to avoid the necessity of using that time for the liquidation, particularly if the final week of the Liquidation Window were to fall during this time;
- (b) The December holiday period is the most significant holiday period of the year in Australia. It is customary for businesses to close for a one to two week period during this time (if not longer), and it can be difficult to conduct business as usual during this period as a result;
- (c) In addition to the above dates, there are 3 public holidays during this period which create disruption and time delay with banking transfers and access to key banking personnel; and




- (d) The Receivers' office has a closure period from 24 December 2025 to 2 January 2026 inclusive which may pose staffing challenges in circumstances where significant resources are required during a short period of time.
119. The key events which may impact the timing of or otherwise disrupt the Interim Distribution are set out below:
- (a) Any collateral applications made to a court which seek to disturb any aspect of the ID Application;
 - (b) Any delay by IBAU transferring funds out of the IB Accounts to the Receivers' accounts;
 - (c) The issuance of a notice of assessment under section 167 of the *Income Tax Assessment Act 1936* by the ATO, which would require the Receivers to halt the distribution process;
 - (d) Any unforeseen data anomalies in the 13 December 2023 Data that impact the majority of Beneficiaries and which require investigation;
 - (e) A Beneficiary having an outstanding issue which requires rectification (refer below), although this would only impact distribution in respect of that Beneficiary (or that Beneficiary's portion of a distribution to a Corporate Trustee);
 - (f) Any Corporate Trustees are unable to receive a bulk payment per currency and/or underlying pension scheme. In the event that the Receivers are required to make payments to individual underlying beneficiary accounts, significant additional work will be required to be undertaken and the Receivers will be required to allocate additional resources and time to process payments in the Receivers' accounting and banking systems; and
 - (g) Any other matters or complexities arising in the Distribution Window which the Receivers have not foreseen or predicted.

Steps taken to date

120. The Receivers' work in respect of the practical distribution of funds to date has primarily consisted of the preparation, planning and design work which is set out below:




- (a) Preparing detailed plans and workflows to consider all aspects of the distribution and how it will work;
- (b) Consulting with the Interim Fund Manager in relation to the practicalities of selling down the portfolio and dealing with currency conversion;
- (c) Considering internal processes and procedures for the payment of the funds;
- (d) Consulting Corporate Trustees in relation to the practicalities of paying amounts to them (including in relation to segregation of payments and currency);
- (e) Facilitating access to Salesforce by Corporate Trustees;
- (f) Consulting with I-Convergence to design additional aspects of Salesforce to facilitate reporting distributions to Beneficiaries and Corporate Trustees;
- (g) Designing a process for Direct Beneficiaries and Corporate Trustees to provide bank details; and
- (h) Developing a financial model to calculate the distribution amount by reference to the Orders of the Court (**Distribution Model**).

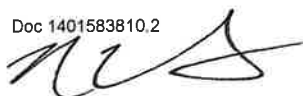
Details on process

121. More specific aspects of the Receivers' proposed process for the Interim Distribution, which are subsets of the steps outlined above but not necessarily outlined in the proposed ID Application Orders, are set out below. These steps are not sequential, several tasks will be completed concurrently:

- (a) The Receivers will write to all Corporate Trustees and Beneficiaries to request bank account details. The process for Corporate Trustees and Beneficiaries is set out below:
 - (i) Corporate Trustees - The Receivers will request bank details from Corporate Trustees and verify those details in a way that minimises fraud risk; and
 - (ii) Direct Beneficiaries and SMSF - The Receivers will request that all Direct Beneficiaries and Beneficiaries invested via Self-Managed Superannuation Funds complete a new identification process with GBG,

which will now include a step to add their bank details (along with supporting documentation for same). The Receivers will also request that these Beneficiaries upload their bank details into Salesforce.

- (b) The Interim Fund Manager will liquidate Client AUM on the Interactive Brokers Platform during a 21 business days period (known as the Liquidation Window), in accordance with the procedures and processes outlined in Mr Alexander's Second Affidavit dated 2 October 2025. The Liquidators will advise the Interim Fund Manager of the amount of cash required in each currency, and the Interim Fund Manager will arrange for currency conversions to ensure the correct amounts are held (the Receivers will pay funds to Corporate Trustees and/or Beneficiaries as per the Beneficiaries' Reporting Currency in Salesforce, unless otherwise advised by the Beneficiaries or their Corporate Trustee).
- (c) The Receivers will write to all Corporate Trustees and Beneficiaries to advise of the date when (i) no further withdrawal requests can be processed, (ii) Trustee payment instruction forms can no longer be accepted, and (iii) no changes can be made to the currency in which the distribution will be paid in, as they are finalising calculations for the Interim Distribution.
- (d) Using the Distribution Model, the Receivers will calculate the amount payable to each Beneficiary and/or Corporate Trustee in the relevant currencies.
- (e) The Receivers will request a transfer of funds from IBAU in each currency to the Australian bank accounts set up by the Receivers in Brite Advisors' name, subject to strict internal controls.
- (f) The Receivers will process payments from the Australian Brite Advisors' bank accounts in batches. The order in which the Receivers intend to pay the Interim Distribution is (i) Corporate Trustees who can accept bulk payments (in order of size based on number of Beneficiaries), (ii) Corporate Trustees who cannot accept bulk payments (and payments must be made per Beneficiary), and then (iii) Direct Beneficiaries.
- (g) The Receivers will pay funds to Corporate Trustees as per the preference and/or the requirements identified by them via consultation, being either (i) in bulk per



currency, or (ii) per Beneficiary (where necessary), or (iii) in bulk per currency, per scheme.

- (h) The Receivers' treatment of Deceased Estates was set out in detail in the Twenty Third Smith Affidavit dated 25 July 2025. As a result of this process, the practical payment steps for Deceased Estates are the same as for other Beneficiaries (i.e. amounts are remitted to either (i) Corporate Trustees where the Deceased Estate has a Corporate Trustee or (ii) the account as directed by the Authorised Representative of a Direct Deceased Beneficiary).
- (i) The Receivers are developing changes to Salesforce to add additional fields to reflect the details of the Interim Distribution. Details of payments will be uploaded into Salesforce for Corporate Trustees and Beneficiaries to access (including itemisation where Corporate Trustees receive bulk payments). Corporate Trustees and Beneficiaries will also receive a document from the Receivers setting out the details of the payment.
- (j) Where there are outstanding issues impacting a Beneficiary or where the Receivers do not have orders to pay a particular Corporate Trustee, which prevents the Receivers from being able to make a payment to them, the cash will remain in the IB Accounts until such time the issue has been resolved, and the funds can be paid to the Corporate Trustee or the Direct Beneficiary. Interest earned on the funds will be credited to each Beneficiary proportionately. The Receivers will remit payment as soon as practical after issues are resolved or orders obtained, which may be on a 'batched' basis for efficiency.

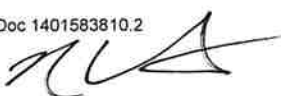
Outstanding issues impacting certain Beneficiaries

- 122. There are a number of matters which may delay payment to or in respect of certain Beneficiaries, and the Receivers will not be in a position to pay the Interim Distribution to these Beneficiaries, or pay the amount due in respect of that Beneficiary's entitlement due to a Corporate Trustee, until those matters are resolved. However, resolution of these matters need not delay the Interim Distribution.
- 123. The total number of Beneficiaries with outstanding issues to be resolved before they can receive a distribution at the date of this Affidavit is 352, with total entitlements of




USD\$137.5 million, noting some Beneficiaries fall into multiple of the below categories. These matters are summarised below:

- (a) Unresolved Valuation Notice Disputes - These matters are set out at section 48 and 49(a) of this Affidavit. There are 14 Beneficiaries with total current quantifiable entitlements of USD \$14.8 million.
- (b) Trustee reconciliation - The Receivers have engaged with certain Corporate Trustees regarding discrepancies identified between Brite Advisors' Salesforce records for a Beneficiary's Corporate Trustee and the information reported by those Corporate Trustees. There are 392 Financial Accounts with reconciliation issues across 311 unique Beneficiaries, representing a total of USD\$115.6 million. Of these 311 Beneficiaries;
 - (i) 195 Beneficiaries (USD\$105.7 million in total) relate to Corporate Trustees that did not provide a complete list of Brite Advisors' Beneficiaries in the first instance. The Receivers are engaging with these Corporate Trustees and expect to resolve these issues prior to the 12 November 2025 hearing;
 - (ii) 60 Beneficiaries (USD\$8.9 million in total) relate to a range of issues, including small balances as a result of dividend adjustments, as well as some genuine errors in the 13 December 2023 Data and/or Corporate Trustee records. The Receivers are in the process of engaging with impacted Corporate Trustees and expect to resolve these issues prior to the 12 November 2025 hearing; and
 - (iii) 56 Beneficiaries (USD\$1.1 million in total) relate to Forthplus Pensions Limited and Global Fiduciary Solutions Limited. Both parties have had limited or no engagement with the Receivers in respect of queries around distribution during the Receivership.
- (c) Unidentified Beneficiaries - 41 Beneficiaries have still not completed the GBG identification process. Of the 41, 19 Unidentified Beneficiaries have Valuation Notices of less than USD\$2,000 (all via Corporate Trustees). In accordance with Order 6 of the Court Orders dated 19 February 2025, the Receivers have ceased attempts to contact these 19 Beneficiaries and will calculate (and pay) their

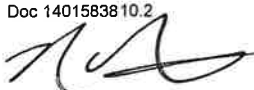



entitlements in accordance with their Valuation Notice to their Corporate Trustee. The Receivers will not make payments in respect of the remaining 22 Unidentified Beneficiaries with entitlements above USD\$2,000 (USD \$2.0 million in total), until they identify themselves. The Receivers are continuing to take steps to identify these Beneficiaries.

- (d) Deceased Estates - 34 Beneficiaries are Deceased Estates. Of the 34, 9 Deceased Estates have Valuation Notices of less than USD\$10,000 (all of which have a Corporate Trustee). In accordance with Order 7 of the Court Orders dated 19 February 2025, the Receivers have ceased attempts to contact these 9 Deceased Beneficiaries (or their estates) and are calculating (and paying) their entitlement in accordance with their Valuation Notice. Accordingly, the Receivers will remit payment to these 9 Beneficiaries' Corporate Trustee. In respect of the remaining 25 Deceased Estates with entitlements above USD\$10,000 (USD \$6.9 million in total), the Receivers intend to release Valuation Notices via Salesforce to (i) Corporate Trustees of Deceased Estates (where they have a Corporate Trustee) to enable the Corporate Trustee to review and accept and/or dispute the Valuation Notice, or (ii) the Authorised Representative of Direct Deceased Beneficiaries to enable the Authorised Representative to review and accept and/or dispute the Valuation Notice. The Receivers expect to commence this process shortly.

Accounting for Tax to Corporate Trustees and Beneficiaries

124. The Receivers have considered (with legal input) the methodology for attributing any tax payable from Client AuM to Corporate Trustees and Beneficiaries. After consideration, given the majority of the Client AuM is a Deficient Mixed Fund, the Receivers are of the view that any pre-receivership and receivership Australian and US tax payable from Client AuM (excluding tax attributable to the Excluded Assets) will have to be attributed proportionately (*pari passu*) between all Corporate Trustees and Beneficiaries. This will mean that all Corporate Trustees and Beneficiaries will be attributed a portion of any Australian and US tax payable from Client AuM irrespective of what their individual securities position should have been. The Receivers intend to seek an order from the Court approving this methodology of tax attribution.
125. The Receivers do not intend to allocate any tax to Corporate Trustees and Beneficiaries at the time of paying the proposed interim distribution and any tax will be attributed to




Corporate Trustees and Beneficiaries after the interim distribution is paid, effectively reducing any further distribution for the tax liability, with correspondence to be provided at that time confirming the tax allocation.

‘Opt-Out’ Mechanism and changing Corporate Trustees

126. In response to the Receivers’ Explanatory Memorandum dated 4 December 2024, the Receivers have received feedback from a number of Beneficiaries and a Financial Advisor in relation to (i) complexities which purportedly arise around changing Corporate Trustees before a full distribution is received, and relatedly (but also as a separate point), and (ii) establishing a mechanism whereby Beneficiaries could opt-out of any further distributions following the substantial initial interim distribution being paid, which would extinguish their rights to any further distribution from the Client AuM.
127. The Receivers intend to seek feedback on these issues from Corporate Trustees, before a further update to the Court is provided.

Prior Delay in Receiving Payments from the IB Platform

128. The initial process for drawdowns from the IB Platform was via formal letter to IBAU and manual transfers. In May 2024, it was discussed that the Receivers be set-up on the IB platform so that the Receivers could process drawdowns without relying on manual processes that were time consuming. The switch to automated drawdowns with dual authorisation was to initially occur on or around 30 May 2024, however, due to varying issues the automated drawdown set-up was not fully operational until 26 November 2024.
129. During the 6-month period from late May 2024 to late November 2024, the Receivers followed up IBAU regularly in relation to set-up and identification issues and regarding the inability to process drawdowns on the IB platform. During this period, the Receivers were forced to continuously seek manual drawdown assistance from IBAU, which again required formal correspondence, bank account verification by phone and manual processing. As a result, drawdowns from IBAU often took between one and two weeks to process, and in some instances longer, required constant follow up from the Receivers to have IBAU process the drawdown of funds.
130. The time it took for the automated drawdown process and dual authorisation to be set up by IBAU is largely unexplained, except for in November 2024 when it was revealed that

various ID and set-up notifications in order to facilitate authorisation functionality were being sent to the historical account contacts (i.e. former Brite management) and not the Receivers.

131. On 22 November 2024, the Receivers were advised of a new primary contact at IBAU, which coincided with the dual authorisation automated drawdown process becoming operational on 26 November 2024. Since the introduction of the new primary contact, queries and issues have been dealt with responsively and the drawdown process has been more efficient and without unreasonable delay.

Receivers' concern to avoid further delays


132. The Receivers are focussed on achieving an interim distribution to Corporate Trustees and Beneficiaries for as much as is reasonably possible, and as soon as is reasonably possible. The Receivers are therefore concerned about further delay.
133. Exhibited hereto behind "**Tab-13**" is a true copy of extracts of reports published by KPMG in respect of liquidations relating to the BBY group of companies and Halifax Investment Services Pty Ltd which indicate the timing of distributions in those matters.

Affirmed by the deponent
at Perth
in Western Australia
on 7 October 2025
Before me:



Signature of witness

)
)
)
)
)


Signature of deponent



Australian Legal Practitioner who
has held a practice certificate for at least 2 years
and who holds a current practice certificate

Exhibit Certificate

No. WAD 13 of 2024

Federal Court of Australia
 District Registry: Western Australia
 Division: General

Australian Securities and Investments Commission

Applicant

And


Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)
(ACN 135 024 412)

Defendant

EXHIBIT LMS-90

This is the exhibit marked "**LMS-90**" referred to in the Thirtieth Affidavit of Linda Methven Smith before me on 7 October 2025.

Signature of witness



Name of witness

Ron Boothman

Address of witness

C/- HWL Ebsworth Lawyers
 Level 20
 240 St George's Terrace
 Perth WA 6000

Capacity of witness

Solicitor

Filed on behalf of (name & role of party)	Linda Smith and Rob Kirman, as joint and several court-appointed receivers and managers of the property of the defendant	
Prepared by (name of person/lawyer)	C A L Boothman	
Law firm (if applicable)	HWL Ebsworth Lawyers	
Tel (08) 6559 6526	Tel	(08) 6559 6526
Email	cboothman@hwle.com.au	
Address for service (include state and postcode)	Level 20, 240 St Georges Terrace, Perth WA 6000	

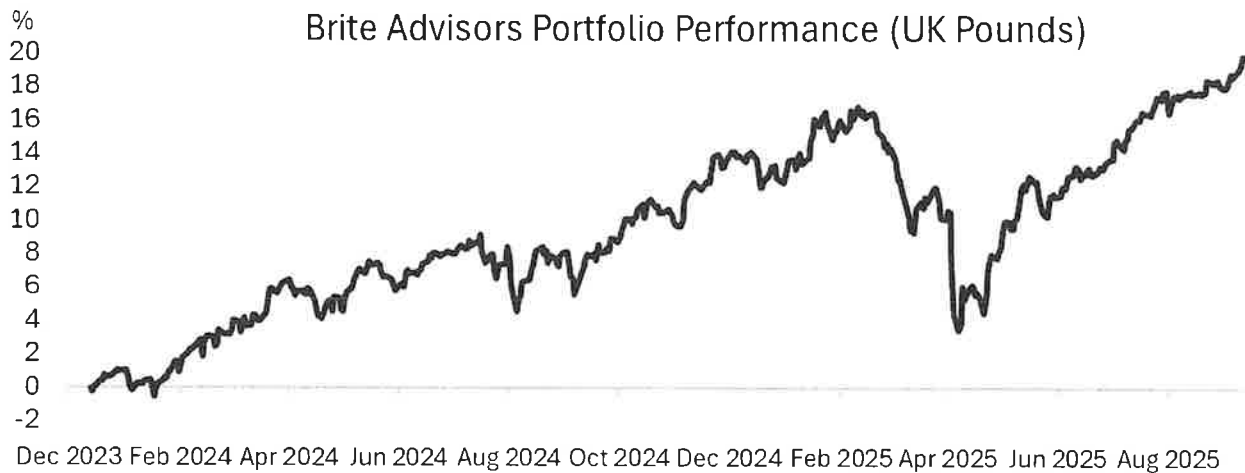
[Version 3 form approved 02/05/2019]



Brite Advisors Weekly Portfolio Report

BML Funds

14 September 2025



The Brite Advisors Portfolio returned +1.04% over the week of 5 September to 12 September 2025, measured in UK pounds. Economic data managed to thread the needle of weak enough for US interest rate cuts, but not so weak to concern company profit forecasts, driving stock markets to new all-time highs. Stock markets were also driven by further Artificial Intelligence investment expectations, with Technology stocks the best sector for the week. For comparison, the MSCI Global stock index rose 1.49% and the Bloomberg GlobalAgg Bonds Index fell -0.14%, with a 60/40 blend returning +0.84% for the week in UK pounds. The fund's return was +1.40% in US dollars for the week.

As of Friday 12 September 2025, the Brite Advisors Portfolio value was £566.9 million which is equivalent to USD \$768.6 million or Australian \$1,155 million. This comprises the core account held at Interactive Brokers and is net of market gains, investor withdrawals and Court approved costs attributable to the Receivership of Brite Advisors. The portfolio is invested in-line with the investment mandate, with 91% held in liquid stocks, ETFs, and bonds, and 9% in cash. We view the holdings as appropriate for the client risk profile. The portfolio has an estimated return of 19.86% since entering receivership on 13 December 2023, as measured in UK pounds. The US dollar return is estimated at 28.77% over that period.

Ted Alexander

Chief Investment Officer, BML Funds

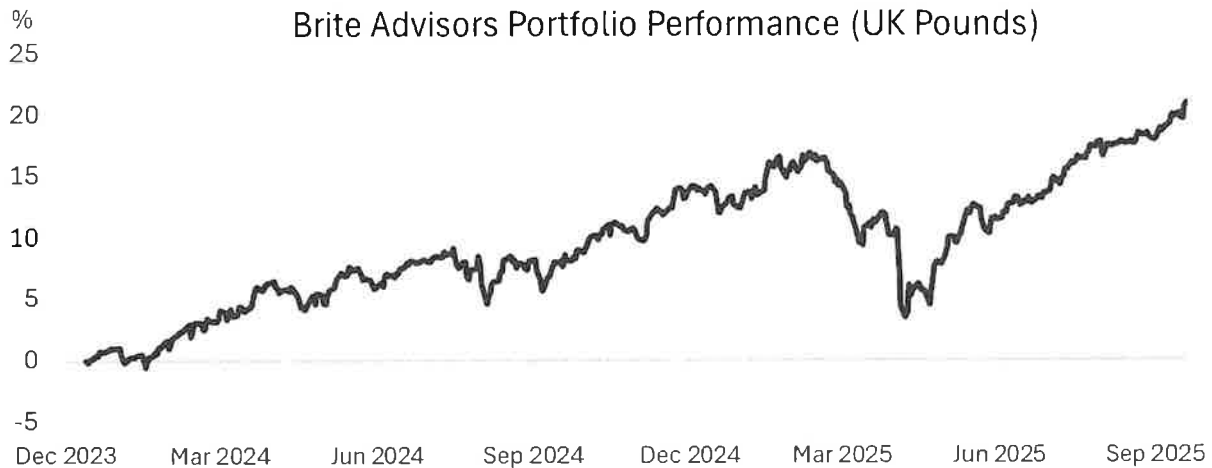
The Brite Advisors Weekly Portfolio Report is published on the basis that this is a valuation of all assets held by Brite Advisors' Interactive Brokers accounts and is intended to give a general indication of the value of the total assets held and how they have performed over time to ensure transparency as to the overall management of the portfolio for the benefit of all beneficiaries. The precise method of distribution and the amount to be paid to each beneficiary has not been determined or ordered by the court and nothing in these reports should be read as indicating what method of distribution that will be adopted or how any individual beneficiary or group of beneficiaries will be assessed in that process. Brite Advisors Portfolio historic performance is simulated from all Brite Advisors asset holdings across multiple funds in existence since 13 December 2023. The return is estimated as an aggregate measure of all assets held. The performance is adjusted for all cash distributions. For example, cash withdrawals have been made for approved pension distributions and expenses, which reduces the value of the Portfolio, but doesn't impact measured returns. BMLFunds Management Pty Ltd (ACN 664 470 991) is a Corporate Authorized Representative (No. 001230) of Havana Financial Services Pty Ltd (ABN 90 619 804 518, AFS License No. 500435). Any advice contained in this communication is general advice only and should not be considered personal financial advice. If you consider it necessary, you should seek your own advice before making any financial or investment decisions. The information provided in this communication is believed to be accurate at the time of writing. None of BML Funds Management, Havana or their related entities nor their respective officers and agents accept responsibility for any inaccuracy in, or any actions taken in reliance upon, that information. This document is not intended to be a research report (as defined in ASIC Regulatory Guides 79 and 264). Past performance is not a reliable indicator of future performance. Future performance and return of capital are not guaranteed.



Brite Advisors Weekly Portfolio Report



21 September 2025



The Brite Advisors Portfolio returned +0.96% over the week of 12 September to 19 September 2025, measured in UK pounds. Stock markets were supported by the Federal Reserve's 25bps interest rate cut, along with continued enthusiasm for Artificial Intelligence investment. For comparison, the MSCI Global stock index rose 1.60% and the Bloomberg GlobalAgg Bonds Index rose +0.55%, with a 60/40 blend returning +1.18% for the week in pounds. The fund's return was +0.31% in US dollars for the week.

As of Friday 19 September 2025, the Brite Advisors Portfolio value was £572.3 million which is equivalent to USD \$771.0 million or Australian \$1,169 million. This comprises the core account held at Interactive Brokers and is net of market gains, investor withdrawals and Court approved costs attributable to the Receivership of Brite Advisors. The portfolio is invested in-line with the investment mandate, with 91% held in liquid stocks, ETFs, and bonds, and 9% in cash. We view the holdings as appropriate for the client risk profile. The portfolio has an estimated return of 20.97% since entering receivership on 13 December 2023, as measured in UK pounds. The US dollar return is estimated at 29.16% over that period.

Ted Alexander

Chief Investment Officer, BML Funds

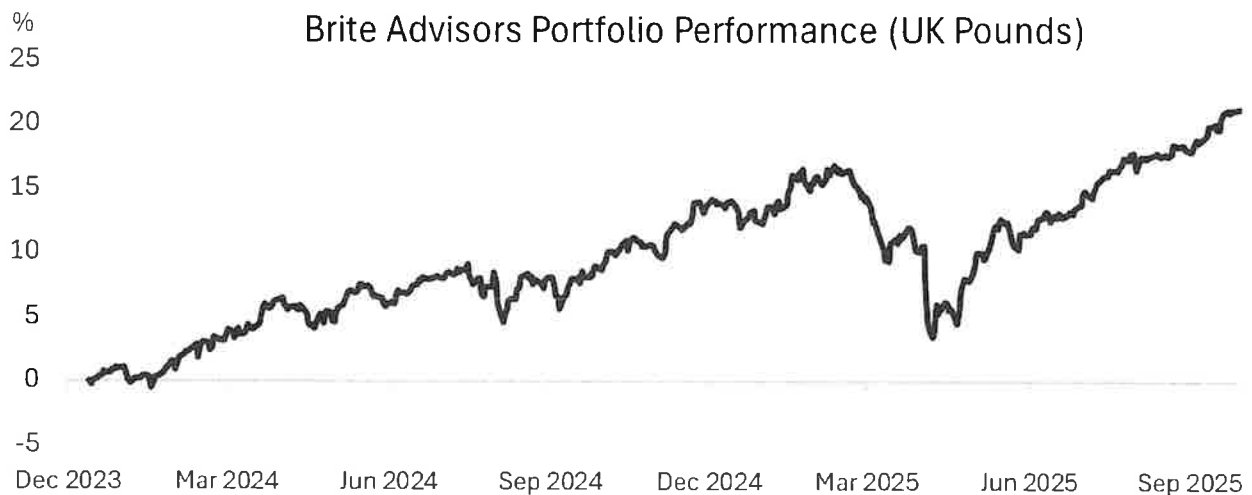
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Brite Advisors Weekly Portfolio Report



28 September 2025



The Brite Advisors Portfolio returned +0.14% over the week of 19 September to 26 September 2025, measured in UK pounds. The US stock market hit new all-time highs on Monday, helped by strong economic data and expectations for further rate cuts. Later in the week, there were concerns about a US government shut down and markets retreated slightly. Attention will now shift toward company profit reporting season, which starts in early October. For comparison, the MSCI Global stock index rose +0.16% and the Bloomberg GlobalAgg Bonds Index fell -0.03%, with a 60/40 blend returning +0.08% for the week in UK pounds. The fund's return was -0.36% in US dollars for the week.

As of Friday 26 September 2025, the Brite Advisors Portfolio value was £572.6 million which is equivalent to USD \$767.5 million or Australian \$1,172 million. This comprises the core account held at Interactive Brokers and is net of market gains, investor withdrawals and Court approved costs attributable to the Receivership of Brite Advisors. The portfolio is invested in-line with the investment mandate, with 91% held in liquid stocks, ETFs, and bonds, and 9% in cash. We view the holdings as appropriate for the client risk profile. The portfolio has an estimated return of 21.27% since entering receivership on 13 December 2023, as measured in UK pounds. The US dollar return is estimated at 28.80% over that period.

Ted Alexander

Chief Investment Officer, BML Funds

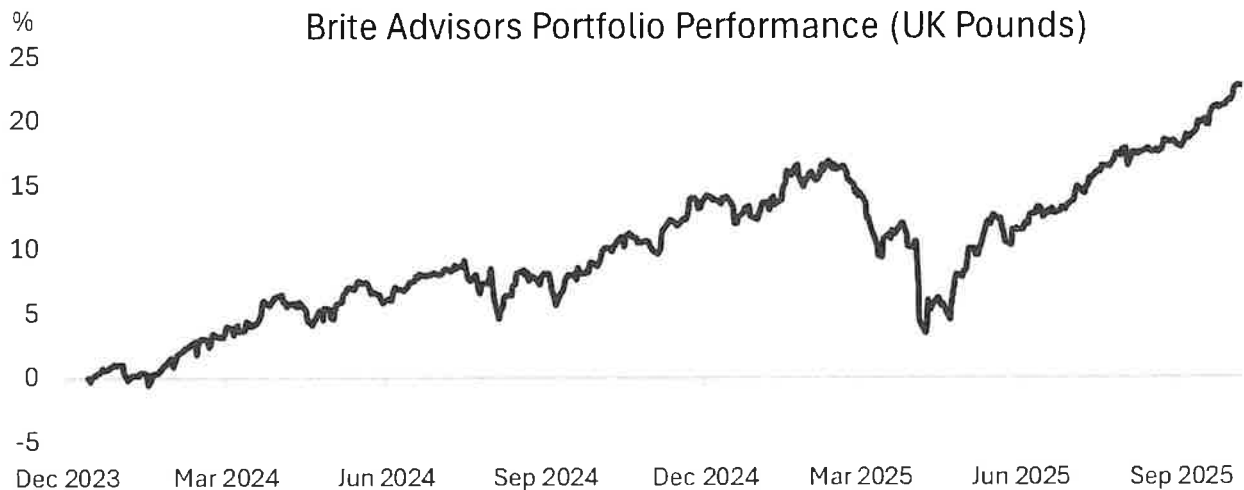
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Brite Advisors Weekly Portfolio Report



5 October 2025



The Brite Advisors Portfolio returned +1.21% over the week of 26 September to 03 October 2025, measured in UK pounds. Stock markets set new highs again this week, shrugging off concerns about a US government shut-down, once more driven by AI investment and hopes for lower interest rates. For comparison, the MSCI Global stock index rose +1.13% and the Bloomberg GlobalAgg Bonds Index rose +0.05%, with a 60/40 blend returning +0.70% for the week in UK pounds. The fund's return was +1.77% in US dollars for the week.

As of Friday 03 October 2025, the Brite Advisors Portfolio value was £579.5 million which is equivalent to USD \$781.1 million or Australian \$1,183 million. This comprises the core account held at Interactive Brokers and is net of market gains, investor withdrawals and Court approved costs attributable to the Receivership of Brite Advisors. The portfolio is invested in-line with the investment mandate, with 91% held in liquid stocks, ETFs, and bonds, and 9% in cash. We view the holdings as appropriate for the client risk profile. The portfolio has an estimated return of 22.71% since entering receivership on 13 December 2023, as measured in UK pounds. The US dollar return is estimated at 31.09% over that period.

Ted Alexander

Chief Investment Officer, BML Funds

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Our Ref: TS:CE:122245

1 October 2025

Private & Confidential

By Email Only

Mr Corey Beat
Partner - Tax Advisory
Crowe Australia
Level 24, Allendale Square
77 ST Georges Terrace
PERTH WA 6000

Email: corey.beat@crowe.com.au

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Dear Corey

Letter of Instruction

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation) (Brite Advisors)

1. Background

- 1.1 As you are aware, we act for Linda Smith and Rob Kirman, the joint Federal Court-appointed receivers and managers of Brite Advisors.
- 1.2 Please note that defined terms in this letter take their meaning from the Receivers' detailed tax position paper, provided to the ATO on 28 March 2025 (**Position Paper**) (unless otherwise stated). A copy of the Position Paper is enclosed at **Annexure A** of this letter for your reference.
- 1.3 We refer to your ongoing assistance in this matter and the Federal Court proceedings in WAD 13/2024.
- 1.4 By way of update regarding the proceedings in WAD 13/2024:
 - (a) The Federal Court issued orders dated 15 September 2025 directing that the Receivers would be acting properly and are justified in bringing an interlocutory application to make an interim distribution from the Trust Assets to Corporate Trustees and Beneficiaries (the **Interim Distribution Application**).
 - (b) In accordance with order 2, the Receivers must by **7 October 2025**:
 - (i) file and serve a minute of proposed orders that the Receivers seek by the Interim Distribution Application; and

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- (ii) file and serve any affidavit evidence and any written outline of submissions.

- 1.5 A copy of the Federal Court orders relating to the Interim Distribution Application is enclosed at **Annexure B** of this letter for your reference.
- 1.6 Please note that the Interim Distribution Application is a separate and distinct application from the determination of the Retained Fund referenced in notes 1 and 2 of the orders.
- 1.7 As part of the Interim Distribution Application, we are instructed to seek your assistance to prepare a formal report setting out the estimated Australian tax liabilities for Brite Advisors on the basis that the ATO will accept the primary position set out in the Position Paper (the **Report**).
- 1.8 The Receivers intend to seek directions from the Federal Court that they are justified in retaining only that amount calculated in accordance with the Position Paper and otherwise distributing the balance of the fund to Clients (net of some other minor amounts that will be retained for non-tax matters).
- 1.9 It is proposed that the Report will be annexed to an affidavit for Linda Smith, which will be filed with the Federal Court by 7 October 2025 and put into evidence to support the Interim Distribution Application.

2. **Position Paper**

- 2.1 The Position Paper set out the Receivers' analysis of the tax issues falling for determination by the Commissioner of Taxation (**Commissioner**), as identified with the assistance of tax counsel Andrew de Wijn SC and Jennifer Vogan.
- 2.2 The quantum of Brite Advisors' Australian tax liability for both the pre- and post- receivership period will ultimately depend upon the answers to certain technical questions that the Receivers have put to the Commissioner regarding the entitlements of Clients to the Trust Assets and income derived on those assets.
- 2.3 In the Position Paper and subsequent correspondence, the Receivers put to the Commissioner that:
 - (a) before 13 December 2023 (when the Receivers were appointed), Clients were between them presently entitled to all income from the Client AuM (paragraph 115);
 - (b) clients are between them also presently entitled to all trust income derived since 13 December 2023 in proportion to their 'entitlements' for the purpose of reg 7.08.03 of the *Corporations Regulations 2001* (Cth) (the **Corps Regs**) (paragraph 160); and
 - (c) at least one of the following applies:¹
 - (i) throughout that period, Clients have been between them absolutely entitled to all CGT assets comprising the Client AuM and will be treated as disposing of those assets when the Client AuM is liquidated (paragraphs 155 to 158);
 - (ii) Clients are, or will be, between them specifically entitled to all capital gains made on liquidation of the Client AuM; or
 - (iii) Clients are, or will be, between them presently entitled to all trust income derived in the income year(s) in which the Client AuM is liquidated.

¹ The two alternatives in subparagraphs (ii) and (iii) reflect the alternative propositions put to the Commissioner in paragraph 15 of our letter dated 7 August 2025.

- 2.4 Those three propositions will, assuming they are right, ensure that Brite Advisors will not be subject to any Australian tax as trustee.
- 2.5 However, there is likely to be some Australian-sourced interest and unfranked dividend income to which non-residents are presently entitled, in which case Brite Advisors would be required to withhold amounts from that income and remit those amounts to the ATO (or, in the case of income already derived, Brite Advisors might have been required to withhold and remit those amounts in the past).

3. **Instructions**

- 3.1 We wish to instruct Crowe Australia to prepare the Report for the purposes of the Interim Distribution Application.
- 3.2 The Report should include:
- (a) A calculation of the estimated tax liabilities for Brite Advisors in respect of both the pre- and post-appointment periods on the basis set out in paragraph 2.3 above, subject to the following assumptions:
 - (i) the Brite trust is a 'fixed trust' for the purpose of section 855-40 of the *Income Tax Assessment Act 1997* (Cth) (ITAA 1997);
 - (ii) none of the assets in the Client AuM are 'taxable Australian property' within the meaning of section 855-15 of the ITAA 1997; and
 - (iii) the amounts of broker interest paid by Interactive Brokers Australia, which has not been allocated to Client accounts, is income to which no beneficiary is presently entitled.
 - (b) A summary of:
 - (i) the calculation methodology adopted in preparing the calculations; and
 - (ii) any assumptions made for the purposes of preparing the calculations.
- 3.3 We respectfully request that the Report is provided no later than **3 October 2025**, to ensure that sufficient time is allowed for review and finalisation of the affidavit prior to filing by the deadline of 7 October 2025.
- 3.4 Please do not hesitate to contact me if you have any questions in relation to this letter.

Yours faithfully



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Annexure A Position Paper

Subject to Legal Professional Privilege

TAX ISSUES PAPER

TO: Australian Taxation Office
 FROM: The Receivers and Managers of Brite Advisors
 DATE: 28 March 2025
 SUBJECT: **Brite Advisors – position paper**

A Introduction

1. The purpose of this paper is to help the Commissioner understand the most significant tax issues arising from the receivership of Brite Advisors Pty Ptd (**Brite**). It contains our analysis and conclusions in respect of those issues. The paper is not intended to address all tax issues that might arise in relation to the receivership. The Receivers currently anticipate applying for a ruling or rulings (it is likely that there will need to be both a private ruling and class ruling), at least in respect of the most significant threshold issues. However, we consider that it would be most productive and efficient to arrange a meeting to discuss the Commissioner's preliminary views and, hopefully, reach an in-principle agreement before formally applying for a ruling. We will contact you to arrange a meeting at a convenient time.
2. The paper is structured as follows:
 - (1) Background (Part B);
 - (2) Summary of beneficiary location and sources of income (Part C);
 - (3) Summary of tax issues and analysis (Part D);
 - (4) A numerical example (Part E);
 - (5) Tax issues and analysis (Part F).

B Background

3. A comprehensive background to Brite's activities and the receivership is detailed in the Explanatory Memorandum, the Fourth Report and the Fifth Report enclosed at Tabs 1 to 3. These documents will form the factual basis for the Receivers' application to the Federal Court for orders authorising the distribution and therefore provide an appropriate foundation for consideration of the tax issues. The procedural history is reflected in the Federal Court's orders and rulings in the insolvency proceedings, enclosed at Tabs 4-31.
4. The following overview of the factual background is intended to help you navigate those documents by highlighting the most relevant material.

B-1 Relationship between Brite, Clients and Ultimate Beneficiaries

5. Brite is an Australian company incorporated in 2009. Brite holds an Australian Financial Services Licence and is authorised to carry on a financial services business in Australia.
6. Brite and its related entities (the **Brite Group**) operated in multiple countries, providing pension administration and asset management services to investors, primarily UK expats, located in various jurisdictions including Australia, Malta, United Kingdom, Gibraltar, Guernsey, Hong Kong and the Isle of Man.
7. Brite acted as the asset manager within the Brite Group and was party to agreements governing the investment and management of beneficiary funds (referred to as the client assets under management or **Client AuM**).¹
8. In this paper we refer to the direct beneficiaries of Brite as '**Clients**'. They are, almost exclusively, Corporate Trustees or administrators of foreign pension funds, Australian SMSFs and 'Relay Direct' beneficiaries (being individuals who are invested directly but not via a SMSF).² The various documents, including the Fourth Report and the Explanatory Memorandum, use the term 'Beneficiaries' to refer to the ultimate beneficiaries (individuals) but we use 'Ultimate Beneficiaries' to avoid confusion.
9. As discussed further in Part C below, according to the Receivers' investigation, a large majority of Clients and Ultimate Beneficiaries are located (based on addresses provided) in foreign jurisdictions and we consider would likely be foreign residents (although we note that in some cases the address will not be located in the country of tax residence). Further, while the Receivers have not investigated whether any of the Clients are 'foreign superannuation funds', it appears that some (if not all) of the foreign pension funds might be.³
10. The Receivers have identified various documents in the records of Brite governing the relationship between Brite, Clients and Ultimate Beneficiaries. As explained in the Fourth Report, the documentation identified by the Receivers is incomplete and there is variation across the available documents.⁴

¹ Defined in the Fourth Report and paragraph 5 of the orders made 6 February 2024 in WAD13/2024 as all property, assets and undertakings held by Brite on trust for another.

² Fourth Report [4.2.2]-[4.2.3].

³ *ITAA 1997*, s 995-1(1) (definition of 'foreign superannuation fund').

⁴ See Fourth Report, Part 4.3. A summary of the documents identified by the Receivers governing the relationship between Brite, Clients and Ultimate Beneficiaries is at [4.3.11] – [4.3.12] of the Fourth Report.

11. However, it appears that the primary document governing the terms of the relationship between Brite and Clients in each case (and, in turn, Brite and Ultimate Beneficiaries) was a 'Platform Agreement'. The Receivers have identified Platform Agreements in substantially the same terms between Brite and six Clients, representing 75% and 78% of Ultimate Beneficiaries by number and value respectively. The Receivers' investigations indicate that Brite's operations were conducted in accordance with the terms of the Platform Agreements. The following analysis therefore assumes that the terms of those agreements are representative of the basis on which Brite held assets on behalf of all Clients, even where the relevant documents have not been found. The six Platform Agreements identified by the Receivers are at Tabs 32-37. In this paper we refer to the terms of the Platform Agreement with MC Trustees at Tab 32 by way of example.
12. The Platform Agreements contain the general terms of the relationship between Brite and Clients, including Brite's use of the Interactive Brokers Australia Pty Ltd (IBA) platform for settling, clearing and holding investments and cash on behalf the Clients.
13. Section 6 of the Platform Agreement (Terms and Conditions) relevantly provides as follows:

Part A - OUR SERVICE...

1. BRITE ADVISORS PLATFORM

The Service

The Brite Advisors Platform is designed to manage investments – buying, selling and recording them in one place but within different wrappers where relevant – for the purpose of retirement savings and pension income. You must sign an Investment Mandate alongside this Platform Agreement which will outline the parameters in which we will discretionarily manage your Account. Once your Account is open, all Beneficiaries looking to make use of the Brite Advisors Platform will be able to open a Managed Portfolio, under the terms of this Platform Agreement and the Managed Portfolio Application that each Beneficiary signs. For the purposes of this Platform Agreement, you are our client, and Managed Portfolios will not be opened for Beneficiaries without a fully opened Account with you first being established.

2. GENERAL MATTERS TO TAKE INTO ACCOUNT REGARDING OUR SERVICES

Investments

The Model Portfolios will be determined by the Discretionary Account Manager. The Beneficiary and their Financial Advisor will be responsible for determining how their Managed Portfolio is invested amongst the Model Portfolios.

Any bespoke arrangements will also be the responsibility of the Beneficiary and their Financial Advisor....

...

Investment Mandate

All of our Model Portfolios, inclusive of their asset universe, weightings, objectives, and risk parameters, will be outlined in our Investment Mandate which will form part of this Application. ...

Part B - AGREEMENTS

...

Our Agreement with Interactive Brokers

We have entered into an agreement with Interactive Brokers, under which Interactive Brokers provides clearing and settlement, safe custody and other associated services to our clients in order to settle the investment transactions we execute or arrange on their behalf, and to hold the related investments and cash (the 'Interactive Brokers Agreement').

By accepting this Platform Agreement, you agree that:

- Brite Advisors is, for the duration of this Platform Agreement, appointed as your intermediary with the authority to enter into and vary the Interactive Brokers Agreement;
- We are the custodian of your assets during the term of the Platform Agreement and assets held or traded with Interactive Brokers will be in our name;
- We may give instructions to Interactive Brokers on your behalf (as provided for in this Platform Agreement), and Interactive Brokers is entitled to rely on any such instructions or information without making any further checks or enquiries; and
- Interactive Brokers is authorised to hold cash and investments on behalf of the Discretionary Account Manager and to transfer cash and investments from our account to meet your settlement or other obligations to Interactive Brokers.

Part C - REGULATORY STATUS

...

1. YOUR RELATIONSHIP WITH US AND INTERACTIVE BROKERS

It is important that you understand that you will be a client of the Discretionary Account Manager in relation to this Platform Agreement between You and the Discretionary Account Manager.

...

Part D – INFORMATION ON ACCOUNTS AND TRANSACTIONS

...

Periodic Statements

Every month we will send or otherwise make available to you a statement which sets out:

- Investments in your Account;
- transactions since your last statement;
- the current value of your investments;
- the basis on which your investments were valued; and
- a breakdown of the Beneficiaries and their Managed Portfolios.

2. INTEREST, DIVIDENDS AND INCOME

...

Investment Dividends and Income

Interactive Brokers will be responsible for claiming and receiving dividends, interest payments and other entitlements automatically arising in respect of investments held by it for your Account.

Your dividends and income will be retained in the relevant Managed Portfolio either as cash or reinvested according to the Model Portfolio allocated to that Managed Portfolio.

...

4. CLOSING YOUR ACCOUNT

If you want to close your Account with us at any time, you can instruct us in writing to:

- sell all holdings and send your cash to the relevant destination; or
- transfer all holdings (where possible) to another provider or into your own name.

...

8. CUSTODY OF YOUR INVESTMENTS

Safekeeping and Registration

Investments which Interactive Brokers hold for your Account will be registered in the name of the Discretionary Account Manager, controlled by Interactive Brokers or a member of Interactive Brokers' group.

Interactive Brokers will not usually register investments in your name, but if it is required to do so you shall remain responsible for the consequences of any such registration.

Whilst your investments are held by the Discretionary Account Manager (through Interactive Brokers) on trust, they may not be kept separate from other investments managed by Interactive Brokers or the Discretionary Account Manager within the same client account.

When your investments are held by the Discretionary Account Manager, we may have rights against the assets held. These rights may include security rights over the assets (including but not limited to a security interest, mortgage or charge, and exit fees), rights to withhold or retain the assets, and/or other rights to have any such asset paid or transferred to them, to prevent a transaction involving the asset from going ahead, or to be paid any or all of the proceeds of a transaction involving the asset.

...

14. The Platform Agreement contemplates that:

- (1) Clients would also enter into an 'Investment Mandate' with Brite.⁵ The Investment Mandate is described as 'ancillary' to the Platform Agreement and establishes a framework and parameters for the discretionary management and investment of the Client AuM by Brite. The Investment Mandates contain Brite's investment policies for 'model portfolios' and 'bespoke arrangements', which are outlined below.

⁵ Tab 38 (Investment Mandate).

- (2) Once a Client's account was opened, Ultimate Beneficiaries would open individual 'Managed Portfolios'. The Managed Portfolio Applications (and similar documents) identified by the Receivers record Ultimate Beneficiaries' preferences for their investment structure, whether by way of investment in model portfolios or bespoke arrangements.⁶ The Receivers understand that Ultimate Beneficiaries provided direct instructions to Brite for the purchase and sale of securities by issuing dealing instructions.⁷
15. Ultimate Beneficiaries invested with Brite via model portfolios or bespoke arrangements.⁸ Investment in a model portfolio entailed authorising Brite to invest in a pre-determined mix of asset classes. The asset allocations of the model portfolios are set out in the schedules to the Investment Mandate. Different model portfolios were available based on the Ultimate Beneficiary's location. Within each jurisdiction, a range of model portfolios were offered based on risk profile, each containing a different balance across the various asset classes. The US model portfolios also specify a predetermined mix of domestic versus international assets.
 16. The Investment Mandate states that any bespoke arrangements will be the responsibility of the Beneficiary and their financial advisor. Unlike investments in model portfolios, specific instructions were required before assets were purchased or sold as part of a bespoke arrangement.⁹
 17. All model portfolio securities and the majority of bespoke investments were held on the IB Platform (see Part B-2 below).¹⁰ Some bespoke investments (including the Minerva Notes and Moventum Assets)¹¹ were held on alternative platforms or via direct investment.¹² A description of the assets comprising the Client AuM is set out at paragraphs 56 to 58 below.
 18. Fee structures and documentation differed between Ultimate Beneficiaries depending on a range of factors including: (i) Corporate Trustee, (ii) financial advisor, (iii) jurisdiction, and (iv)

⁶ Tab 39 (Managed Portfolio Application).

⁷ Fourth Report [4.4.2].

⁸ Fourth Report [4.5.1].

⁹ Fourth Report [4.5.1].

¹⁰ Fourth Report [4.5.6].

¹¹ See Part 5.4 of the Fourth Report for an overview of Client AuM held in other locations.

¹² Fourth Report [4.5.6].

the time when the Beneficiary was onboarded.¹³ It should also be noted that the documentation held by the Receivers is incomplete and/or cannot be located.

B-2 The IBA Platform and margin loan

19. The vast majority (approximately 99%) of the Client AuM is held on an investment platform with IBA. In accordance with the Intermediary Agreement¹⁴ entered into between IBA and Brite in August 2019, the Client AuM is held in an 'omnibus' structure, meaning the assets are pooled.¹⁵
20. Client funds were transferred to a Westpac Client Account in the relevant currency, before being transferred to the IBA Platform where the funds were aggregated in the omnibus account.¹⁶ The Receivers have formed the view that there is no way of telling, from the data held by IBA on its brokerage platform, which specific assets are held for which Client or Ultimate Beneficiary.¹⁷
21. IBA also provided Brite with a margin loan facility, the terms of which ostensibly provided that Brite Advisors was able to borrow funds using assets held in the IBA Accounts as security.¹⁸ The terms of the margin loan are contained in the 'General Terms and Conditions' dated May 2021 and a 'Leverage Facility Agreement' dated 2 June 2021.¹⁹
22. The Receivers understand that the margin loan was held out as being a facility to fund 'Surrender Rebates' and 'Upfront Transfer Fees' for new Ultimate Beneficiaries.²⁰ IBA has advised the Receivers that, the way the IBA Accounts operated in practice, assets held in one IBA Account serve as collateral for credit extended, by way of the margin loan, to that same account and, under the General Terms and Conditions, IBA has the right to set off assets in one IBA Account against debts in another.²¹

¹³ Fourth Report [4.3.16].

¹⁴ Tab 40 (Intermediary Agreement).

¹⁵ Fourth Report [4.6.1].

¹⁶ Fourth Report [4.4.1].

¹⁷ Fourth Report [4.6.2].

¹⁸ Fourth Report [4.6.3].

¹⁹ Fourth Report [4.6.13]; Tab 41 (General Terms and Conditions) and Tab 42 (Leverage Facility Agreement).

²⁰ Fourth Report [4.6.21].

²¹ Fourth Report [4.6.14].

23. The Receivers have disputed IBA's entitlement to set off the Client AuM against the margin loan liability.²² On 5 June 2024, the Court made interim orders preventing IBA from continuing to set off any dividends and bond maturities generated from Client AuM against the remaining margin loan liability.²³

B-3 The shortfall in the Client AuM

24. The Receivers have concluded that, since as early as the year ended 30 June 2020, there was a shortfall in the Client AuM.²⁴
25. Based on their analysis of the period from 1 January 2021 to 13 December 2023, the Receivers consider that the primary cause of the shortfall was misappropriation effected via: (a) unauthorised drawdowns on the margin loan to generate cash; (b) withdrawing that cash from the IBA Accounts, and (c) later liquidating assets or diverting client deposits to repay the margin loan and fund further withdrawals from Client AuM.²⁵
26. The Receivers' investigations have revealed that amounts borrowed by Brite under the IB margin loan were used to pay for expenses of other entities within the Brite Group, acquire client books from other pension schemes and pay for entirely unrelated expenses.
27. The Client AuM was co-mingled in the omnibus account and, as a result of the shortfall, co-mingling and lack of records, it is not possible to reconcile the shortfall to particular Clients or Ultimate Beneficiaries.²⁶

B-4 Salesforce data

28. Brite maintained an online system (**Salesforce**), which recorded the asset purchases and sales and income individually for each account. Ultimate Beneficiaries (and a limited number of Corporate Trustees) were given access to the Salesforce system. A sample of the information available to the Receivers on Salesforce is at Tab 43. The information available to Ultimate

²² Fourth Report [4.6.5].

²³ Fourth Report [4.6.5].

²⁴ Fourth Report [6.8.2].

²⁵ Fourth Report, Part 6.

²⁶ For further details regarding the comingling of funds, see Part 6.9 of the Fourth Report.

Beneficiaries through Salesforce may differ from the information that can be viewed by the Receivers.

29. The Receivers' lost access to Salesforce during the receivership, and rebuilt the data relying on AutoRek data. AutoRek is an automated financial and operational reconciliation software product that was used by Brite to assist with maintaining and reconciling financial data at an Ultimate Beneficiary level, which was then stored and displayed via Salesforce.²⁷ The reconstructed AutoRek data was used to calculate Clients' 'entitlements' for the purpose of their distributions. Broadly speaking, that process involved identifying the assets that should have been held on trust for each Client, if not for the shortfall, and valuing those assets as at the date of the Receivers' appointment, 13 December 2023.²⁸ The nature of a Client's entitlement is explained in detail in Part E below.

B-5 The receivership

30. On 25 October 2023, ASIC obtained interim freezing orders against Brite in the Federal Court following an investigation.²⁹
31. On 9 November 2023, Linda Smith and Rob Kirman, partners of McGrathNicol, were appointed to act as Investigative Accountants in ASIC's proceedings against Brite.³⁰ On 8 December 2023, the Investigative Accountants' report was provided to the Court.³¹
32. The Investigative Accountants' report identified a US\$69m shortfall in the Client AuM. As a result of the shortfall, discrepancy in records and comingling of the Client AuM, the Investigative Accountants were unable to effectively trace Client AuM to accounts on an Ultimate Beneficiary level.³²
33. On 13 December 2023, the Court ordered that Ms Smith and Mr Kirman cease to act as Investigative Accountants and instead be appointed as joint and several receivers and managers of the property of Brite, including trust property, for the purpose of identifying, collecting and

²⁷ Fourth report [4.8.2].

²⁸ The process of accessing and reconstructing the Salesforce data to calculate Clients' entitlements as at 13 December 2023 is discussed at Part 3.4 of the Fourth Report.

²⁹ Orders of 25 October 2023 in WAD262/2023.

³⁰ Orders of 9 November 2023 in WAD262/2023.

³¹ Tab 44 (Investigative Accountants' Report).

³² Investigative Accountants' Report, [1.6.1].

securing the property and investigating and providing opinions on certain matters.³³ The Court also made further asset preservation orders.

34. On 21 December 2023, the Court made orders regarding the Receivers' ability to continue processing some regular pension withdrawals on behalf of Ultimate Beneficiaries.³⁴ The Receivers have continued to pay regular pension withdrawals in accordance with these orders.

35. On 6 February 2024, the first receivership ended³⁵ and, in a new proceeding, the Court ordered that:

(1) Brite be wound up on just and equitable terms pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth);

(2) Ms Smith and Mr Kirman be appointed joint and several liquidators of Brite pursuant to s 472(1) of the *Corporations Act*; and

(3) Ms Smith and Mr Kirman be appointed joint and several receivers and managers (**Receivers**) over the property, assets and undertakings held by Brite on trust for another.³⁶

36. Pursuant to the 6 February 2024 orders, the Receivers were authorised to take possession of, preserve, maintain and sell the Client AuM and had the power to do all things necessary for the identification and realisation of the Client AuM.³⁷

37. However, paragraph 11 provided that:

Save for as permitted by these orders (including the orders and directions that apply in these proceedings by virtue of paragraph 9 above), the Receivers are justified and would be acting properly in not distributing any Trust Assets, or any part of them, to or for the benefit of any person asserting a claim to the Trust Assets (including the underlying individual beneficiaries) until further direction or order of the Court.

38. On 5 June 2024, the Court ordered that the Receivers would be acting properly and are justified in adopting 13 December 2023, their appointment date, as the relevant date at which to determine Beneficiaries' entitlements.³⁸

³³ Orders of 13 December 2023 in WAD262/2023.

³⁴ Orders of 21 December 2023 in WAD262/2023.

³⁵ Orders of 6 February 2024 in WAD262/2023 [1].

³⁶ Defined in the orders as the 'Trust Assets', but we refer to these assets as the Client AuM.

³⁷ Orders of 6 February 2024 in WAD13/2024 [7]-[8].

³⁸ Orders of 5 June 2024 in WAD13/2024.

39. On 9 August 2024, the Receivers delivered their fourth report to the Federal Court in WAD13/2024 (**Fourth Report**). The purpose of the Fourth Report was to explain the rationale behind the proposed timeline to distribution orders.
40. On 2 September 2024, the Court made orders providing for a 'framework' for the distribution of the Client AuM. The orders provided for the following three hearings before any orders are made with respect to the distribution of the Client AuM:
 - (1) an Explanatory Memorandum Application Hearing to approve an explanatory memorandum addressing the distribution proposed by the Receivers, with such memorandum to be provided to interested parties;
 - (2) an Interested Parties Leave to Appear Hearing to grant leave to those parties wishing to be heard in the Distribution Methodology Application Hearing; and
 - (3) the Distribution Methodology Application Hearing where, subject to the Court granting them leave to do so, interested parties would be heard before orders are made in respect of the distribution of the Client AuM.
41. The 2 September 2024 orders also provided for a process for verifying and calculating Ultimate Beneficiary entitlements.³⁹ Ultimate Beneficiary entitlements were to be calculated:
 - (1) by reference to the value of the money and investments, where possible assessed on a mark-to-market basis, which were recorded as being held by each Ultimate Beneficiary in Brite's systems as at 13 December 2023; and
 - (2) by setting off positive balances and investment values held by a particular Ultimate Beneficiary against negative account balances or debts incurred by the same Ultimate Beneficiary.
42. Ultimate Beneficiaries were then given an opportunity to verify or dispute the value of their entitlement, including by making an application to the Court.
43. On 13 December 2024, the Explanatory Memorandum application was heard and, on 13 December 2024, an Explanatory Memorandum was published.⁴⁰ Feedback on the Explanatory

³⁹ Beneficiary is defined in paragraph 2 of the 2 September 2024 orders as 'any person with a beneficial interest in the Trust Assets, either directly or through a Corporate Trustee'.

⁴⁰ Orders dated 13 December 2024 in WAD12/2024 at Tab 29; Explanatory Memorandum at Tab 1.

Memorandum was required to be provided in writing by 31 January 2025 and the Receivers have been considering the feedback received.⁴¹

44. On or before 28 March 2025, the Receivers are required to publish:
 - (1) A revised minute of the orders sought to give effect to the proposed distribution, having had the benefit of any feedback (**Proposed Distribution Orders**); and
 - (2) If necessary, a Supplemental Explanatory Memorandum which explains the rationale for any changes to the proposed distribution following the consultation process.
45. A draft copy of the Proposed Distribution Orders is at Tab 45. The orders provide that:
 - (1) The Receivers can treat the Client AuM, other than the '**Excluded Assets**' as a 'pooled fund (together the **Deficient Mixed Fund**), with each Beneficiary having an equitable charge over the entire pooled fund to the value of their Verified Entitlement (to the extent it includes assets and cash which Brite Advisors held or purported to hold in the IB Accounts), but without any traceable interest to specific assets or cash in the Deficient Mixed Fund'.⁴²
 - (2) Beneficiaries⁴³ whose Verified Entitlements⁴⁴ include an entitlement to the Deficient Mixed Fund will receive a distribution calculated on a *pari passu* basis in accordance with the formula in paragraph 3.
 - (3) The Excluded Assets include:
 - (a) Cash held in Westpac client accounts;
 - (b) Moventum Assets;⁴⁵ and
 - (c) IB Margin Loan Security Assets.⁴⁶

⁴¹ Explanatory Memorandum, 9 [1.6].

⁴² Paragraph 2.

⁴³ Defined as any person with a beneficial interest in the Trust Assets, either directly or through a Corporate Trustee.

⁴⁴ Defined as the entitlement of each Beneficiary as calculated and verified in accordance with the 2 September 2024 orders.

⁴⁵ Defined as the financial notes held by Brite on trust for certain Beneficiaries which are held on the platform provided by Moventum S.C.A.

⁴⁶ Paragraphs 17-15. Defined as specified accounts held in the name of Brite with IBA and containing Trust Assets.

- (4) The Receivers propose to liquidate the assets in the IB Accounts (except the IB Margin Loan Security Assets).⁴⁷
 - (5) With permission from the Court, the Receivers propose to retain an amount from the liquidated value of the Deficient Mixed Fund and withhold it from the distribution (the **Retained Funds**).
 - (6) Distributions can be made to Corporate Trustees rather than Ultimate Beneficiaries.⁴⁸
46. The following analysis of tax issues assumes that the Proposed Distribution Orders will be made in their current form. However, it is possible that the orders will change following the process provided for in the Court's orders dated 2 September 2024. In particular, it is possible that Ultimate Beneficiaries or Clients will establish tracing claims to particular assets such that those assets should be excluded from the Deficient Mixed Fund and distributed *in specie*.
47. Accordingly, the following analysis relates:
- (1) in respect of the period before the Receivers' appointment, to all assets forming part of the Client AuM; but
 - (2) in respect of the period after the Receivers' appointment (ie after 13 December 2023), only to assets forming part of the Deficient Mixed Fund.
48. Assets which are ultimately excluded from the Deficient Mixed Fund will need to be considered separately.

C Summary of beneficiary location and sources of income

49. The Receivers' investigations indicate that:
- (1) a significant proportion of the Clients and Ultimate Beneficiaries have foreign addresses, and we therefore consider they are likely foreign residents;
 - (2) a significant proportion of the income derived from the Client AuM is denominated in foreign currency and is likely foreign sourced; and
 - (3) it is unlikely that any of the assets in the Client AuM are taxable Australian property (TAP).

⁴⁷ Paragraph 19.

⁴⁸ Paragraph 25-26.

50. For the most part, these factual issues are not directly relevant to the Receivers' analysis of the tax issues discussed in this paper.⁴⁹ However, we understand that the ATO will be assisted by an indication of the likely quantum of Australian tax liabilities arising from the receivership. We summarise the Receivers' findings in respect of these issues below.
51. The summaries and data have been extracted from calculations undertaken by the Receivers on the basis of Brite's records. The relevant calculations and source data are at Tab 46.

Client location

52. A breakdown of the Client AuM by value attributable to Clients located in different jurisdictions is at Tab 47.⁵⁰ For the purpose of this analysis, a Client's 'location' is the country of their mailing address according to the Receivers' most recent records and the Client AuM value is based on the value as at 13 December 2023.
53. As per the summary table below, the Receivers' analysis indicates that 1.87% of the total value of the Client AuM is held on trust for Clients located in Australia.⁵¹

Client location⁵²	Value (US\$)	Percentage of total value
Australia	14,023,879	1.87%
Gibraltar	77,709,100	10.38%
Guernsey	28,886,638	3.86%
Hong Kong	3,388,764	0.45%
Isle of Man	285,219	0.04%
Malta	346,305,522	46.26%
United Kingdom	251,027,245	33.54%
Other	26,917,548	3.60%
Total	748,543,916	100%

54. Based on the information in Tab 47, it appears that approximately 98.13% of the Client AuM is held for Ultimate Beneficiaries located outside Australia.

Categories of assets

⁴⁹ Save for issue 8, which concerns the ability for non-resident Clients to disregard capital gains in respect of TAP.

⁵⁰ Tab 47 ('Beneficiaries Valuation by Trustee').

⁵¹ The total figure of US\$748,543,916 offsets the Surrender Rebate from the valuation number. An explanation of the Surrender Rebate can be found in the Fourth Report [4.3.17], [5.6.10].

⁵² Location reflects the Client's mailing address.

55. The large majority (US\$645.1m as at 13 December 2023, after deduction of the outstanding margin loan liability) of the Client AuM is held in accounts with IBA.⁵³ A summary showing the categories and current value of those assets is at Tab 48.
56. As reflected in the summary table at paragraph 5.3.7 of the Fourth Report, the Client AuM held on the IBA Platform comprises cash, stocks & bonds. Most of the assets held through the IBA Platform comprise stocks.
57. A breakdown of the IBA assets which should have been held by Brite for each Client, as at 13 December 2023 is at in the 'client holdings' spreadsheet at Tab 46.
58. In addition, the following assets (totalling US\$8.2m as at 13 December 2023) were held outside the IB Platform:⁵⁴
 - (1) Cash held in accounts with Westpac (US\$5.5m) and HSBC Hong Kong (US\$1.8m);
 - (2) Cash held in the Moventum account (US\$0.9m);
 - (3) Minerva Notes with a principal value of £8.2m.

Sources of income

59. A breakdown of the income derived from the Client AuM held on the IBA Platform from 1 October 2019 to 31 December 2024 on a currency basis is at Tab 49.⁵⁵
60. The Receivers are undertaking further analysis to determine the sources of Brite's income. As set out in Tab 49, the Australian currency denominated income for the 2024 calendar year was A\$427,481. However, that might not be indicative of Australian-sourced income. For example, the Receivers are aware that Brite received interest from Australian bank accounts in various currencies equivalent to approximately A\$4m (2024 Calendar year, net of the margin loan).

D Summary of tax issues and analysis

61. The tax issues arising from the receivership of Brite can be analysed by reference to four time periods: (i) before the appointment of the Receivers; (ii) the Receivers' appointment on 13 December 2023 (iii) after the Receivers' appointment; and (iv) the proposed liquidation and distribution of the Client AuM. Our analysis of the tax issues relevant to each time period is summarised below.

⁵³ Fourth report [5.3.1], [5.3.7].

⁵⁴ Fourth report [5.4.1]-[5.4.15].

⁵⁵ Tab 49 ("Tax Query Data")

Before 13 December 2023

62. The contractual documentation identified by the Receivers indicates that Brite held assets on behalf of Clients on a 'custodial' basis. Clients were entitled to all income derived from their investments and the income was either retained as cash in their accounts or reinvested in accordance with the Client's instructions. Brite bought and sold assets at the direction of Clients (whether within the parameters of a model portfolio or on a bespoke basis)⁵⁶ and Clients were entitled at any time to have their assets sold, transferred to another investment platform, or transferred into their own name.⁵⁷
63. In addition, Brite used system called AutoRek to keep records of asset purchases and sales and income individually for each account. Ultimate Beneficiaries and some Corporate Trustees were given access to Salesforce, which is a client relationship management platform which presented the AutoRek data. An example of an extract of information available to Receivers on Salesforce is at Tab 43.
64. Accordingly, it is our view that, until 13 December 2023, Clients were absolutely entitled to the assets recorded as held in their name in the Salesforce data for capital gains tax purposes and presently entitled to the income derived on those assets.
65. Therefore, Brite (as trustee) is not liable to any income tax on income or gains derived from the Client AuM before 13 December 2023, except for the possibility of tax under s 98(4) of the *ITAA 1936*.
66. Whether Clients are taxable on each amount of income/gains, and the amount of that tax, will depend on the type of income and their own characteristics (particularly residency). Whether Brite was required to withhold any amounts or liable for tax under s 98(4), depends on similar factors. However, on the assumption that none of the assets in the Client AuM were TAP (as the Receivers expect), non-residents will not be liable for tax on any capital gains.

Receivers' appointment on 13 December 2023

67. From the date of their appointment, the Receivers have held the Client AuM on a statutory trust for the Clients, being persons with an 'entitlement' to the assets for the purpose of regulation

⁵⁶ See, eg, Investment Mandate at Tab 38.

⁵⁷ Platform Agreement, Section 6, Part D cl 4.

7.8.03 of the *Corporations Regulations 2001* (Cth).⁵⁸ But for the operation of s 106-60 of the *ITAA 1997*, the vesting of the Client AuM in the Receivers pursuant to this regulation would have constituted a transfer to the statutory trust for CGT purposes and caused Clients to cease being absolutely entitled to their assets.

68. However, s 106-60 of the *ITAA 1997* provides that the vesting of a CGT asset in an entity for the purpose of 'enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset' is ignored for CGT purposes if the security, charge or encumbrance remains over the asset just after the vesting. As a result of the pooling of the Client AuM in the omnibus account and the shortfall caused by the misappropriation of assets, the Client AuM was a 'deficient mixed fund' over which each Client had an equitable charge.⁵⁹ When the Receivers were appointed, the Client AuM vested in the Receivers 'for the purpose of ... giving effect to' that charge.⁶⁰ Therefore, the vesting of the Client AuM in the Receivers is ignored for CGT purposes.

After appointment of Receivers (ie after 13 December 2023)

69. Because the vesting of the Client AuM in the Receivers is ignored for CGT purposes, Clients are deemed to have continued to be absolutely entitled to the assets which were held in their name on 13 December 2023 for CGT purposes.
70. Since the date of the Receivers' appointment, Clients have been presently entitled to a share of the income of the statutory trust in proportion to their verified entitlements.⁶¹ Assuming the Proposed Distribution Orders⁶² are made in their current form, all Clients would be presently entitled to a proportion of each category of income in the fund (that is, the orders do not contemplate any streaming).
71. Therefore, as for the period before 13 December 2023:

⁵⁸ See *Corporations Regulations 2001*, reg 7.8.03(4)-(5); *Re MF Global Australia Ltd (in liq)* (2012) 267 FCR 27 [100]-[102]; Orders of 2 September 2024 in WAD12/2024.

⁵⁹ *Kelly (Liquidator), in the matter of Halifax Investment Services Pty Ltd (in liquidation) v Loo* [2021] FCA 531 [313].

⁶⁰ Orders of 13 December 2023 in WAD262/2023.

⁶¹ *Corporations Regulations 2001*, reg 7.8.03 deals with how money held in an account of a financial services licensee maintained for s 981B of the *Corporations Act* is to be dealt with in the event of the appointment of an administrator, or insolvency, etc of the licensee. Paragraph 7.8.03(6)(d) provides that if the money in the account is not sufficient to make payments to each person who is "entitled" to be paid money from the account, the money in the account must be paid in proportion to the amount of each person's entitlement.

⁶² Tab 45 (Proposed Distribution Orders).

- (1) Brite (as trustee) will not be liable to income tax on any income/gains derived from the Client AuM (except for the possibility of s 98(4) tax); and
- (2) Clients' tax liabilities and whether Brite is required to withhold will depend on the character of the income and characteristics of the Client (particularly residency).

Liquidation and distribution of the Client AuM

72. When the Client AuM is liquidated, each Client will be treated as disposing of the assets it is absolutely entitled to, including assets that have been misappropriated.
73. The applicable CGT event is CGT event A1. CGT event C1 will not occur because it will not be possible for Clients to identify which of their assets have been lost. For the purpose of the timing of that event, the loss of assets will not be 'discovered'.
74. The first element of the cost base for the CGT event A1 will be the Client's acquisition costs.
75. The capital proceeds of the CGT event will be equal to the total distribution the Client receives, but only to the extent that the distribution represents amounts not previously recognised as income or in the Client's account as cash on 13 December 2023.

E Example

E-1 Before 13 December 2023

76. Assume a Client has access to the following information on the Salesforce platform.

Year	Transaction	Number of shares	Amount per share	Movements in portfolio			Taxable income	
				Cash	BHP	Tesla	Dividends	Capital gains
2021	Contribute \$3000			\$3000				
	Buy BHP shares	100	\$30	-\$3000	100			
	BHP dividend	100	\$0.50	\$50			\$50	
2022	Sell BHP shares	-10	\$50	\$500	-10			\$200
	Contribute \$3500			\$3500				
	Buy Tesla shares	200	\$20	-\$4000		200		

	BHP dividend	90	0.5	\$45	\$45
2023	BHP dividend	90	0.5	\$45	\$45
13 December 2023				\$140 90 200	
Total					\$140 \$200

77. Before 13 December 2021, each Client was presently entitled to the amounts and types of income shown in their Salesforce data before 13 December 2023.
78. Therefore, depending on their personal circumstances, the Client in the example was liable for tax on \$140 total dividend income and a \$200 capital gain for the 2021-2023 income years.
79. The Receivers assume, although they do not know, that Clients have been preparing tax returns on this basis. Brite did not lodge tax returns as a trustee, presumably on the basis that it was a custodian.
80. The Receivers' investigations have shown that not all the assets recorded in the Salesforce platform actually existed. Those losses will be effectively recognised for capital gains tax purposes when the Client AuM is liquidated.

E-2 After 13 December 2023

81. The Client's verified entitlement on 13 December 2023 would be calculated as follows.

Number of shares		Share value	Portfolio value		
			Cash	BHP	Tesla
Cash			\$140		
BHP	90	\$200		\$18,000	
Tesla	200	\$250			\$50,000
Verified entitlement					\$68,140
Value of share of pooled fund (assuming 10% shortfall)					\$61,326

82. Any CGT consequences of the appointment of the Receivers on 13 December 2023 will be disregarded. Neither the verified entitlement nor the value of the Client's share of the pooled fund on 13 December 2023 is directly relevant to their tax outcome.

83. Assume, though, that the Client's verified entitlement of \$68,140 is 0.5% of all verified entitlements.
84. From 13 December 2023 onwards the Client will be treated as:
- (1) receiving 0.5% of each item of income derived from the Client AuM; but
 - (2) for CGT purposes, continuing to hold the 90 BHP and 200 Tesla shares recorded in their Salesforce data on 13 December 2023.

Dividend and interest income

85. The Client would be taken to be entitled to 0.5% of each category of income derived by the Receivers from the Client AuM for the 2024 and 2025 income years, as illustrated in the following table

Year	Category of income	Total income from Client AuM	Client's share (0.5%)
2024	Australian franked dividends	\$20,000	\$100
	Australian unfranked dividends	\$10,000	\$50
	Australian interest	\$30,000	\$150
	Foreign dividends	\$16,000	\$80
	Foreign interest	\$24,000	\$120
2025	Australian franked dividends	\$20,000	\$100
	Australian interest	\$10,000	\$150
	Australian unfranked dividends	\$30,000	\$200
	Foreign dividends	\$16,000	\$80
	Foreign interest	\$24,000	\$120
	Total income	\$200,000	\$1,000

86. Whether the Client is taxable on each category of income will depend on the Client's individual circumstances (particularly whether they are an Australian or foreign resident).

Capital gains tax

87. In addition, the Client will make a capital gain or loss when the Client AuM is liquidated, calculated as follows (assuming a total distribution of \$69,000 is made to the Client in 2025):

Capital proceeds

Distribution	\$69,000	
Cash position at 13 December 2023 ⁶³	(\$140)	
Total income after 13 December 2023	(\$1,000)	\$67,860

Cost Base

BHP shares (90 x \$30)	\$2,700	
Tesla shares (200 x \$20)	\$4,000	\$6,700

Capital gain **\$61,160**

88. Whether the Client is taxable on that capital gain will depend on the Client's individual circumstances (particularly whether they are an Australian or foreign resident) and whether the assets are TAP.
89. Notice that the total income/gains that the Client is taxable on is equal to their real gain, as follows:

Taxable amounts	Income	Capital
BHP dividend (2021)	\$50	
Capital gain on BHP shares (2022)		\$200
BHP dividend (2022)	\$45	
BHP dividend (2023)	\$45	
Share of income (2024)	\$500	
Share of income (2025)	\$500	
Capital gain on liquidation		\$61,160
	\$1,140	\$61,360
Total taxable amounts		\$62,500

Real gain

Contribution (2021)	(\$3,000)
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⁶³ Representing accumulated dividend income for 2021, 2022 and 2023 income years.

Contribution (2022)	(\$3,500)
Final distribution	\$69,000
Total real gain	\$62,500

F Tax issues and analysis

Issue 1: Was Brite liable for tax (other than under s 98 of the ITAA 1936) on capital gains derived from the Client AuM before 13 December 2023?

Answer

90. No.

Summary

91. Before 13 December 2023 (when the Receivers were appointed), Clients were absolutely entitled as against Brite to assets held on their behalf.

Capital gains

Legal principles

92. When a beneficiary is absolutely entitled to a CGT asset as against the trustee of a trust, the asset is treated as an asset of the beneficiary for capital gains purposes and an act done by the trustee in relation to the asset is taken to have been done by the beneficiary.⁶⁴ Because the beneficiary is the relevant taxpayer, any capital gain or loss made in relation to the asset is not required to be included in the net income of the trust under s 95 of the *ITAA 1997*. Therefore, to the extent that Clients were absolutely entitled to their CGT assets, Brite was not liable as trustee for tax on capital gains derived from the Client AuM.
93. The term absolute entitlement is not defined in the legislation. However, the courts have recognised that the concept has its origins in the rule in *Saunders v Vautier*,⁶⁵ namely that ‘an adult beneficiary (or a number of adult beneficiaries acting together) who has (or have between them) an absolute, vested and indefeasible interest in the capital and income of property may at

⁶⁴ *ITAA 1997*, s 106-50.

⁶⁵ (1841) 4 Beav 115; 41 ER 482. See *Kafataris v Deputy Commissioner of Taxation* (2008) 172 FCR 242 [55]-[61]; *Taras Nominees v Federal Commissioner of Taxation* (2015) 228 FCR 418 [9].

any time require the transfer of the property to him (or them) and may terminate any accumulation'.⁶⁶

94. The essence of the rule is the ability to require the immediate transfer of trust property. In *Kafataris v DCT*, Lindgren J held that the rule in *Saunders v Vautier* was not enlivened where a trust deed provided that the trustee "may" transfer assets to a beneficiary in lieu of their entitlement to the payment of benefits and that power was required to be exercised subject to the Trustee's obligations to other beneficiaries.⁶⁷
95. The Commissioner's views in respect of the meaning of absolute entitlement are contained in Draft Taxation Ruling TR 2004/D25⁶⁸ (**Draft Ruling**) which, in summary, provides as follows.
 - (a) To be absolutely entitled to a CGT asset as against a trustee a beneficiary must have a vested and indefeasible interest in the asset, such that they are entitled to have the asset transferred to them or applied at their direction.⁶⁹
 - (b) The requirement is for the beneficiary to be absolutely entitled as against the trustee. As a consequence, a beneficiary may be absolutely entitled to an asset notwithstanding that a security interest has been granted over the asset in favour of a third party or that the trustee has a right of indemnity in respect of the asset.⁷⁰
 - (c) When multiple beneficiaries have an interest in trust assets, a beneficiary may still be considered to be absolutely entitled to a specific number of those assets if the assets are: (i) fungible; (ii) conveniently divisible without prejudice to other beneficiaries; and (iii) there is a clear understanding that the beneficiary is entitled to a specific number of the assets (as opposed to having a shared interest in each and every asset). When those conditions are satisfied, it does not matter that the beneficiary cannot point to particular assets belonging to them.⁷¹

⁶⁶ *CPT Custodian Pty Ltd v Commissioner of State Revenue* (2005) 224 CLR 98 [47] quoting *Thomas on Powers* (1998) 176.

⁶⁷ (2008) 172 FCR 242 [39]. See also *Taras Nominees Pty Ltd as Trustee for the Burnley Street Trust v Commissioner of Taxation* (2015) 228 FCR 418 [9].

⁶⁸ See also the ATO Decision Impact Statement affirming the views published in TR 2004/D25 in light of *Kafataris v Deputy Commissioner of Taxation* (2008) 172 FCR 242.

⁶⁹ Draft Ruling [10]. See also *CPT Custodian Pty Ltd v Commissioner of State Revenue* (2005) 224 CLR 98 [47] quoting *Thomas on Powers* (1998) 176; *Kafataris v Deputy Commissioner of Taxation* (2008) 172 FCR 242 [55]-[61]; *Taras Nominees v Federal Commissioner of Taxation* (2015) 228 FCR 418 [9].

⁷⁰ Draft Ruling [62]-[65].

⁷¹ Draft Ruling [80]-[121].

96. Since the Draft Ruling was published, there have been few decided cases considering the meaning of “absolute entitlement” for the purposes of the capital gains tax provisions. In two cases, single judges of the Federal Court have found that beneficiaries were not absolutely entitled to trust assets where the trustee had a power of sale over the asset.⁷² However, those cases concerned different facts.⁷³
97. Ultimately, whether a taxpayer is absolutely entitled to trust assets as against the trustee depends on the terms of the relevant deed and on general law principles.⁷⁴ The existence of a trustee’s power of sale or right of indemnity in respect of trust assets will not always exclude absolute entitlement.

Analysis

Absolute entitlement

98. Before the appointment of the Receivers, Clients’ entitlements to the capital and income of the trust were determined under the relevant agreements, principally the Platform Agreements, Investment Mandates and Managed Portfolio Agreements (and similar documents).⁷⁵ While the documentation identified by the Receivers is incomplete, and there is variation across the available documents,⁷⁶ the material identified by the Receivers indicates that the relationship between Brite, Corporate Trustees and Ultimate Beneficiaries was to the following effect.

⁷² *Kafataris v Deputy Commissioner of Taxation* (2008) 172 FCR 242; (2013) 133 FCR 110 [77]–[81]; *Oswal v Federal Commissioner of Taxation* (2013) 133 FCR 110 [76].

⁷³ In *Kafataris*, the trustee had a broad power under the trust deed to “make or vary any of the investments authorised under [the] Deed”. In *Oswal*, Edmonds J held that the existence of the trustee’s power of sale over the trust assets conferred by the trust deed and the *Trustees Act 1962* (WA) meant that the beneficiaries’ interests in those trust assets “while absolute were defeasible”. Both cases involved a broad power of sale that could be exercised at any time over all trust assets in the exercise of the trustee’s discretion. See also the ATO Decision Impact Statement affirming the views published in TR 2004/D25 in light of the decision in *Kafataris v Deputy Commissioner of Taxation* (2008) 172 FCR 242.

⁷⁴ *Kafataris v Deputy Commissioner of Taxation* (2008) 172 FCR 242 [73].

⁷⁵ A summary of the documents identified by the Receivers governing the relationship between Brite, Clients and Ultimate Beneficiaries is at [4.3.11] – [4.3.12] of the Fourth Report.

⁷⁶ See Fourth Report, Part 4.2-4.3. In particular, the documentation for Australian SMSFs and Ultimate Beneficiaries described as ‘Direct Investors’ in the diagram at paragraph 4.2.2 of the Fourth Report might be somewhat different. However, the Receivers understand that Brite’s management of the Client AuM was generally consistent across all classes of Clients.

- (1) Corporate Trustees entered into Platform Agreements with Brite, which set out the general terms of the relationship, including Brite's use of the IBA platform for settling, clearing and holding investments on behalf of Corporate Trustees.⁷⁷
- (2) Corporate Trustees were also required to sign an Investment Mandate, which outlined the parameters in which Brite would discretionarily manage their accounts.⁷⁸
- (3) The Investment Mandates contained Brite's investment policies for 'model portfolios' and 'bespoke arrangements'.⁷⁹
- (4) Once the Corporate Trustee's account was opened, Ultimate Beneficiaries could apply for an individual 'Managed Portfolio' by completing a Managed Portfolio Application.⁸⁰
- (5) Ultimate Beneficiaries gave direct dealing instructions to Brite to buy and sell assets, whether by way of investment in model portfolios or bespoke arrangements.⁸¹
- (6) Dividends and income earned on investments were retained in the Ultimate Beneficiaries' Managed Portfolios either as cash or reinvested according to the model portfolio parameters.⁸²
- (7) Brite was required to provide periodic statements to Clients and Ultimate Beneficiaries in respect of their investments.⁸³ Brite's Salesforce system kept records of asset purchases and sales and income individually for each account. The Receivers understand that Corporate Trustees and Ultimate Beneficiaries were given the option to access the Salesforce system (however we understand that not all Corporate Trustees and Ultimate Beneficiaries availed themselves of this option).
- (8) Corporate Trustees and Ultimate Beneficiaries were entitled to close their accounts or Managed Portfolios at any time and have the assets sold or transferred in accordance with their directions.⁸⁴

⁷⁷ Platform Agreement. The Receivers have identified 6 identical Platform Agreements between Brite and 6 Corporate Trustees, representing 82% of Ultimate Beneficiaries by both number and value.

⁷⁸ Investment Mandate.

⁷⁹ Investment Mandate.

⁸⁰ Platform Agreement, Section 6, Part A, cl 1.

⁸¹ Managed Portfolio Application, Part D, cl 1.

⁸² Platform Agreement, Section 6, Part C, cl 2.

⁸³ Platform Agreement, Section 6, Part D; Managed Portfolio Application, Part D.

⁸⁴ Platform Agreement, Section 6, Part D, cl 4; Managed Portfolio Application, Part D, cl 4.

- (9) Despite the relationship between Ultimate Beneficiaries and Brite, Brite's management of the Managed Portfolios was ultimately subject to the terms of the Platform Agreement and Investment Mandate agreed with the relevant Corporate Trustee. It was the Corporate Trustees, and not the Ultimate Beneficiaries, who were the clients of Brite and its beneficiaries.
99. The effect of these terms was that Clients had present rights to have their assets transferred to them or applied at their direction. Their interests in the assets were therefore vested in possession.
100. Clients' vested interests in their assets were subject to a number of contingencies including:
- (1) Brite's right to deduct amounts in respect of fees and charges from the proceeds of sale of assets in Managed Portfolios;⁸⁵
 - (2) Brite's power of sale over assets in Managed Portfolios to discharge its entitlement to fees and charges;⁸⁶ and
 - (3) The security interest granted by Brite to IBA over the Client AuM to secure Brite's margin loan liability.⁸⁷
101. However, the interests of Brite and IBA in the Client AuM were not inconsistent with Clients' absolute entitlements to the assets as against Brite. Specifically, they did not render the Clients' interests in the Client AuM defeasible.
102. So far as Brite's entitlement to payment of fees is concerned, as explained in the Draft Ruling, the existence of a trustee's lien to enforce a right of indemnity against a trust asset will not prevent a beneficiary being absolutely entitled to the asset; it just means that the beneficiary can only exercise their rights subject to the rights of a trustee to be indemnified.⁸⁸ Further, a trustee's lien is commensurate to the trustee's right of indemnity and does not necessarily attach to all trust assets at all time, at least where those assets are conveniently divisible.⁸⁹

⁸⁵ Platform Agreement, Section 6 cl 5 and 6.

⁸⁶ Platform Agreement, Section 6 cl 5.

⁸⁷ See Fourth Report, Part 4.6. The terms of the margin loan are contained in "General Terms and Conditions" dated May 2021 (Tab 41) and a supplementary "Leverage Facility Agreement" dated 2 June 2021 (Tab 42).

⁸⁸ Draft Ruling [64].

⁸⁹ *Chief Commissioner of Stamp Duties (NSW) v Buckle* (1998) 192 CLR 226, 245; *Carter Holt Harvey Woodproducts Australia Pty Ltd v The Commonwealth* (2019) 268 CLR 524 [28]-[33] (Kiefel CJ, Keane and

103. Under the Platform Agreement, Brite was only authorised to sell investments to discharge its entitlement to fees if there was insufficient cash in the relevant Managed Portfolio to meet Clients' obligations. That power of sale is an extension of Brite's right of indemnity as trustee and subject to the same limitations. It is quite different to the broad, discretionary powers of sale considered by the Courts in *Kafataris* and *Oswal*.
104. The Draft Ruling states that the existence of a mortgage, encumbrance or other charge over an asset in favour of a third party with no interest in the trust does not of itself prevent a beneficiary being absolutely entitled to the assets as against the trustee, as the charge does not affect the beneficiary's relationship with (or rights against) the trustee.⁹⁰ IBA's security interest is therefore irrelevant to the question of Clients' absolute entitlements.

The effect of the shortfall on absolute entitlement

105. The Receivers have concluded that it is not possible to reconcile the shortfall in the Client AuM to particular Clients or Ultimate Beneficiaries.⁹¹ For the purposes of the distribution, the Receivers are therefore treating the Client AuM as a 'deficient mixed fund'.⁹² From an insolvency perspective, once the Client AuM became a deficient mixed fund, any beneficial interests held by Clients in particular assets ceased to exist and, in their place, each Client acquired an equitable charge over all of the assets within the fund.⁹³
106. In contrast, a beneficiary can be absolutely entitled to trust assets for capital gains tax purposes but not have a specific proprietary interests in particular assets. In the case of fungible assets, such as shares, a beneficiary can be absolutely entitled to a specific number of assets within the fungible class even if they cannot point to particular assets which they own.⁹⁴ Further, absolute entitlement is not extinguished by third party security interests over trust assets.⁹⁵ It follows that, if any absolute entitlement was lost here, it was only lost to the extent of the shortfall (ie only in respect of the misappropriated assets).

Edelman JJ), [82]-[83] (Bell, Gageler and Nettle JJ); *Naaman v Jaken Properties Australia Pty Limited* [2025] HCA 1 [1], [21].

⁹⁰ Draft Ruling [62].

⁹¹ For further details regarding the comingling of funds, see Part 6.9 of the Fourth Report.

⁹² See Proposed Distribution Orders, paragraph 2.

⁹³ *Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markers Pty Ltd (in liq)* [2012] FCA 75; 288 ALR 240 [83]; *Kelly (Liquidator), in the matter of Halifax Investment Services Pty Ltd (in liquidation) v Loo* [2021] FCA 531 [313].

⁹⁴ Draft Ruling [25], [80]-[126].

⁹⁵ Draft Ruling [62].

107. Therefore, before 13 December 2023 Clients, and not Brite, were liable for capital gains tax in respect of assets held on their behalf by Brite, as recorded in their Salesforce data.

Issue 2: Did a CGT event happen when Clients' assets were misappropriated?

Answer

108. No

Summary

109. CGT event C1 has not happened as the loss of Clients' assets has not been 'discovered'.

Legal principles

110. CGT event C1 happens if a CGT asset you own is lost or destroyed.⁹⁶ The time of CGT event C1 is when compensation is first received for the loss or, if no compensation is received, when the loss is discovered.⁹⁷
111. The ATO has confirmed CGT event C1 happens if shares are improperly sold by a bank holding them as mortgagee or by a stockbroker holding shares in its account on behalf of a client without the owner's consent.⁹⁸

Analysis

112. The unauthorised sale of assets by Brite in this case is analogous to the facts considered in ATO IDs 2010/116 and 2010/124. However, the Clients have not and will not receive any compensation for their loss and the loss has not yet been 'discovered'. Although the Receivers have 'discovered' the overall shortfall, they have not been able to attribute the loss of specific assets to specific Clients. Therefore, it cannot be said that any Client has 'discovered' the loss of any of their particular assets. On that basis, CGT event C1 has not yet occurred and is likely to never occur.
113. The fundamental problem faced by the Receivers is the inability to allocate misappropriated assets to individual Clients. Even when the proposed distributions are made, Clients' will not be able to say which of their assets were lost or destroyed for the purpose of CGT event C1. Therefore, CGT event C1 will not happen, even when the assets are liquidated.

⁹⁶ ITAA 1997, subsection 104-20(1).

⁹⁷ ITAA 1997, subsection 104-20(2).

⁹⁸ ATO ID 2010/116; ID 2010/124.

Issue 3: Was Brite liable for tax (other than under s 98) on income derived from the Client AuM before 13 December 2023?

Answer

114. No.

Summary

115. Before 13 December 2023 (when the Receivers were appointed), Clients were between them presently entitled to all income from the Client AuM.

Legal principles

116. Section 96 of the *ITAA 1936* provides that, except as provided in the Act, a trustee shall not be liable as trustee to pay income tax upon the income of the trust estate. Subject to the rules relating to the tax liabilities of non-residents⁹⁹ and beneficiaries under legal disabilities, the trustee of a trust estate will not be liable for tax on income to which beneficiaries are presently entitled.

117. A beneficiary is presently entitled to a share of the income of the trust if the beneficiary has ‘an interest in the income which is both vested in interest and vested in possession’ and ‘a present legal right to demand and receive payment of the income, whether or not the precise entitlement can be ascertained before the end of the relevant year of income and whether or not the trustee has the funds available for immediate payment’.¹⁰⁰

Analysis

118. Before the appointment of the Receivers, Clients’ entitlements to income were determined by the relevant agreements. Clients were entitled to all of the ‘dividends, interest payments and other entitlements automatically arising in respect of [their] investments’.¹⁰¹ That income was

⁹⁹ A trustee is liable under s 98 of the *ITAA 1936* to pay tax on behalf of non-resident beneficiaries on (a) so much of the share of the net income as is attributable to a period when the beneficiary was a resident, whatever the source of the income; and (b) so much of the share as is attributable to a period when the beneficiary was a non-resident and is also attributable to Australian sources. Beneficiaries will be entitled to a tax credit for tax paid by the trustee: s 98A. Income subject to withholding is excluded from the assessable income of the non-resident beneficiary and from taxation to the trustee under s 98.

¹⁰⁰ *Federal Commissioner of Taxation v Harmer* (1991) 173 CLR 264, 271; *Federal Commissioner of Taxation v Carter* (2022) 274 CLR 304, 310 [3].

¹⁰¹ Platform Agreement, Section 6, Part D, cl 2; Managed Portfolio Application, Part D cl 2.

required to be 'retained in [the] Managed Portfolio either as cash or reinvested according to the Model Portfolio allocated to [the] Managed Portfolio'.¹⁰²

119. Certain Clients and Ultimate Beneficiaries were able to access periodic statement regarding the investments in each managed portfolio, transactions since the last statement, the current value of investments and the basis on which investments were valued.¹⁰³ In practice, this occurred through the operation of the Salesforce platform, which the Receivers understand was made available to Clients and Ultimate Beneficiaries and recorded all transactions and income in respect of each Managed Portfolio (however we understand that not all Corporate Trustees and Ultimate Beneficiaries availed themselves of the option to view Salesforce).¹⁰⁴
120. At any time, Clients could close their accounts by requesting that Brite sell their holdings and transfer the cash or transfer the asset holdings (where possible) at their direction.¹⁰⁵ This represents a 'present legal right to demand and receive payment' of the income in which Clients had a vested interest.
121. As discussed above, the Clients' rights to receive payment of their income distributions were subject to the rights of Brite under the Platform Agreement, including in respect of fees etc. However, these contingencies did not affect the Clients' present legal rights to call for and receive payment of the income.¹⁰⁶ Rather, amounts contractually owing by Clients to Brite in respect of fees and charges were able to be set off by Brite against amounts held in Client accounts. These separate legal obligations between the parties did not defeat the Clients' present entitlements to the trust income. Alternatively, these amounts simply represented reductions of trust income.
122. Therefore, until 13 December 2023, Clients were presently entitled to the amounts and types of income shown in their Salesforce data.
123. The Receivers note that this conclusion is consistent with the information available via the Salesforce platform and the feedback from certain Clients and Ultimate Beneficiaries that they saw Brite as a custodian. It is also consistent with the entitlement verification process that has

¹⁰² Platform Agreement, Section 6, Part D, cl 2; Managed Portfolio Application, Part D, cl 2.

¹⁰³ Platform Agreement, Section 6, Part D; Managed Portfolio Application, Part D.

¹⁰⁴ Tab 43 (Salesforce extract).

¹⁰⁵ Platform Agreement, Section 6, Part D, cl 4.

¹⁰⁶ *Federal Commissioner of Taxation v Harmer* (1991) 173 CLR 264, 271.

been undertaken by the Receivers on the basis of Salesforce data to determine the assets that should have been held for Clients on 13 December 2023 (and the related Court orders¹⁰⁷).

124. However, the fact that this position is consistent with Brite's records also means that it may result in Clients being taxed on income that did not exist or was never received by Brite. That is because Brite recorded assets in Client accounts in Salesforce that had been misappropriated (hence the shortfall). The Receivers know that Brite also purported to record income in the Salesforce data relating to misappropriated assets which was never received. However, it is simply not possible for the Receivers to determine what Clients' income positions were other than by reference to the Salesforce data.

Issue 4: Were non-resident Clients liable for withholding tax on the following categories of income derived before 13 December 2023, to the extent that they were presently entitled to the income (as shown in their Salesforce data)? Alternatively, was Brite liable to s 98 tax on that income?

Summary

125. Non-resident Clients will be liable for withholding tax on the following categories of income derived before 13 December 2023:
- (1) Australian unfranked dividends.
 - (2) Australian interest, subject to the 128F exception for publicly issued debentures and debt interests.¹⁰⁸
126. These withholding liabilities are also subject to the exception for a 'superannuation fund for non-residents'.¹⁰⁹
127. Withholding tax will not apply to franked dividends, foreign dividends, or foreign interest.¹¹⁰
128. Brite will be liable as trustee under s 98 of the *ITAA 1936* for tax on capital gains only if:
- (a) the relevant asset is held for a non-resident Client; and
 - (b) the asset is TAP.

¹⁰⁷ Orders of 6 September 2024 in proceeding WAD13/2024, particularly order 9(a).

¹⁰⁸ *ITAA 1936*, s 128F. And the exception for interest paid by residents incurred through an overseas permanent establishment.

¹⁰⁹ *ITAA 1936*, s 128B(3)(jb).

¹¹⁰ Subject to the exception for interest paid by non-residents incurred through an Australian permanent establishment.

Legal principles

Liability for capital gains tax under s 98

129. A trustee is liable to pay tax under s 98 of the *ITAA 1936* on behalf of non-resident beneficiaries on:

- (1) the beneficiaries' share of the net income of the trust attributable to Australian sources (other than dividends, interest and royalties)¹¹¹ for the period when the beneficiary was a non resident; and
- (2) the beneficiary's share of a capital gain.¹¹²

130. Beneficiaries will be entitled to a tax credit for tax paid by the trustee under s 98.¹¹³

Interest and dividend withholding tax

131. Withholding tax is imposed under s 128B of the *ITAA 1936* on:

- (1) unfranked dividends paid by resident companies and derived by non-residents;¹¹⁴ and
- (2) interest derived by non-residents and paid by:
 - (a) a resident, except where the interest is wholly incurred by the resident as an expense of carrying on a business overseas at or through a permanent establishment, or
 - (b) a non-resident and the interest is an expense wholly or partly incurred by the non-resident in carrying on a business in Australia at or through a permanent establishment in Australia.¹¹⁵

132. A non-resident beneficiary who is presently entitled to interest or dividend income of a trust is deemed to have derived the income when the present entitlement arose.¹¹⁶

¹¹¹ *ITAA 1936*, s 99B and 128D. Income taxed under the withholding rules is not assessable income and therefore not taxed to the trustee under s 98.

¹¹² *ITAA 1997*, s 115-220(1).

¹¹³ *ITAA 1936*, s 98A.

¹¹⁴ *ITAA 1936*, s 128B(1). Franked dividends are not subject to withholding: *ITAA 1936*, s 128B(3)(ga)(i).

¹¹⁵ *ITAA 1936*, s 128B(2).

¹¹⁶ *ITAA 1936*, s 128A(3).

133. Interest and dividends derived by a 'superannuation fund for non-residents' that is exempt from tax in its country of residence are not subject to withholding tax.¹¹⁷ A fund is a 'superannuation fund for non-residents' if:¹¹⁸

- (a) at that time, it is:
 - (i) an indefinitely continuing fund; and
 - (ii) a provident, benefit, superannuation or retirement fund; and
- (b) it was established in a foreign country; and
- (c) it was established, and is maintained at that time, only to provide benefits for individuals who are not Australian residents; and
- (d) at that time, its central management and control is carried on outside Australia by entities none of whom is an Australian resident.

134. However, a fund is not a superannuation fund for non-residents if an amount paid to the fund can be deducted under the Act or a tax offset has been allowed or is allowable.¹¹⁹

135. Withholding tax is also not payable on interest paid under a debenture or debt interest if the issue of the debenture or debt interest by a company satisfies the 'public offer test' in s 128F(3) of the *ITAA 1936*.¹²⁰

Analysis

Liability for capital gains tax under s 98

136. As discussed under issue 8 below, because Clients were absolutely entitled to their CGT assets, Clients who are foreign residents or the trustees of foreign trusts can disregard capital gains on non-TAP CGT assets.¹²¹

137. Therefore, Brite will not be liable for tax under s 98 of the *ITAA 1936* in respect of capital gains made by foreign Clients on assets that are not TAP.

Interest and dividend withholding tax

¹¹⁷ *ITAA 1936*, s 128B(3)(jb).

¹¹⁸ *ITAA 1997*, s 118-520(1).

¹¹⁹ *ITAA 1997*, s 118-520(2).

¹²⁰ *ITAA 1936*, s 128F(2).

¹²¹ *ITAA 1997*, s 855-10.

138. In or around December 2023, the Receivers requested Crowe Australasia (**Crowe**) to undertake an independent review of Brite's records and comment on potential issues and potential breaches from a financial reporting and taxation perspective.
139. Pursuant to their report dated 23 January 2024, attached at Tab 50, Crowe raised the following high-level issues regarding withholding tax:¹²²
- (1) further investigation was required to determine whether Brite had any withholding obligations under section 12-390 of Schedule 1 of the *Taxation Administration Act 1953* (Cth); and
 - (2) given Brite was not registered as a managed investment scheme, consideration had not yet been given to the managed investment trust withholding provisions.
140. Otherwise, the Receivers continue to review Brite's records to determine the extent of pre-receivership withholding tax liabilities or the extent of Brite's historical compliance with its obligations.

Issue 5: Did a CGT event happen to each Client on 13 December 2023?

Answer

141. No.

Summary

142. The vesting of the Client AuM in the Receivers on that day is ignored for CGT purposes by s 106-60 of the *ITAA 1997*.

Legal principles

143. When the holder of an Australian Financial Services Licensee becomes insolvent, regulation 7.8.03 of the *Corporations Regulations 2001* determines how money and assets subject to Part 7.8, Subdivision 2A of the *Corporations Act 2001* are to be distributed.¹²³

¹²² The report also raised a number of issues regarding the preparation of Brite's personal income tax returns.

¹²³ Regulation made under s 981F of the *Corporations Act 2001* (Cth). The regulation applies if an AFSL is subject to the appointment of a receiver by court order: reg 7.8.03(2)(b)(iii).

144. The effect of that regulation is that, from the date Receivers are appointed, money and investments held by the AFSL become subject to a statutory trust in favour of each person who was 'entitled to be paid money from the account' in proportion to their entitlements.¹²⁴
145. A person's 'entitlement' is not defined in the legislation or regulations. The concept has been held to import trust law principles, including those applicable to deficient mixed funds.¹²⁵ As noted above, once a client account becomes a deficient mixed fund, any beneficial interests held in particular assets cease to exist and, in their place, each client acquires an equitable charge over all of the assets within the fund.¹²⁶

Analysis

146. The Receivers were appointed to the assets of Brite on 13 December 2023.¹²⁷ On that day, the Client AuM was taken to be subject to a statutory trust in favour of each Client in proportion to their entitlements pursuant to reg 7.8.03.¹²⁸
147. As a result of the shortfall, co-mingling and lack of records, the Receivers have concluded that it is not possible to reconcile the shortfall in the Client AuM to particular Clients.¹²⁹ The Receivers have therefore approached the distribution process, including the calculation of Clients' 'entitlements' for the purpose of reg 7.8.03, on the basis that, as at the date of the Receivers' appointment, the Client AuM was a deficient mixed fund.
148. Consistently with that approach, the proposed distribution orders provide that the Receivers would be justified in treating the Client AuM 'as a pooled fund (together the Deficient Mixed Fund), with each Beneficiary having an equitable charge over the entire pooled fund to the

¹²⁴ Reg 7.8.03(4), (5), (6); *Re MF Global Australia Ltd (in liq)* (2012) 267 FCR 27 [100]-[102], [117]; *Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq)* [2012] FCA 75; 288 ALR 240 [79].

¹²⁵ *Re MF Global Australia Ltd (in liq)* (2012) 267 FCR 27 [102]; *Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq)* [2012] FCA 75; 288 ALR 240 [82]-[86].

¹²⁶ *Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq)* [2012] FCA 75; 288 ALR 240 [83]; *Kelly (Liquidator), in the matter of Halifax Investment Services Pty Ltd (in liquidation) v Loo* [2021] FCA 531 [313].

¹²⁷ Orders dated 13 December 2023 in WAD262/2023.

¹²⁸ Reg 7.8.03(4), (5), (6); *Re MF Global Australia Ltd (in liq)* (2012) 267 FCR 27 [100]-[102], [117]; *Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq)* [2012] FCA 75; 288 ALR 240 [79].

¹²⁹ For further details regarding the comingling of funds, see Part 6.9 of the Fourth Report.

value of their Verified Entitlement ... but without any traceable interest to specific assets or cash in the Deficient Mixed Fund.¹³⁰

149. Viewed in isolation, the transition to the receivership would constitute a transfer of assets for CGT purposes; from the appointment date, the Clients would be taken to have transferred their CGT assets to the statutory trust, and received a proportionate interest in the trust in return.
150. However, s 106-60 of the *ITAA 1997* provides that the vesting of a CGT asset in an entity for the purpose of 'enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset' is ignored for CGT purposes if the security, charge or encumbrance remains over the asset just after the vesting.
151. When the Receivers were appointed, the Client AuM vested in the Receivers subject to the terms of their appointments and the requirements of reg 7.08.03.¹³¹ The Receivers are therefore bound to distribute the Client AuM to Clients in accordance with their entitlements. As Gordon J explained in *Sonray*, in the case of a deficient mixed fund a person's 'entitlement' can be understood as a reference to their equitable charge over the fund according to the relevant trust principles. In other words, on the date the Receivers were appointed, the Client AuM vested in the Receivers 'for the purpose of ... giving effect to' Clients' equitable charges. The vesting of the assets in the Receivers is therefore ignored for CGT purposes pursuant to s 106-160.

Issue 6: Is Brite liable for tax (other than under s 98) on capital gains derived from the Client AuM after 13 December 2023?

Answer

152. No.

Summary

153. After 13 December 2023, Clients remained absolutely entitled to the Client AuM.

Legal principles

154. For capital gains tax purposes:

¹³⁰ Tab 45 (Proposed Distribution Orders) [1]-[2].

¹³¹ See orders dated 13 December 2023 in WAD262/2023 and orders dated 6 February 2024 in WAD13/2024.

- (1) a beneficiary of a trust who is absolutely entitled to a CGT asset of the trust as against the trustee is treated as being the owner of the asset and any act done in relation to the asset by the trustee is treated as an act of the beneficiary;¹³²
- (2) the vesting of a CGT asset in an entity for the purpose of enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset is ignored if the security, charge or encumbrance remains over the asset just after the vesting;¹³³ and
- (3) an act done by an entity in relation to a CGT asset for the purpose of enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset is treated as an act done by the entity that provided the security (instead of by the first-mentioned entity).¹³⁴

Application

155. As Clients were absolutely entitled to the Client AuM on 13 December 2023, they are treated as the owners of the assets for capital gains tax purposes.
156. The effect of the application of s 106-60(1) of the ITAA 1997 is that the vesting of the Client AuM in the Receivers on 13 December 2023 is ignored for capital gains tax purposes. Therefore, after the Receivers were appointed the Clients continued to own the Client AuM for capital gains purposes and any CGT event that happens to the Client AuM will happen to the Clients.
157. When a CGT asset vests in an entity in circumstances covered by s 106-60(1), s 106-60(2) provides that the capital gains tax provisions apply as if any act done by the entity for the purpose of giving effect to or maintaining a security, charge or encumbrance over the asset had been done by the entity 'that provided the security', rather than the first-mentioned entity. The reference in s 106-60(2) to 'the entity that provided the security' in effect refers to the owner of the asset, which, in this case, is the Client.
158. Therefore, any capital gains or losses made in respect of the Client AuM in this period are assessable to the Clients, not Brite.

¹³² *ITAA 1997*, s 106-50.

¹³³ *ITAA 1997*, s 106-60(1).

¹³⁴ *ITAA 1997*, s 106-60(2).

Issue 7: Is Brite liable for tax (other than under s 98) on income derived from the Client AuM after 13 December 2023?

Answer

159. No.

Summary

160. Clients are presently entitled to trust income derived since 13 December 2023 in proportion to their ‘entitlements’ for the purpose of reg 7.08.03 of the *Corporations Regulations 2001*. The Commissioner should remit interest payable by Clients in respect of any unpaid tax liabilities for the year ended 30 June 2024.

Legal principles

161. A beneficiary is presently entitled to a share of the income of a trust estate only if the beneficiary has ‘an interest in the income which is both vested in interest and vested in possession’ and a ‘present legal right to demand and receive payment of the income’.¹³⁵

Analysis

162. The Client AuM has been subject to asset preservation orders since 25 October 2023.¹³⁶ Subject to some limited carve outs, these orders prevent the Receivers from making payments to Clients in satisfaction of their entitlements to the Client AuM.¹³⁷ Further, the Court has ordered that ‘the Receivers are justified and would be acting properly in not distributing any Trust Assets, or any part of them, to or for the benefit of any person asserting a claim to the Trust Assets (including the underlying individual beneficiaries) until further direction or order of the Court’.¹³⁸

163. The Client AuM is vested in the Receivers subject to the terms of their appointments and the requirements of reg 7.08.03. On 2 September 2024, the Court made orders regarding the process for making distributions pursuant to reg 7.08.03. That process involves: valuing and verifying Clients’ entitlements as at 13 December 2023; the publication of an explanatory memorandum

¹³⁵ *Harmer v FCT* (1991) 173 CLR 263, 271.

¹³⁶ See orders made 25 October 2023, 27 October 2024 and 13 December 2023 in WAD262/2023 and orders made 6 March 2024 in WAD13/2024.

¹³⁷ The orders apply to ‘agents’ of Brite. Pursuant to orders made 6 March 2024 in WAD13/2024, the asset preservation orders also apply to ‘any person with custody or control of the Property of the Defendant’.

¹³⁸ Orders made 6 February 2024 in WAD262/2023 [11].

addressing the proposed distributions; a hearing at which interested parties may apply for leave to be heard by the Court; and a distribution methodology hearing where, subject to the grant of leave, interested parties can be heard, before orders are made in respect of the distribution of the Client AuM.¹³⁹ Therefore, until the proposed distribution orders are made, the distribution methodology is not fixed and Clients will not be paid.

164. However, in *Harmer v FCT*, the High Court explained that present entitlement can exist even if the precise entitlement cannot be calculated until a later date and even if the trustee does not have funds available for immediate payment.¹⁴⁰ The Court described the case of moneys subject to an existing trust paid into court for the purpose of determining pre-existing interests. In that case, the High Court said that the court's ultimate orders are simply 'a judicial recognition of a present or relevantly vested beneficial entitlement ... which existed independently of the actual order'.¹⁴¹ On the other hand, where money paid into court is not subject to a pre-existing trust and the effect of the court orders is to create new rights or interests to that money, beneficiaries are not presently entitled to income derived on that money (those were the facts in *Harmer*).
165. The Clients' entitlements to income derived from the Client AuM are pre-existing interests, being their statutory and equitable entitlements to a distribution from the Mixed Deficient Fund in accordance with the process provided for in reg 7.8.03. While the methodology for determining Clients' entitlements remains to be determined by the Court, their interests arose under reg 7.8.03 and are not contingent on (or defeasible by) a decision of the Court. The Court's orders will simply recognise the Clients' pre-existing entitlements.¹⁴²
166. Therefore, applying the reasoning in *Harmer*, Beneficiaries are presently entitled to trust income derived from the Client AuM since 13 December 2023 in proportion to their 'entitlements' for the purpose of reg 7.8.03.
167. Assuming the proposed distribution orders are made in their current form (ie Clients' entitlements are calculated on the basis that the Client AuM is a deficient mixed fund in which no Client has a specific proprietary interest), all Clients would be presently entitled to a proportion of each category of income in the fund. That is, there will not be any streaming.

¹³⁹ Orders made 2 September 2024 in WAD13/2024.

¹⁴⁰ (1991) 173 CLR 263, 271-2.

¹⁴¹ *Harmer v FCT* (1991) 173 CLR 263, 271-2.

¹⁴² Cf *Harmer v Federal Commissioner of Taxation* (1991) 173 CLR 263, 271.

168. A consequence is that it is likely that some Clients or Ultimate Beneficiaries may have unpaid tax liabilities for the year ended 30 June 2024. The Commissioner should exercise his discretion to remit in full any interest payable in respect of any unpaid 2024 tax liabilities on the basis that:¹⁴³

- (1) the circumstances that caused the delay in payment were (and are) wholly outside the control of the Clients and/or Ultimate Beneficiaries;
- (2) Clients and/or Ultimate Beneficiaries will not be able to calculate their unpaid 2024 tax liabilities until after the proposed distribution orders are made and the Receivers have calculated each Client's distribution;¹⁴⁴ and
- (3) Clients and/or Ultimate Beneficiaries will not receive the actual distributions to which any unpaid 2024 tax liabilities relate until a later date, possibly split over multiple instalments.

169. The Receivers would like to discuss the administrative requirements for the payment of Clients' 2024 tax with the ATO.

Issue 8: Is a non-resident Client liable for withholding tax on income derived on the Client AuM since 13 December 2023, to the extent that they are presently entitled? Alternatively, is Brite liable to s 98 tax on that income?

Answer

170. The position is the same as for the pre-receivership period.

171. Non-resident Clients will be liable for withholding tax on the following categories of income derived before 13 December 2023:

- (1) Australian unfranked dividends.
- (2) Australian interest, subject to the 128F exception for publicly issued debentures and debt interests.¹⁴⁵

¹⁴³ *Taxation Administration Act 1953* (Cth), s 8AAG.

¹⁴⁴ See Tab 45 (Proposed Distribution Orders) [22].

¹⁴⁵ *ITAA 1936*, s 128F. And the exception for interest paid by residents incurred through an overseas permanent establishment.

172. These withholding liabilities are also subject to the exception for a 'superannuation fund for non-residents'.¹⁴⁶
173. Withholding tax will not apply to franked dividends, foreign dividends, or foreign interest.¹⁴⁷
174. Brite will be liable as trustee under s 98 of the *ITAA 1936* for tax on capital gains made by non-resident beneficiaries in respect of CGT assets that are TAP.
175. As is the case for the pre-receivership period, the Receivers expect that the scope of withholding tax obligations will be minimal.

Issue 7: Will the liquidation and distribution of the Client AuM cause any CGT events to happen for Clients? How will any capital gain/loss be calculated?

Answer

176. Yes.

Summary

177. When the Client AuM is liquidated, each Client will be treated as disposing of the assets it is absolutely entitled to. The first element of the cost base for the CGT event will be the Client's acquisition costs as shown in Salesforce. The capital proceeds of the CGT event will be equal to the total distribution the Client receives, but only to the extent that the distribution represents amounts not previously recognised as income or taken into account as cash in calculating the verified entitlement as at 13 December 2023.

Legal principles

178. CGT event A1 happens on the disposal of a CGT asset.¹⁴⁸ An asset is disposed of if there is a change in ownership.¹⁴⁹
179. The time of the event is when the contract for the disposal is entered into to or, if there is no contract, when the change of ownership occurs.

¹⁴⁶ *ITAA 1936*, s 128B(3)(jb).

¹⁴⁷ Subject to the exception for interest paid by non-residents incurred through an Australian permanent establishment.

¹⁴⁸ *ITAA 1997*, s 104-10(1).

¹⁴⁹ *ITAA 1997*, s 104-10(2).

180. The owner of the CGT asset makes a capital gain if the capital proceeds from the disposal are more than the asset's cost base and a capital loss if those capital proceeds are less than the asset's reduced cost base.¹⁵⁰
181. The capital proceeds from CGT event A1 are the money and the market value of any property the owner receives, or is entitled to receive, in respect of the event happening.¹⁵¹
182. The cost base of a CGT asset is the sum of its acquisition cost and other costs and expenditure associated with ownership of the asset.¹⁵²
183. CGT event C1 happens when a CGT asset is lost or destroyed.¹⁵³ The time of CGT event C1 is when compensation is first received for the loss or, if no compensation is received, when the loss is discovered.¹⁵⁴ The capital gain or loss from CGT event C1 is the difference between the capital proceeds from the loss or destruction of the asset and the asset's cost base (or reduced cost base).¹⁵⁵
184. If more than one CGT event is applicable to a situation, the more specific event is used.¹⁵⁶

Analysis

185. As explained in response to issues 2 and 6 above:
 - (1) The effect of the application of s 106-60 of the *ITAA 1997* is that Clients remained absolutely entitled to the Client AuM after 13 December 2023 and any act done by the Receivers in relation to the Client AuM will be treated as an act done by the Clients.
 - (2) The timing of CGT event C1 on the loss of a CGT asset is when compensation is received or the loss is discovered. Due to the ongoing distribution process and the inability to allocate lost asset to particular Clients, the loss of assets is yet to be recognised for capital gains tax purposes.

¹⁵⁰ *ITAA 1997*, s 104-10(4).

¹⁵¹ *ITAA 1997*, s 116-20.

¹⁵² *ITAA 1997*, s 110-25.

¹⁵³ *ITAA 1997*, s 104-20(1).

¹⁵⁴ *ITAA 1997*, s 104-20(2).

¹⁵⁵ *ITAA 1997*, s 104-20(3).

¹⁵⁶ *ITAA 1997*, s 102-25(1).

186. Therefore, for capital gain tax purposes, clients remain absolutely entitled to all assets recorded in their individual Salesforce data as at 13 December 2023, including assets which, in fact, have been lost.
187. Because the proposed distribution methodology will not enable Clients to determine which of their CGT assets were lost, CGT event C1 will not happen as the loss cannot be 'discovered'. Rather, when the Client AuM is liquidated, each Client will be treated as disposing of the assets it is absolutely entitled to, including assets which were in fact lost at an earlier point in time. CGT Event A1 will happen at the time the assets are sold or the time the Receivers enter into a contract for their disposal.
188. The capital proceeds for the CGT event will be equal to the total distribution the Client receives less any part of the distribution that represents income or cash held in the Client accounts as at 13 December 2023 (these are not amounts paid to Clients 'in respect of' the disposal of their CGT assets).¹⁵⁷
189. The first element of the Clients' cost base for the CGT event will be the Client's acquisition costs as shown in Salesforce.
190. The net effect will be the same as separately recognising the disposal of existing assets and the loss of misappropriated assets.

Issue 8: Will Clients that are non-residents disregard any capital gains or losses they make on CGT assets that are not TAP from the appointment of the Receivers, the liquidation of the Client AuM or the distribution of the proceeds?

Answer:

191. Yes.

Summary

192. Yes. Assuming it is correct (as the Receivers believe) that none of the assets in the Client AuM are TAP, Clients that are foreign residents or the trustees of foreign trusts will disregard any capital gains in respect of the Client AuM.

Legal principles

¹⁵⁷ ITAA 1997, s 116-20.

193. Section 855-10 of the *ITAA 1997* provides that a foreign resident or the trustee of a foreign trust for CGT purposes disregards a capital gain or capital loss from a CGT event if the CGT event happens in relation to a CGT asset that is not taxable Australian property.
194. A trust (other than a unit trust) is a foreign trust for CGT purposes if:
 - (1) the trustee is not an Australian resident; and
 - (2) the central management and control of the trust is not in Australia.¹⁵⁸
195. A CGT asset is TAP if it is:
 - (1) Taxable Australian real property;¹⁵⁹
 - (2) An indirect interest in Australian real property;¹⁶⁰
 - (3) A business asset of a permanent establishment in Australia;
 - (4) An option or right to acquire any of the above assets; or
 - (5) A CGT asset that is deemed to be Australian taxable property pursuant to an election made under subsection 104-165(3).¹⁶¹
196. An 'indirect Australian real property interest' exists where a foreign resident has a membership interest in an entity that passes both the 'non-portfolio interest test' and the 'principal asset test'.¹⁶²

Analysis

197. Although the Receivers have not determined the residency status of each Client or Ultimate Beneficiary, it is reasonable to assume that the majority of the Clients and Ultimate Beneficiaries are foreign residents. The Receivers' analysis indicates that over 98% of the Client AuM by value is held on behalf of Clients with mailing addresses outside Australia and circa 90% of the Client AuM is held on behalf of Ultimate Beneficiaries with mailing addresses outside Australia. The following analysis will apply to Clients who meet the relevant residency requirements.

¹⁵⁸ *ITAA 1997*, s 995-1 (definitions of "foreign trust for CGT purposes" and "resident trust for CGT purposes").

¹⁵⁹ A CGT asset is taxable Australian real property if it is: (a) real property situated in Australia (including a lease of land in Australia); or (b) a mining quarrying or prospecting right in respect of minerals, petroleum or quarry materials situated in Australia: *ITAA 1997*, s 855-20.

¹⁶⁰ See *ITAA 1997*, s 855-25.

¹⁶¹ *ITAA 1997*, s 855-15.

¹⁶² *ITAA 1997*, s 855-25.

Application of s 855-10

198. Section 855-10 does not apply to a capital gain that a foreign resident beneficiary has because of s 115-215(3), as these capital gains do not come from a CGT event that happened directly to the beneficiary.¹⁶³ However, where a beneficiary is absolutely entitled to CGT assets as against the trustee, any CGT event that happens to the CGT asset is deemed to happen to the beneficiary.¹⁶⁴
199. For the reasons given in respect of issues 1 and 6 above, at all times before and after the appointment of the Receivers Clients have been absolutely entitled to the CGT assets comprising the Client AuM for capital gains tax purposes.
200. Therefore, Clients that are foreign residents or the trustees of foreign trusts for CGT purposes will disregard any capital gains or losses from CGT assets that are not taxable Australian property.

Taxable Australian property

201. The information available to the Receivers indicates that the Client AUM does not include any CGT assets that are:
 - (a) taxable Australian real property; or
 - (b) any of the CGT assets listed in items 3-5 of the Table in s 855-15 of the *ITAA 1997*.
202. The remaining category of TAP is 'an indirect interest in Australian real property'.
203. The Receivers have not analysed the Client AuM for the purpose of determining whether the assets would pass the principal asset test. However, it is reasonable to assume that the Client AuM does not include an aggregate interest of 10% or more in any entity for the purpose of the non-portfolio interest test in s 960-195 of the *ITAA 1997*. It must also be assumed that no Client holds an aggregate interest of 10% or more in any entity when its interest in the Client AuM is combined with any other direct participation interest the Client or its associates have in the entity.¹⁶⁵ If those assumptions are correct, none of the CGT assets in the Client AuM are TAP and Clients that are foreign residents or the trustees of foreign trusts will disregard any capital

¹⁶³ *Peter Greensill Family Co Pty Ltd (Trustee) v Commissioner of Taxation* (2021) 285 FCR 410 [35]; ATO Taxation Determination TD 2022/13.

¹⁶⁴ *ITAA 1997*, s 106-50(2).

¹⁶⁵ *ITAA 1997*, ss 960-190, 960-195.

gains (or losses) from the appointment of the Receivers, liquidation of the Client AuM or distribution of the proceeds.

G Next steps

204. The Receivers anticipate applying for a ruling or rulings, at least in respect of the most significant threshold issues addressed in this paper. Before doing so, we would like to meet with you to discuss the Commissioner's preliminary views and, hopefully, reach an in principle agreement. We will contact you within the next few days to arrange a meeting.

Annexure B Orders (Interim Distribution Application)



Federal Court of Australia

District Registry: Western Australia Registry

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and others named in
the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

AMENDED ORDER

(Amended pursuant to r 39.05(e) of the *Federal Court Rules 2011* (Cth))

JUDGE: Justice O'Sullivan

DATE OF ORDER: 15 September 2025

WHERE MADE: Perth

For the purposes of this order:

The same definitions used in the Distribution Methodology Orders made on 15 September 2025 in these proceedings apply to these orders unless stated otherwise.

THE COURT NOTES THAT:

1. The Receivers must deduct from the Final Total Value, referred to above in order 3, an amount to be determined and approved by the Court. These funds are to be deducted prior to the Valuation Date and retained by the Receivers (**Retained Funds**).
2. The quantum of the Retained Fund is to be comprised of the following amounts, each to be specified on application to the Court and supported with evidence:
 - (a) An amount reflecting a conservative estimate of the potential tax liabilities of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client AuM, including any interest or penalties, where there are unresolved tax issues at the time of determining the amount of any distribution;



- (b) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in investigating and pursuing claims against third parties;
- (c) An amount reflecting the Receivers' reasonable remuneration, costs and expenses to resolve any other outstanding matter and a conservative estimate of any other potential liability identified at the time of determining the amount of any distribution, including without limitation, any potential adverse costs order that may be made against the Receivers or Brite Advisors; and
- (d) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in managing the Retained Funds for the anticipated remaining length of the Receivership.

THE COURT ORDERS THAT:

Interim Distribution Application

1. The Receivers would be acting properly and are justified in bringing an interlocutory application, as set out in Orders 2 to 11 below, to make an interim distribution from the Trust Assets to Corporate Trustees and Beneficiaries (**Interim Distribution Application**).
2. By 7 October 2025, the Receivers are to:
 - (a) file and serve a minute of proposed orders that the Receivers seek by the Interim Distribution Application; and
 - (b) file and serve any affidavit evidence and any written outline of submissions, with such submissions being limited to 10 pages.
3. Any person who has been granted leave to be heard as an interested party in this matter without becoming a party to the proceeding is granted leave to be heard, if they so wish, in relation to the Interim Distribution Application.
4. Any person may seek leave pursuant to r 2.13(1) of the *Federal Court (Corporations) Rules 2000* (Cth) to be heard as an interested party in relation to the Interim Distribution Application. Any application for leave to be heard as an interested party must be filed with the Court and served on the Receivers by on or before 14 October



2025.

5. Any application for leave to be heard as an interested party pursuant to order 4 shall be determined by the Court on the papers.
6. By 28 October 2025, any interested party may file any affidavit evidence and any written outline of submissions, with such submissions being limited to 10 pages.
7. Any person who is not an interested party may provide the Receivers with any submissions or evidence they seek to put before the Court to determine the Interim Distribution Application by 28 October 2025. The Receiver must file with the Court an affidavit including any submissions or evidence so received by 30 October 2025.
8. By 4 November 2025, the Receivers may file any affidavit evidence and any outline of submissions in reply, with such submissions being limited to 5 pages.
9. Any outlines of submissions and affidavits must be easily legible using a font size of at least 12 points and 1 ½ line spacing throughout.
10. The Receivers are to file and serve a Court Book by 5 November 2025.
11. The Interim Distribution Application hearing be listed for a full day hearing on **Wednesday 12 November 2025 at 9am AWST / 11.30am ACDT.**
12. The Receivers and each interested party have liberty to apply on 48 hours' written notice.

Joining the ATO

13. The Receivers would be acting properly and are justified in bringing an interlocutory application under r 2.13 of the *Federal Court (Corporations) Rules 2000* (Cth) for the Commissioner of Taxation for the Commonwealth of Australia to be joined as an interested party to be heard on the Interim Distribution Application and any further interlocutory application brought by the Receivers in relation to the distribution or retention of Trust Assets in this proceeding.
14. The following interested parties be granted access to the Court file (excluding any material which the Court has marked as confidential) in this matter:
 - (a) the Administrators of Relay Administration Ltd;
 - (b) Alltrust Services Ltd;



- (c) Bourse Pension Administrators (Malta) Limited;
- (d) Commissioner of Taxation for the Commonwealth of Australia; and
- (e) Interactive Brokers Australia Pty Ltd.

Surrender Rebate and Interest

- 15. The Receivers would be acting properly and are justified in treating any balance of a Surrender Rebate as a deduction in the calculation of the respective Beneficiary's total entitlement in accordance with Order 9(b) of the orders made in this matter on 2 September 2024.
- 16. The Receivers would be acting properly and are justified in not adding any interest to any cash holding recorded in the 13 December 2023 Data.

Date orders authenticated: 16 September 2025

Sia Lagos
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: WAD13/2024

Federal Court of Australia

District Registry: Western Australia Registry

Division: General

Interested Person	LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR CAPACITY AS RECEIVERS AND MANAGERS OF BRITE ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Interested Person	ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN THEIR CAPACITIES AS JOINT ADMINISTRATORS OF RELAY ADMINISTRATION LIMITED, CORINTHIAN PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES LIMITED (ALL IN ADMINISTRATION)
Interested Person	INTERACTIVE BROKERS AUSTRALIA PTY LTD ACN 166 929 568



Findex (Aust) Pty Ltd
trading as Crowe Australasia
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 www.crowe.com.au

6 October 2025

Ms Linda Smith & Mr Rob Kirman
 Receivers & Managers
 Brite Advisors Pty Ltd (Receivers & Managers Appointed) (In Liquidation)
 C/- McGrathNicol
 Level 19
 2 The Esplanade
 PERTH WA 6000

Dear Linda & Rob

TRUSTEE TAXATION LIABILITIES

We refer to our ongoing discussions with you regarding taxation matters arising from the winding up of Brite Advisors Pty Ltd (Receivers & Managers Appointed) (In Liquidation) ("Brite"), and are pleased to provide this report on the estimated Australian tax liabilities arising for Brite in its capacity as trustee of the trust estate comprising the Brite Client assets under management ("Client AuM").

Background and assumptions

In-line with instructions provided by Timothy Stokes of HWLE on 1 October 2025, the calculations in this report have been performed on the basis that the Australian Taxation Office ("ATO") will accept the primary position contained in the detailed position paper provided to the ATO on 28 March 2025 ("Position Paper").

The Position Paper set out the Receivers' analysis of the tax issues falling for determination by the Commissioner of Taxation ("Commissioner"), as identified with the assistance of tax counsel Andrew de Wijn SC and Jennifer Vogan.

In the Position Paper and subsequent correspondence, the Receivers put to the Commissioner that:

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- (a) Before 13 December 2023 (when the Receivers were appointed), Clients were between them presently entitled to all income from the Client AuM (paragraph 115);
- (b) Clients are between them also presently entitled to all trust income derived since 13 December 2023 in proportion to their 'entitlements' for the purpose of reg 7.08.03 of the *Corporations Regulations 2001* (Cth) (paragraph 160); and
- (c) At least one of the following applies:
 - (i) Throughout that period, Clients have been between them absolutely entitled to all CGT assets comprising the Client AuM and will be treated as disposing of those assets when the Client AuM is liquidated (paragraphs 155 to 158);
 - (ii) Clients are, or will be, between them specifically entitled to all capital gains made on liquidation of the Client AuM; or
 - (iii) Clients are, or will be, between them presently entitled to all trust income derived in the income year(s) in which the Client AuM is liquidated.

HWLE's instructions state that in our calculation of the estimated tax liabilities for Brite, we are to make the following assumptions:

- (a) The Client AuM is a 'fixed trust' for the purpose of section 855-40 of the *Income Tax Assessment Act 1997* (Cth) ("ITAA 1997") at all times;
- (b) None of the assets in the Client AuM are 'taxable Australian property' within the meaning of section 855-15 of the ITAA 1997; and
- (c) The amounts of broker interest paid by Interactive Brokers Australia, which has not been allocated to Client accounts, is income to which no beneficiary is presently entitled, and Brite would be liable to tax on any net income to which no beneficiary is presently entitled at 47% pursuant to section 99A of the *Income Tax Assessment Act (1936)* (Cth) ("ITAA 1936").

Further details on the information we have relied upon, and assumptions we have made in preparing the calculations are contained in Appendix 1 to this report.

Calculation

We summarise below the estimated Australian taxation outcomes for Brite based on the information provided to us to date, the instructions provided by HWLE, and other assumptions contained in Appendix 1 of this report:

Year	Withholding tax on Australian sourced interest and unfranked dividends	Trustee tax liability under section 99A	Penalties and ATO general interest charge on trustee liability	Total estimated Australian tax liability (including penalties)
FY2020 (part year only)	6,417	1,120	2,537	10,071
FY2021	25,428	-	-	25,428
FY2022	29,338	4,812	8,306	42,456
FY2023	14,056	1,031,801	1,172,596	2,218,453



Year	Withholding tax on Australian sourced interest and unfranked dividends	Trustee tax liability under section 99A	Penalties and ATO general interest charge on trustee liability	Total estimated Australian tax liability (including penalties)
FY2024 (pre-appointment)	5,860	773,565	764,869	1,544,294
FY2024 (post-appointment)	8,370	1,574,144	1,557,949	3,140,463
FY2025	34,159	1,986,175	-	2,020,334
FY2026 (year to date)	29,982	738,612	-	768,594
Total estimated tax liability for Brite as trustee	153,610	6,110,229	3,506,257	9,770,096

We note that the estimates of Brite's Australian tax obligations above are solely in respect of Brite's obligations in its capacity as trustee of the Trust. Further income taxes and/or withholding taxes may be payable in other jurisdictions by Brite in its capacity as trustee (e.g. US Foreign Account Transaction Compliance Act ("FATCA") withholding tax).

Further income taxes may also be payable by intermediary corporate trustees, pension fund Clients and ultimate pension fund beneficiaries in Australian and/or other jurisdictions on receipt of distributions by the Receivers, if not already paid on an annual accruals basis. We have not considered or included beneficiary level taxes in our calculation above.

We thank you for the opportunity to assist you in this matter and trust that you will contact me if you have any queries.

Yours sincerely
Findex (Aust) Pty Ltd
 trading as Crowe Australasia

COREY BEAT
 Partner – Tax Advisory

DISCLAIMER

The above comments and have been made specifically in response to your request for this advice on behalf the Receivers of Brite Advisors Pty Ltd (Receivers & Managers Appointed) (In Liquidation) (the Client). Accordingly, neither Crowe (the firm) or any member or employee of the firm undertakes any responsibility in any way whatsoever to any person or company other than the Client for any errors or omissions in this paper, however caused.

The above advice has been prepared on the basis of taxation law as at 2 December 2024. We have not been engaged by the Client to update the contents of this paper to reflect legislative or judicial amendment to law occurring after that date. Therefore the firm can accept no responsibility for any outcomes that differ to the above arising from a change to the legislation. For this reason, it is strongly recommended that no party proceed with any of the transactions contemplated in this paper without first seeking professional advice in light of the then current legislation and practices.



Appendix 1 – Assumptions made and methodology used in performing the calculations

1.1 Sources of information

We have performed the calculations based on the following information provided to us by the Receivers:

Document/file	Description
251001-BRITADV01-Updated tax query data to 26 September 2025.xlsx	Transaction schedules extracted from Interactive Broker statements during the period from 1 October 2019 to 26 September 2025
250918-BRITADV01-Quantification of interest income.xlsx	Summary of interest earned on term deposits held by Receivers, and allocation of interest earned between deficient mixed fund ("DMF") and beneficiaries who held excluded assets
Brite Advisors – Beneficiary Financial Accounts Detailed (incl Scheme Type).xlsx	Details of ultimate clients who held accounts with Brite as at the date of the appointment of the Receivers, being 13 December 2023, including the pension scheme they invested through, and the corporate trustee they have engaged (if any).
Workbook 1 – Brite Advisors – Aus mailing address Beneficiaries.xlsx	Details of mailing addresses provided by ultimate clients taken from Salesforce records

The Receivers have advised that they have requested transactions schedules prior to October 2019 from Interactive Brokers but they have not been provided this information to date.

We have not audited this information and have assumed that the transaction data is both complete and correct for the period under review.

1.2 Trust income definition

In the absence of a formal trust deed that defines how trust income is to be calculated on an annual basis, we have assumed that all receipts by the trustee will be deemed to be income of the trust for the purpose of this calculation.

Where the trust has a net loss for an income tax year arising from a disposal of securities, we have not included the loss from disposal of securities when calculating trust income for the year.

1.3 Summary of types of income and treatment in calculations

Our calculation methodology has been based on the summary of tax consequences arising for Brite in respect of each type of income and capital gains set out below:

Interest Income			
Interest income generated from:	Source of income	Beneficiaries presently entitled?	Comment
Bonds on Interactive Brokers platform	Foreign	Yes	Brite not liable to trustee tax or withholding tax on this income
Interest credited by Interactive Brokers (including interest from Stock Yield Enhancement	Australian	No	Brite liable to trustee tax at section 99A rates on this income



Interest Income			
Interest Income generated from:	Source of income	Beneficiaries presently entitled?	Comment
Program)			
Interest from deposits with an Australian bank in Australia – foreign currency denominated accounts	Australian	Interest attributed to DMF – No	Brite liable to trustee tax at section 99A rates on this income
Interest from deposits with an Australian bank in Australia – foreign currency denominated accounts	Australian	Interest attributed to excluded assets - Yes	Only non-resident beneficiaries are entitled to income from excluded assets - Brite liable to non-resident withholding tax on this interest income
Dividend Income			
Dividend income generated from:	Source of income	Beneficiaries presently entitled?	Comment
Foreign entity shares traded on a foreign exchange	Foreign	Yes	Brite not liable to trustee tax or withholding tax on this income
Australian entity shares traded on a foreign exchange	Australian	Yes	Withholding tax applies only to unfranked dividends where non-resident beneficiaries are presently entitled Fully franked dividends not subject to further withholding by payer
Australian entity shares traded on an Australian exchange	Australian	Yes	Withholding tax applies only to unfranked dividends where non-resident beneficiaries are presently entitled Fully franked dividends not subject to further withholding by payer
Capital Gains			
Income generated from:	Source of income	Beneficiaries presently entitled	Comment
Sale of non-TAP assets	N/A	Yes	Brite not liable to trustee tax or withholding tax on this income



Exchange traded funds			
Income generated from:	Source of Income	Beneficiaries presently entitled	Comment
Mixed portfolio of foreign and Australian shareholdings	As advised by the ETF	Yes	<p>These funds are generally Managed Investment Trusts, and will provide a summary of income by source, capital gains and any tax credits available that Brite can rely on</p> <p>Brite's tax liability on each component of ETF income will be in line with the individual categories above</p>

1.4 Conversion of foreign currency denominated amounts to AUD

The detailed transaction schedules contain income and expense items denominated in the currency in which the income was received, or the expense was paid.

We have converted the amounts into Australian currency using average annual exchange rates published by the ATO, which are sourced from the Reserve Bank of Australia (RBA).

For the period 1 October 2019 to 30 August 2024, some currencies held by Brite did not have their currencies published by the RBA. Listed below are the currencies where we were unable to find annual average foreign exchange rates on either the ATO or RBA websites, and have instead relied on the monthly average rates published by the RBA where these were available, or from XRates.com where these were not available.

FY2020 – FY2022	FY2024 (Pre-appt)	FY2024 (Post-appt)	FY2025 and FY2026 (YTD)
Hungary (HUF)	Hungary (HUF)	Hungary (HUF)	Hungary (HUF)
Norway (NOK)	Norway (NOK)	Norway (NOK)	Norway (NOK)
Poland (PLN)	Poland (PLN)	Poland (PLN)	Poland (PLN)
Sweden (SEK)	Sweden (SEK)	Sweden (SEK)	Sweden (SEK)
	Canada (CAD)	Canada (CAD)	Switzerland (CHF)
		Switzerland (CHF)	

1.5 Deductible expenses

When calculating the trust income to which no beneficiary is entitled, we have not claimed income tax deductions for any fees, commissions or debit interest charges found in transactions on the Interactive Brokers platform.

We have also not claimed any income tax deductions for Receivers costs or other professional fees incurred by Brite post-13 December 2023.



1.6 ATO penalties

We have assumed the ATO will charge GIC on outstanding trustee tax assessments under section 99A of the ITAA 1936, and have calculated GIC on trustee tax liabilities based on an assumption the tax liability would be due and payable from 31 October in each relevant income tax year.

No GIC has been calculated on assessments that are not yet due.

We have assumed the ATO will levy failure to lodge penalties on all overdue returns, other than returns with no trustee tax liability.

We have also assumed the ATO will levy failure to provide document penalties at the highest base penalty rate (75% of tax shortfall) and with a 20% uplift for all years other than the first year (FY 2020).

1.7 Residency of beneficiaries

We have determined the residency of beneficiaries based on information contained in the *Brite Advisors - Beneficiary Financial Accounts Detailed (incl Scheme type).xlsx*. Specifically:

- For pension fund schemes, we have determined residency based on the jurisdiction of the corporate trustee, not the jurisdiction of the ultimate beneficiary;
- For direct investors, we have determined residency based on the jurisdiction of the corporate trustee, not the jurisdiction of the ultimate beneficiary;
- For beneficiaries where their pension scheme is unknown, but they have a corporate trustee listed on their account, we have determined residency based on the jurisdiction of the corporate trustee, not the jurisdiction of the ultimate beneficiary;
- For beneficiaries where their pension scheme is unknown, and they have no corporate trustee listed on their account, we have determined residency based on their mailing address.

1.8 Beneficiary present entitlement

For the scenarios where we have assumed beneficiaries are presently entitled to income of the Trust for the year, we have calculated their present entitlement proportionately based on the proportion of their account balance to total Client AuM (before application of any shortfall) contained in the document *Brite Advisors - Beneficiary Financial Accounts Detailed (incl Scheme type).xlsx*.

From this, we have estimated the split of present entitlement between Australian resident Clients and non-resident Clients to be as follows:

Residency of Client	%
Australian resident	1.53%
Foreign resident	98.47%

30 September 2025

NORTON ROSE FULBRIGHT

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Your reference: **Our reference:**
4083585

Email: cboothman@hwle.com.au; tstokes@hwle.com.au

Attention: Carmen Boothman and Timothy Stokes

HWL Ebsworth
Level 20
240 St Georges Terrace
PERTH WA 6000

Dear Carmen and Timothy

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation) (Brite) Federal Court Proceedings numbered WAD 13 of 2024 (Proceedings)

- 1 We continue to act for the Australian Taxation Office (**ATO**) and refer to the ATO's letter to you dated 27 August 2025 (**ATO Letter**).
- 2 If the Receivers require the Commissioner's binding view on the four Preliminary View issues set out in the ATO Letter, they can lodge a Private Binding Ruling Application (**PBR Application**) limited to those issues forthwith.
- 3 We are instructed that if the Receivers do so by no later than **6 October 2025**, and there are no material changes to the facts and assumptions already submitted to the ATO and relied upon in issuing the ATO Letter, then the Commissioner presently anticipates that a binding ruling could be issued by **31 October 2025**.
- 4 We are instructed to bring this letter to the attention of the Court in opposition of the application made by the Receivers to join the Commissioner to the Proceedings.

Please contact us if you seek to discuss.

Yours sincerely



Kellie Link
Partner
Norton Rose Fulbright Australia
Contact: Molly Urwin

APAC-#313649160-v1

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Our Ref: CAB:JLH:1202928

1 October 2025

Kellie Link and Nick White
Norton Rose Fullbright
Level 30, 108 St Georges Terrace
PERTH WA 6000

Email: kellie.link@nortonrosefullbright.com; nick.white@nortonrosefullbright.com

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Dear Kellie and Nick

WAD 13/2024: ASIC v Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation) (Brite Advisors) (Proceedings)

1. We refer to your letter of 30 September 2025, and adopt the definitions used in our previous correspondence.
2. We are grateful that the Commissioner is able to expedite determination of a PBR Application by the Receivers on the issues the subject of the Preliminary View, and will submit that application by 6 October 2025. We note the qualification on the Commissioner's ability to issue a PBR by 31 October 2025, being that there is no material change to the facts and assumptions already submitted to the ATO.
3. We note that the issues in the Preliminary View are a sub-set of the matters raised in the Receivers' Position Paper.
4. As you will be aware, on 7 October 2025 the Receivers will file an application for orders to facilitate an interim distribution of the Client AuM (**Interim Distribution Application**). While the evidentiary basis for doing so will be disclosed in the supporting affidavit material that will be filed, the Receivers intend to seek directions that they are justified in distributing the bulk of the Deficient Mixed Fund, and that the only funds to be withheld from distribution on account of liability to the Commissioner is to be calculated by reference to the position advanced by the Receivers in the Position Paper. Our clients' tax advisors are in the process of performing those calculations, but we understand that amount to be in the order of approximately AUD\$2m.
5. On that basis, notwithstanding any PBR issued in respect of the Preliminary View, the Receivers remain of the view that the Commissioner has an interest in the Interim Distribution Application and ought to be joined as an interested party for that purpose.

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6. Please do not hesitate to let us know if you would like to discuss any aspect of the above further.

Kind regards



Carmen Boothman

Partner

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Krysten Ioannidis

From: Kellie Link <kellie.link@nortonrosefulbright.com>
Sent: Monday, 6 October 2025 7:43 PM
To: Carmen Boothman
Cc: Molly Urwin; Nick White; Jemma Huntsman; Simone Basso
Subject: RE: Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation) [HWLE-MATTER.C0220392.1202928] [NRF-APAC.1069352.4083585.FID3649361]

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[Report Suspicious](#)

Dear Carmen

Thank you for your email.

We have sought instructions and will revert.

Kind regards

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NORTON ROSE FULBRIGHT

nortonrosefulbright.com

From: Carmen Boothman <cboothman@hwle.com.au>
Sent: Monday, 6 October 2025 6:27 PM
To: Kellie Link <kellie.link@nortonrosefulbright.com>
Cc: Molly Urwin <molly.urwin@nortonrosefulbright.com>; Nick White <nick.white@nortonrosefulbright.com>; Jemma Huntsman <jhuntsman@hwle.com.au>; Simone Basso <sbasso@hwle.com.au>
Subject: Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation) [HWLE-MATTER.C0220392.1202928]

External Email - Use Caution

Dear Kellie

We refer to your letter of 30 September 2025 and our response of 1 October 2025 in which we confirmed that the Receivers would lodge an application for a private binding ruling limited to the issues the subject of the preliminary view expressed in the ATO's letter of 27 August 2025.

We note that you have said that the Commissioner presently anticipates that a binding ruling could be issued by 31 October 2025 if the application was lodged by today, 6 October 2025 (and subject to other qualifications).

We have worked with tax counsel to prepare a PBR application which is in final form. The Receivers require one further day to review the application before they are able to instruct us to lodge it.

Accordingly, the Receivers will file their PBR application by tomorrow, 7 October 2025. We assume that the Commissioner will be able to issue a binding ruling by 1 November 2025, but please let us know if your client disagrees.

Kind regards
Carmen

Carmen Boothman
Partner



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Australian Government
Australian Taxation Office

Private ruling application

Who should use this form

Use this form to apply for a [private ruling](#) for yourself or on behalf of another person or entity. You can also use it to apply for [administratively binding advice](#) (ABA).

Before you use this form

Check [Supporting documents](#) for the specific information you may need to provide with this form.

If you are seeking advice for a complex transaction, consider an [early engagement](#) discussion before you complete this form.

How to complete this form

This form uses JavaScript. If prompted, you will need to enable JavaScript. Our [Private ruling application form instructions](#) has more details.

- Fields you **MUST COMPLETE** are marked (*).
- Complete this form on your computer as your answers help choose which questions will appear.
- Complete Sections A, B, C and D.
- Sign and date the declaration at Section E.
- Lodge the completed form using instructions in Section F.

More information

For help:

- completing this application, use our [ruling reference guide](#) or see [Applying for a private ruling](#)
- accessing online services, see [Online services](#).

Application date*

07/10/2025

Is the taxpayer seriously considering the scheme or circumstance?*

No ☐

Yes ☒

Section A: Taxpayer details

Include only the individuals or entities relevant to the particular scheme or circumstances set out in this application.

Taxpayer 1

Is this taxpayer an individual or an entity?*

☐ Individual

☒ Entity

Entity name*

Brite Advisors Pty Ltd as The Trustee for Brite Client Funds

It is not compulsory to provide your TFN, but it will help us process your application.

☒ TFN

☐ ABN

TFN

Is this taxpayer registered for GST?*

No ☐

Yes ☒

Is the business registered as a GST branch?*

No ☒

Yes ☐

Add taxpayer

Section B: Contact details

Contact person*

Timothy Stokes

Postal address (street address or PO Box)

We need your postal address in case we need to post your advice to you.

Street address*

Level 14/83 Pirie Street

Suburb/town/locality*

Adelaide

State/territory*

SA

Postcode*

5000

Email address

tstokes@hwle.com.au



- ☒ The internet is not a secure environment. We don't control the path of emails, so we can't guarantee the privacy of personal information sent by email. Select this box to confirm you understand the risks of using unsecure channels to send

Preferred phone number*

0882102610

Fax number**How would you prefer us to contact you about this application?***

We aim to contact you using your preferred channel.

- ☐ Phone ☒ Email ☐ Post ☐ Fax ☐ Online services

How will you lodge this form?*

- ☐ Online services
☒ Fax or post

Are you authorised to act for the taxpayers in this matter?*No ☐Yes ☒ Do we have a record of your authority to act?No ☐Yes ☒ Include a copy of your authority to act if this is not already recorded on our system**Are you a tax professional?***No ☐Yes ☒ Registered agent number (RAN)* (if applicable)

--	--	--	--	--	--	--	--	--	--

Practice name*

HWLE Lawyers

Section C: Application details**What interactions have you had with the ATO for the issues raised in this application?***

- ☐ An audit (including being notified of a proposed audit)
☒ Oral or written advice or a ruling has been provided or requested
☐ No interactions

Oral or written advice or ruling:

ATO reference number (if known)

1052442807949

Date of ruling/advice (or approximation)

27/08/2025

 We may choose not to rule if the matter has already been decided in private ruling or audit.

What is the subject of the advice?*

Select all that apply

- | | |
|--|---|
| <input type="checkbox"/> Administratively binding advice (ABA) | <input checked="" type="checkbox"/> Interest, dividend or royalty withholding tax |
| <input checked="" type="checkbox"/> Capital gains tax | <input checked="" type="checkbox"/> International matters |
| <input type="checkbox"/> Excise (alcohol) | <input type="checkbox"/> Luxury car tax |
| <input type="checkbox"/> Excise (fuel) | <input type="checkbox"/> Market valuation |
| <input type="checkbox"/> Excise (tobacco) | <input type="checkbox"/> Not for profit |
| <input type="checkbox"/> Fringe benefits tax | <input type="checkbox"/> Small business |
| <input type="checkbox"/> Fuel tax | <input type="checkbox"/> Superannuation |
| <input type="checkbox"/> Goods and services tax | <input type="checkbox"/> Wine equalisation tax |
| <input checked="" type="checkbox"/> Income tax | |
| <input type="checkbox"/> Other | |

What is the period or periods this application applies for?*


Detail the income years or other accounting periods covered by this application, for example, Year ended 30 June 2027 or Quarter ended 30 September 2026.

If you don't know the start and end dates, detail the events that will determine the start and end dates of the particular scheme or circumstances.

Year ending 30 June 2026

Section D: Your ruling

What type of application would you like to submit?*

- ☐ You will provide information about the facts and circumstances for the ATO to determine the advice
- ☒ You are confident in how the law applies to the facts and circumstances and wish to include detailed reasoning and legislative references to support your application
-  Our [Reference Guide](#)'s style guide and examples will help you with formatting.

How do you wish to provide the application?*

- ☐ Input on this form ☒ Attach as a separate document

Include the following headings and information in your separate document:

- **Question**
List and number the questions you want us to address. Include the relevant provision and structure each question to allow a 'yes' or 'no' answer. We can only give advice on the application of specific tax laws (see section 357-55 of Schedule 1 of the *Taxation Administration Act 1953*) or on certain topics.
 - **Answer**
Record a 'Yes' or 'No' answer for each question.
 - **Relevant facts and circumstances**
Give a full description of the scheme or circumstances. Include all facts, transaction dates and the names of other parties actively involved. You should be reasonably certain about these details before you lodge this application.
 - **Assumptions**
Explain any assumptions you have made in determining the answer to your question(s).
 - **Relevant legislative provisions**
Record the legislative provisions that will be ruled on.
 - **Reasons for decision – summary**
For each question provide a brief statement of the decision.
 - **Reasons for decision – detailed reasoning**
Provide detailed reasoning for how the answer for each question was reached.
- Our reference guide has example rulings to help with formatting.

Section E: Declaration

Applying on your own behalf

If you are applying on your own behalf, you are declaring the following by signing this form; the information contained in this document, and any attached documents, is true and correct.

Agent

If you are an agent, by signing this form you are declaring that:

- this document and any attached documents have been prepared according to information supplied by the client (or clients) identified in Section A of this form
- you have received a declaration from each client stating that the information provided to you to prepare this application is true and correct
- you are authorised by each client to give this application to the Commissioner of Taxation.

Legal personal representative

If you are a legal personal representative, you are declaring the following by signing this form; the information contained in this document, and any attached documents, is true and correct.

Terms used

'You' includes a trustee of a trust, a partner in a partnership, public officer or company director.

'Legal personal representative' means an executor or administrator of a deceased estate, a person holding a general power of attorney or a trustee of an estate of a person under a legal disability.

'Agent' includes spouse, relative, friend, or another agent, tax agent or other tax professional authorised to give this application to the Commissioner of Taxation.

Privacy

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If you are sending this by:

- fax or post, print this form and sign and date it below
- online services, type your name below as an electronic signature.

Sign



Date

07/10/2025

Section F: How to lodge your application

You can lodge this form by:

- fax to the appropriate number below
- mail to the appropriate address below.

Send copies of any relevant supporting documents with this form. This will speed up processing the application.

We provide [details of supporting documents](#) required for many categories of private ruling applications.

Alternatively, to fax or post, select your advice topic or entity type from the drop down list for the appropriate details.

Save as draft

Validate

Save final version

Print

Our Ref: 1222245

7 October 2025

Private & Confidential
Urgent

Ms Deanna Sari
Assistant Commissioner
Australian Taxation Office
GPO Box 9990
SYDNEY NSW 2001

Email: Deanna.Sari@ato.gov.au

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Dear Ms Sari

Private Binding Ruling Application

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (in Liquidation) as The Trustee for Brite Client Funds (TFN: [REDACTED])

1. Introduction

- 1.1 As you are aware, we act for Ms Linda Smith and Mr Robert Kirman, the joint court-appointed receivers and managers of Brite Advisors Pty Ltd (**Brite Advisors**) (the **Receivers**).
- 1.2 Unless otherwise stated, terms used in this letter and the private binding ruling (**PBR**) application at **Annexure A** take their meaning from the relevant court orders.
- 1.3 We refer to:
 - (a) the letter from HWLE to the ATO dated 7 August 2025 (**our Letter**), seeking the Commissioner's views in respect of the potential tax liabilities of the Receivers and Brite Advisors relating to the net capital gains expected to be made on liquidation of the Trust Assets (a copy of our Letter is enclosed at **Annexure C** for reference);
 - (b) the letter from the ATO to HWLE dated 27 August 2025 (**ATO Letter**), which confirmed the Commissioner's non-binding preliminary views in respect of the matters set out in our Letter (a copy of the ATO Letter is enclosed at **Annexure D** for reference); and
 - (c) the letter from Ms Kellie Link of Norton Rose Fulbright dated 30 September 2025 (**NRF Letter**), acting on behalf of the ATO in relation to the Federal Court proceedings WAD 13/2024 (a copy of the NRF Letter is enclosed at **Annexure E** for reference).

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1.4 Relevantly, the NRF Letter states:

*"2. If the Receivers require the Commissioner's binding view on the four Preliminary View issues set out in the ATO Letter, they can lodge a Private Binding Ruling Application (**PBR Application**) limited to those issues forthwith.*

*3. We are instructed that if the Receivers do so by no later than **6 October 2025**, and there are no material changes to the facts and assumptions already submitted to the ATO and relied upon in issuing the ATO Letter, then the Commissioner presently anticipates that a binding ruling could be issued by **31 October 2025**."*

1.5 The Commissioner's preliminary views set out in the ATO Letter are as follows:

"Our Preliminary View is that, in respect of the net capital gain, expected to be made on liquidation of the Client AuM:

(i) The Receivers and Brite Advisors will not be liable to pay tax on behalf of non-residents under subsection 98(3) of the ITAA 1936.

(ii) The Receivers and Brite Advisors will not be liable to pay tax under section 99A of the ITAA 1936.

(iii) A capital gain of a Beneficiary will be disregarded under subsection 855-40(2) of the ITAA 1997 where the Beneficiary is a foreign resident when the Receivers make the capital gain.

*(iv) The Receivers and Brite Advisors will not be liable to pay tax as trustee of the Trust in respect of an amount to the extent that the amount gives rise to a capital gain that is disregarded for a Beneficiary under subsection 855-40(2) of the ITAA 1997, for the purposes of subsection 855-40(3)." (**Preliminary View**)*

1.6 We now write to formally request that the Commissioner issue a PBR to the Receivers in accordance with the Preliminary View as set out above.

2. **Status of the distribution application**

2.1 The ATO Letter states that the ATO has assumed, for the purpose of forming the Preliminary View, that the Federal Court will make distribution orders that reflect the proposed orders filed with the Court on 23 July 2025.

2.2 On 15 September 2025, the Court made orders substantively in the form of the proposed orders, with one exception (**Distribution Orders**). A copy of the Distribution Orders is enclosed at **Annexure J**.

2.3 Paragraph 24A of the Distribution Orders contemplates that the Receivers may make an "interim distribution" of Trust Assets to Corporate Trustees or Beneficiaries.

2.4 On 15 September 2025, the Court made separate orders providing for the Receivers to make an interim distribution application by 7 October 2025 (**Interim Distribution Application Orders**). A copy of the Interim Distribution Application Orders is enclosed at **Annexure K**.

- 2.5 To accommodate the making of interim distributions *before* the Retained Fund application, the formula in paragraph 3 of the Distribution Orders for calculating each Beneficiary's Deficient Mixed Fund Distribution has been amended as follows (changes in bold):

$$\text{Beneficiary's Deficient Mixed Fund Distribution} = \frac{BE - \text{Loans}}{TE - TL} * \text{Final Total Value} - \text{Withdrawals} + \text{Tax} - ID$$

ID (Interim Distribution) is any distribution already paid for the benefit of that Beneficiary pursuant to an order made by this Court in this matter and as contemplated by order 24B.

- 2.6 The Receivers are required to make an interim distribution application by 7 October 2025. The Receivers' minute of proposed orders is referred to in and enclosed with this PBR application at **Annexure L (Proposed Interim Distribution Orders)**. The Proposed Interim Distribution Orders provide for the Receivers to liquidate a portion of the Trust Assets (the **Liquidation Assets**) and make interim distributions to Beneficiaries in the same proportions as the Beneficiary Deficient Mixed Fund Distributions.
- 2.7 The effect of the Proposed Interim Distribution Orders is discussed further in the PBR application. In short, because the interim distributions are to be made to Corporate Trustees and Beneficiaries in the same proportions as the final distributions to be made pursuant to Distribution Orders, the Receivers consider that this change to the distribution methodology should not impact the answers to the Preliminary View questions or the Commissioner's ability to make a binding ruling by 31 October 2025.

3. Structure

- 3.1 The PBR application is set out at Annexure A. The declaration is set out at Annexure B.

- 3.2 We also enclose the following documents with this application:

- (a) Annexure C – Our Letter;
- (b) Annexure D – ATO Letter;
- (c) Annexure E – NRF Letter;
- (d) Annexure F – 13 December 2023 Orders;
- (e) Annexure G – 6 February 2024 Orders;
- (f) Annexure H – 5 June 2024 Orders;
- (g) Annexure I – 2 September 2024 Orders;
- (h) Annexure J – Distribution Orders;
- (i) Annexure K – Interim Distribution Application Orders;
- (j) Annexure L – Proposed Interim Distribution Orders.

- 3.3 If you have any questions or wish to discuss any aspect of this matter, please do not hesitate to contact us on the below contact details.

Yours sincerely



Timothy Stokes
Partner
HWLE Lawyers

+61 8 8210 2610
tstokes@hwle.com.au

Connor Eglinton
Senior Associate
HWLE Lawyers

+61 8 8205 0593
ceglinton@hwle.com.au

Annexure A Private Binding Ruling Application

Questions and Answers

The questions to be ruled on, and the proposed answers to those questions, are as follows:

Question 1:

Will Brite Advisors or the Receivers be liable to pay tax under subsection 98(3) of the *Income Tax Assessment Act 1936* (Cth) (**ITAA 1936**) in respect of any capital gains made on liquidation of the Trust Assets?

Answer: No.

Question 2:

Will Brite Advisors or the Receivers be liable to pay tax under section 99A of the ITAA 1936 in respect of any capital gains made on liquidation of the Trust Assets?

Answer: No.

Question 3:

Will a capital gain of a Beneficiary be disregarded under subsection 855-40(2) of the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) where the Beneficiary is a foreign resident when the Receivers make the capital gain in respect of the liquidation of the Trust Assets?

Answer: Yes.

Question 4:

Will Brite Advisors or the Receivers be liable to pay tax as trustee of the Trust in respect of a capital gain that is disregarded for a Beneficiary under subsection 855-40(2) of the ITAA 1997?

Answer: No.

Relevant Facts and Circumstances

This section sets out the scheme specified for the purposes of section 359-5(1). The specified scheme includes the Court orders referred to below (including the Proposed Interim Distribution Orders).

1. Brite Advisors

- 1.1 Brite Advisors is an Australian company incorporated in 2009.
- 1.2 Until 29 April 2025, Brite Advisors held an Australian Financial Services Licence (**AFSL**) and was authorised to carry on a financial services business in Australia.
- 1.3 Brite Advisor's business involved providing asset management, advisory and pension administration services.
- 1.4 Brite Advisors managed and invested assets on behalf of:
 - (a) Trustees or administrators of foreign pension funds;
 - (b) Australian Self-Managed Superannuation Funds; and
 - (c) Individuals who invested assets directly with Brite.
- 1.5 On 29 April 2025, the Australian Securities and Investment Commission (**ASIC**) cancelled Brite's AFSL licence but specified under section 915H of the *Corporations Act 2001* (Cth) (**Corporations Act**) that the licence would continue in effect until 5.00pm on 29 April 2026 for the purpose of ss 912A(1)(g)(i) and 912A(2)(c).

2. The Receivership

- 2.1 On 30 June 2021, the ASIC commenced an investigation of Brite Advisors pursuant to section 13 of the *Australian Securities and Investments Commission Act 2001* (Cth).
- 2.2 On 9 November 2023, Ms Linda Smith and Mr Rob Kirman were appointed to act as Investigative Accountants in ASIC's Federal Court proceedings against Brite Advisors.
- 2.3 On 13 December 2023, the Court ordered that Ms Smith and Mr Kirman cease to act as Investigative Accountants and instead be appointed as joint and several receivers and managers of the property of Brite Advisors, including trust property, for the purpose of identifying, collecting and securing the property and investigating and providing opinions on certain matters (the 13 December 2023 orders are enclosed at **Annexure F**).
- 2.4 On 6 February 2024, in a new proceeding WAD12/2024, the Court ordered that:
 - (a) Brite Advisors be wound up on just and equitable terms pursuant to section 461(1)(k) of the Corporations Act;
 - (b) Ms Smith and Mr Kirman be appointed joint and several liquidators of Brite Advisors pursuant to section 472(1) of the Corporations Act; and
 - (c) Ms Smith and Mr Kirman be appointed joint and several receivers and managers over the property, assets and undertakings held by Brite Advisors on trust for another (**Trust Assets**) (the 6 February 2024 orders are enclosed at **Annexure G**).

- 2.5 Pursuant to the 6 February 2024 orders, the Receivers were authorised to take possession of, preserve, maintain and sell the Trust Assets (paragraph 7) and were granted powers in relation to their appointment, including the powers to do all things necessary for the identification and realisation of the Trust Assets (paragraph 8).
- 2.6 On 5 June 2024, the Court ordered that the Receivers would be acting properly and were justified, for the purposes of exercising their powers under paragraph 8 of the 6 February 2024 orders, in adopting 13 December 2023, their appointment date, as the relevant date at which to determine Beneficiaries' entitlements (the 5 June 2024 orders are enclosed at **Annexure H**) (paragraph 8(b)).
- 2.7 On 2 September 2024, the Court ordered that the Receivers were justified in adopting the approach set out in those orders to calculating and verifying Beneficiaries' entitlements (the 2 September 2024 orders are enclosed at **Annexure I**) (paragraphs 9 and 10).

3. **Distribution Orders**

- 3.1 On 15 September 2025, the Court made the following orders:
 - (a) orders that the Receivers would be acting properly and were justified in adopting the approach set out in those orders for determining and making a distribution from the Trust Assets to Corporate Trustees or Beneficiaries (the **Distribution Orders**) (a copy of the Distribution Orders is enclosed at **Annexure J**); and
 - (b) orders that the Receivers would be acting properly and were justified in bringing an interlocutory application, as set out in paragraphs 2 to 11 of those orders, to make an interim distribution from the Trust Assets to Corporate Trustees and Beneficiaries (the **Interim Distribution Application Orders**) (a copy of the Interim Distribution Application Orders is enclosed at **Annexure K**).

4. **Interim Distribution Application**

- 4.1 By 7 October 2025, in accordance with paragraph 2 of the Interim Distribution Application Orders, the Receivers are required to file and serve a minute of proposed orders that the Receivers seek by the Interim Distribution Application.
- 4.2 A copy of the Receivers' minute of proposed orders is enclosed at **Annexure L** (the **Proposed Interim Distribution Orders**).

Assumptions

5. The Commissioner should make the following assumptions when answering the questions:
 - (a) Before 30 June 2026:
 - (i) If the Court makes interim distribution orders, the orders will provide for interim distributions to be made to Corporate Trustees and Beneficiaries on the same proportionate basis as paragraph 7 of the Proposed Interim Distribution Orders.
 - (i) If the Court makes interim distribution orders, the Receivers will liquidate Trust Assets and make interim distributions in accordance with those interim distribution orders.
 - (ii) The Receivers will (after the interim distributions, if any) liquidate Trust Assets and make distributions in accordance with the Distribution Orders.

- (b) The liquidation and distribution of the Trust Assets will be consistent with any interim distribution orders (if made) and the Distribution Orders.
- (c) No Trust Assets are or will be taxable Australian property (as that term is defined in section 855-15 of the ITAA 1997).
- (d) The Receivers will record, in their character as capital gains, amounts referable to the capital gains made on liquidation of the Trust Assets, in the accounts or records of the Trust no later than 31 August 2026.

Relevant legislative provisions

- 6. The legislative provisions to be ruled on are:
 - (a) Sections 98(3), 99A and 254 of the ITAA 1936.
 - (b) Section 855-40(2) and (3) of the ITAA 1997.

Detailed reasoning

Relevant Law

7. Liability for capital gains tax under section 98

- 7.1 A trustee is liable to pay tax under section 98 of the ITAA 1936 on behalf of a non-resident beneficiary in respect of:
 - (a) the beneficiary's share of the net income of the trust attributable to Australian sources (other than dividends, interest and royalties)¹ for the period when the beneficiary was a non-resident; and
 - (b) the beneficiary's share of a capital gain.²

8. Liability for tax under section 99A

- 8.1 Subsection 99A(4) of the ITAA 1936 provides that a trustee will be assessed and liable to pay tax on the net income of the relevant trust estate where there is no part of the net income of a resident trust estate:
 - (a) that is included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee of the trust estate is assessed and liable to pay tax in pursuance of section 98; or

¹ ITAA 1936, ss 99B & 128D. Income taxed under the withholding rules is not assessable income and therefore not taxed to the trustee under s 98.

² ITAA 1997, s 115-220(1).

- (c) that represents income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia.
- 8.2 Subsection 99(4A) of the ITAA 1936 provides that a trustee will be assessed and liable to pay tax on the part of net income of the trust estate:
- (a) that is not included in the assessable income of a beneficiary of the trust estate in pursuance of section 97;
 - (b) in respect of which the trustee is not assessed and is not liable to pay tax in pursuance of section 98; and
 - (c) that does not represent income to which a beneficiary is presently entitled that is attributable to a period when the beneficiary was not a resident and is also attributable to sources out of Australia.
9. **Tax on capital gains or losses**
- 9.1 Pursuant to section 104-10 of the ITAA 1997, CGT event A1 happens on the disposal of a CGT asset.³
- 9.2 A CGT asset is disposed of if there is a change in beneficial ownership.⁴ The time of the CGT event A1 is when the contract for the disposal is entered into or, if there is no contract, when the change of ownership occurs.⁵
- 9.3 The owner of the relevant CGT asset makes:
- (a) a capital gain if the capital proceeds from the disposal are more than the asset's cost base; and
 - (b) a capital loss if the capital proceeds are less than the asset's reduced cost base.⁶
- 9.4 The capital proceeds from CGT event A1 are the total of the money and the market value of any property the owner receives, or is entitled to receive, in respect of the event happening.⁷
- 9.5 The cost base of a CGT asset is the sum of its acquisition cost and other costs and expenditure associated with ownership of the asset.⁸
10. **Absolute entitlement**
- 10.1 When a beneficiary is absolutely entitled to a CGT asset as against the trustee of a trust, the asset is treated as an asset of the beneficiary for capital gains tax purposes and an act done by the trustee in relation to the asset is taken to have been done by the beneficiary.⁹ Because the beneficiary is the relevant taxpayer, any capital gain or loss made in relation to the asset is not required to be included in the net income of the trust under section 95 of the *ITAA 1997*.

³ *ITAA 1997*, s 104-10(1).

⁴ *ITAA 1997*, s 104-10(2).

⁵ *ITAA 1997*, s 104-10(3).

⁶ *ITAA 1997*, s 104-10(4).

⁷ *ITAA 1997*, s 116-20.

⁸ *ITAA 1997*, s 110-25.

⁹ *ITAA 1997*, s 106-50.

11. Specific entitlement

- 11.1 Pursuant to section 115-228 of the ITAA 1997, a beneficiary is specifically entitled to an amount of a capital gain if they receive, or can be reasonably expected to receive, an amount referable to the capital gain and the amount is recorded, in its character as referable to the capital gain, in the accounts or records of the trust no later than 2 months after the end of the income year. The amount of the beneficiary's specific entitlement is taken into account in calculating the beneficiary's share of a capital gain under section 115-227 of the ITAA 1997.

12. Present entitlement

- 12.1 A beneficiary is presently entitled to a share of the income of the trust if the beneficiary has 'an interest in the income which is both vested in interest and vested in possession' and 'a present legal right to demand and receive payment of the income, whether or not the precise entitlement can be ascertained before the end of the relevant year of income and whether or not the trustee has the funds available for immediate payment'.¹⁰

13. Foreign resident beneficiaries

- 13.1 Subsection 855-40(2) of the ITAA 1997 provides that a foreign resident may disregard a capital gain made in respect of its interest in a fixed trust if the gain is attributable to a CGT event happening to a CGT asset of a fixed trust that is not taxable Australian property.
- 13.2 Subsection 855-40(3) of the ITAA 1997 provides that a trustee of a fixed trust is not liable to pay tax in respect of an amount to the extent that amount gives rise to a capital gain that is disregarded for a beneficiary under subsection 855-40(2) of the ITAA 1997.
- 13.3 A trust is a fixed trust if the beneficiaries have fixed entitlements to all of the income and capital of the trust.¹¹ A beneficiary with a vested and indefeasible interest under a trust instrument in a share of the income or capital of the trust has a fixed entitlement to that share of the income or capital.¹²

14. Application of the Relevant Law

- 14.1 The proposed answers to all four questions are correct on any one of the following three alternative bases:
- (a) Beneficiaries are absolutely entitled to the CGT assets comprising the Trust Assets and will be treated as disposing of those assets when the Trust Assets are liquidated; or
 - (b) Corporate Trustees and/or Beneficiaries will be specifically entitled to a share of each capital gain made in respect of the liquidation of the Trust Assets in proportion to their 'entitlement' for the purpose of reg 7.8.03 of the *Corporations Regulations 2001* (Cth) and in accordance with the Distribution Orders and Proposed Interim Distribution Orders and Brite Advisors is the trustee of a fixed trust for the purpose of section 855-40 of the ITAA 1997 (such that Brite Advisors is not liable to pay tax in respect of the capital gains on behalf of non-residents under section 98(3) of the ITAA 1936); or

¹⁰ *Federal Commissioner of Taxation v Harmer* (1991) 173 CLR 264, 271; *Federal Commissioner of Taxation v Carter* (2022) 274 CLR 304, 310 [3].

¹¹ *ITAA 1997*, s 995 (definitions of "fixed trust" and "fixed entitlement").

¹² *ITAA 1936*, Sch 2F, s 272-5(1).

- (c) Corporate Trustees and/or Beneficiaries are between them presently entitled to all the income of the Trust, including any capital gains arising on liquidation for which there is no specific entitlement, in proportion to their 'entitlements' for the purpose of reg 7.8.03 of the Corporations Regulations and in accordance with the Distribution Orders and Proposed Interim Distribution Orders and Brite Advisors is the trustee of a fixed trust for the purpose of section 855-40 of the ITAA 1997 (such that Brite Advisors is not liable to pay capital gains tax on behalf of non-residents under section 98(3) of the ITAA 1936).

14.2 Each of the above bases is explained below.

15. Absolute entitlement

- 15.1 If Corporate Trustees and/or Beneficiaries remain absolutely entitled to the CGT Assets that were recorded as held in their names in Brite Advisors' systems on 13 December 2023, each Corporate Trustee or Beneficiary will be treated as disposing of the CGT assets they are absolutely entitled to when the Trust Assets are liquidated.
- 15.2 If that is correct, Brite Advisors will not be liable for tax in respect of the capital gains arising from the liquidation of the Trust Assets pursuant to the Proposed Interim Distribution Orders or the Distribution Orders.
- 15.3 For the purposes of this PBR application, the Commissioner is not required to determine whether Corporate Trustees or Beneficiaries remain absolute entitled to Trust Assets, as the Commissioner can determine the questions by reference to one or both alternative bases outlined below.

16. Specific entitlement

- 16.1 The first alternative basis on which Brite Advisors would not be liable for tax on capital gains made on liquidation of the Trust Assets is that Corporate Trustees and Beneficiaries will, between them, be specifically entitled to 100% of the capital gains.¹³
- 16.2 The effect of the Proposed Interim Distribution Orders (if made) is to declare that the Receivers are justified and would be acting properly in liquidating the Liquidation Assets (as defined in paragraph 4(a) of those orders) and making an interim distribution to Corporate Trustees and Beneficiaries in accordance with the proportions calculated using the formula set out in paragraph 7.
- 16.3 The effect of the Distribution Orders is to declare that the Receivers are justified and would be acting properly in liquidating further Trust Assets and distributing the proceeds to Corporate Trustees and Beneficiaries in accordance with the proportions calculated using the formula set out in paragraph 3.
- 16.4 The proportionate entitlements of Beneficiaries to distributions under paragraph 3 of the Distribution Orders and paragraph 7 of the Proposed Interim Distribution Orders are the same.
- 16.5 Any interim distributions made to Corporate Trustees or Beneficiaries pursuant to the Proposed Interim Distribution Orders would be deducted from the final distributions made pursuant to the Distribution Orders.
- 16.6 Together, the Proposed Interim Distribution Orders and Distribution Orders make Corporate Trustees and/or Beneficiaries entitled to 100% of the Trust Assets. If the Proposed Interim Distribution Orders are not made, Corporate Trustees and/or Beneficiaries will be entitled to 100% of the Trust Assets pursuant to the Distribution Orders.

¹³ITAA 1997, s 115-227(a).

- 16.7 Therefore, Corporate Trustees and Beneficiaries will be specifically entitled to a share of each capital gain that is made on liquidation in accordance with the formulas set out in the Distribution Orders and Proposed Interim Distribution Orders (if made), as Corporate Trustees or Beneficiaries are simply entitled to all of the Trust Assets, including the capital gains, in fixed proportions.
17. **Present entitlement**
- 17.1 The second alternative basis on which Brite Advisors would not be liable for tax on the capital gains on liquidation is that, if Corporate Trustees and Beneficiaries are not specifically entitled to all of the capital gains, they are, nonetheless, presently entitled to all income derived from the Trust Assets in the income year in which the liquidation occurs.
- 17.2 The effect of the Proposed Interim Distribution Orders (if made) is to declare that the Receivers are justified and would be acting properly in liquidating the Liquidation Assets (as defined in paragraph 4(a) of those orders) and making an interim distribution to Corporate Trustees or Beneficiaries in accordance with the proportions using the formula set out in paragraph 7.
- 17.3 The effect of the Distribution Orders is to declare that the Receivers are justified and would be acting properly in liquidating the Trust Assets and distributing the proceeds to Corporate Trustees and Beneficiaries in accordance with the proportions calculated using the formula set out in paragraph 3.
- 17.4 The proportionate entitlements of Beneficiaries to distributions under paragraph 3 of the Distribution Orders and paragraph 7 of the Proposed Interim Distribution Orders are the same.
- 17.5 Any interim distributions made to Beneficiaries or Corporate Trustees pursuant to the Interim Distribution Orders would be deducted from the final distributions pursuant to the Distribution Orders.
- 17.6 Together, the Proposed Interim Distribution Orders and Distribution Orders make Corporate Trustees and/or Beneficiaries entitled to 100% of the Trust Assets. If the Proposed Interim Distribution Orders are not made, Corporate Trustees and/or Beneficiaries will be entitled to 100% of the Trust Assets pursuant to the Distribution Orders.
- 17.7 Therefore, Corporate Trustees and Beneficiaries will be presently entitled to all income derived from the Trust Assets in proportion to their 'entitlements' in the year the Distribution Orders and Proposed Interim Distribution Orders are made.¹⁴
- 17.8 That is, the effect of the formulas set out at paragraph 3 of the Distribution Orders and paragraph 7 of the Proposed Interim Distribution Orders (if made) is that Corporate Trustees and Beneficiaries are entitled to all of the Trust Assets, including the capital gains, in fixed proportions.
- 17.9 Therefore, assuming that Corporate Trustees and/or Beneficiaries are not absolutely entitled to the CGT assets comprising the Trust Assets and are not specifically entitled to the capital gains arising on liquidation of the Trust Assets, the capital gains will still be taxed to Corporate Trustees or Beneficiaries on the basis of their present entitlements to the income of the Trust.

¹⁴ We note that this position appears to be consistent with PBR 1012676750071, in which it was decided that the liquidators were not liable to tax on any capital gains derived by the trust on the sale of shares in the year that the liquidators determined to make a final disbursement of corpus and income because beneficiaries were presently entitled to the income of the trust in that year.

18. Fixed trust requirements

- 18.1 The Distribution Orders and Proposed Interim Distribution Orders (if made) put the 'fixed' nature of the Corporate Trustees or Beneficiaries 'entitlements' to the income and capital of the Client AuM beyond doubt. The orders make clear that Corporate Trustees or Beneficiaries are entitled to a fixed proportion of the entirety of the Trust Assets, including all income and capital.
- 18.2 As Brite Advisors is the trustee of a fixed trust for the purpose of section 855-40 of the ITAA 1997, non-resident Corporate Trustees or Beneficiaries can disregard any capital gains they make in respect of their interest in the Trust pursuant to section 855-40(2) of the ITAA 1997, and Brite Advisors will not be liable to pay tax as trustee in respect of the capital gains pursuant to section 855-40(3) of the ITAA 1997.

Annexure B Declaration

If you are applying on your own behalf, you are declaring the following by signing this form; the information contained in this document, and any attached documents, is true and correct.

If you are an agent, by signing this form you are declaring that:

- this document and any attached documents have been prepared according to the information supplied by the client identified in Section A of this form.
- you have received a declaration from each client stating that the information provided to you to prepare this application is true and correct.
- you are authorised by each client to give this application to the Commissioner of Taxation.

If you are a legal personal representative, you are declaring the following by signing this form; the information contained in this document, and any attached documents, is true and correct.

'You' includes a trustee of a trust, a partner in a partnership, public officer or company director.

'Legal personal representative' means an executor or administrator of a deceased estate, a person holding a general power of attorney or a trustee of an estate of a person under legal disability.

'Agent' includes a spouse, relative, friend or another agent, tax agent or other tax professional authorised to give this application to the Commissioner of Taxation.

Privacy

The ATO is a government agency bound by the *Privacy Act 1988* in terms of collection and handling of personal information and tax file numbers. Further information about our privacy policy is available on our website.

Name _____ Timothy Stokes _____



Signature _____

Date _____ 07 October 2025 _____

Annexure C Our Letter

Our Ref: 1202928

7 August 2025

Australian Taxation Office

Attention: David Hall
Assistant Commissioner
Engagement & Assurance Services
GPO Box 9977
CANBERRA ACT 2601

Email: DavidJ.Hall@ato.gov.au

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Dear Mr Hall

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

1. We confirm that we act for Linda Smith and Rob Kirman, the joint court-appointed receivers and managers of Brite Advisors Pty Ltd (**Receivers**). We write in relation to the distribution hearing in the Federal Court in *ASIC v Brite Advisors Pty Ltd* (WAD 13/2024) listed for 15 September 2025.
2. We anticipate that shortly following that hearing, the Federal Court will make orders as to how the Client AuM held on trust are to be distributed to Clients with an entitlement to those assets. The purpose of this letter is to progress the resolution of matters with the Australian Taxation Office (**ATO**) which may otherwise cause delays to the distribution of assets to Clients.
3. To that end we would appreciate the ATO confirming by 18 August 2025:
 - (a) the ATO's position on certain issues relating to the Receivers' and Brite's potential tax liability, explained below; and
 - (b) whether the ATO intends to make an application to become an interested party in WAD 13/2024.

Coordination with ATO to date

4. We set out below by way of summary the history of the Receivers' coordination with the ATO on this matter to date.
 - (a) The Receivers, having been appointed by the Court on the application of ASIC on 13 December 2023, first wrote to the ATO on 5 March 2024 to notify the ATO of their appointment.

Adelaide
Brisbane
Canberra
Darwin
Hobart
Melbourne
Norwest
Perth
Sydney

- (b) On 20 August 2024, the ATO submitted a proof of debt in the liquidation of Brite Advisors, claiming a debt owed to the Commissioner of \$780.
- (c) On or around 5 February 2025, the Receivers' legal advisors (**HWLE**) made contact with Mr David Hall, Assistant Commissioner, Engagement & Assurance Services, Private Wealth, seeking a meeting for an initial discussion regarding the tax issues identified by the Receivers.
- (d) The Receivers and HWLE, attended a briefing meeting with representatives of the ATO on 7 February 2025 including Assistant Commissioners and other ATO staff from various business units within the ATO including Private Wealth, Legal and Litigation Services, Superannuation and Employer Obligations and Frontline Compliance.
- (e) A further meeting took place on 21 February 2025 between the Receivers, HWLE and tax counsel engaged by the Receivers, Andrew de Wijn SC and Jennifer Vogan.
- (f) The Receivers' detailed position paper was provided to the ATO on 28 March 2025 (**Position Paper**). That paper set out in detail the Receivers' analysis of the tax issues falling for determination, and outlining the basis upon which the Receivers considered the ATO ought to treat those matters.
- (g) Following provision of that Position Paper, the Receivers and their specialist tax advisors attended an early engagement meeting with representatives of the ATO, including from the business units described above. During that meeting, those in attendance discussed the Receivers' Position Paper, including the questions put to the ATO by the Receivers, with the intention that those matters would form part of any private ruling application (**PBR Application**). The Receivers also noted, during that meeting, the anticipated timeline for obtaining orders from the Court as to the distribution of the Client AuM, and the need to understand the ATO's position on the various tax issues so that the Receivers could quantify the potential tax liability of Brite Advisors, which would inform the funds to be retained from the interim distribution. The Receivers noted that to meet their target timetable, the ATO's position on the matters set out in the Position Paper would need to be known by no later than the first week of August 2025.
- (h) On 14 May 2025, the ATO wrote to HWLE, setting out a number of questions designed to elicit further material factual information and to discuss tax issues which would be relevant to the PBR Application scheme facts to be ruled upon by the ATO. The Receivers' provided a detailed response to that request on 10 June 2025 (the deadline requested by the ATO).
- (i) On 23 June 2025, the ATO advised HWLE that the matter had been referred to the ATO's Tax Counsel Network (**TCN**).
- (j) On 27 June 2025, HWLE and the ATO had a further meeting following which the ATO requested a further bullet point summary of the Receivers' primary position in relation to the taxation matters to be considered by the ATO and

an update on the proposed timetable, particularly in relation to when the distribution orders would be made and the ongoing urgency in relation to the need for the ATO to provide advice and clarification on taxation matters.

- (k) Between 2 July 2025 and 15 July 2025, HWLE provided the material requested by the ATO during the 27 June 2025 meeting, and answered further questions raised by the ATO.
- (l) On 22 July 2025, HWLE wrote to the ATO seeking to engage with the ATO including TCN. On the same date, HWLE received written confirmation from the ATO that TCN was reviewing the materials, nothing further was required at that stage and the ATO would re-engage once TCN has completed its review.

- 5. As matters currently stand, the ATO is yet to re-engage with HWLE or the Receivers.
- 6. The Receivers have so far not made a formal ruling application, on the understanding that the matter was being progressed internally by the ATO as a matter of urgency and nothing further was required from the Receivers to facilitate that process.

Retained Fund

- 7. At the hearing on 15 September 2025, the Receivers will seek directions that they may hold back an amount of the Client AuM from distribution (a **Retained Fund**). That amount must be approved by the Court. The Retained Fund will include:

"An amount reflecting a conservative estimate of the potential tax liabilities of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client AuM, including any interest or penalties, where there are unresolved tax issues at the time of determining the amount of any distribution"
- 8. Before making any distributions, the Receivers therefore need to estimate what, if any, tax might be payable so that a sufficient amount can be included in the Retained Fund. Of course, the Receivers also want to distribute as much of the Client AuM to Clients as sensibly possible; i.e. an overestimate of the potential tax liabilities would unnecessarily reduce the initial distribution to Clients.
- 9. As explained below, we therefore seek the ATO's agreement to at least some of the issues covered in our Position Paper so that the Receivers can confidently reduce their estimate of the potential tax liabilities and therefore maximise the initial distribution to Clients.
- 10. In our Position Paper, we expressed the view that:
 - (a) Before 13 December 2023 (when the Receivers were appointed), Clients were between them presently entitled to all income from the Client AuM: paragraph 115.

"Tab-7"

- (b) Clients are between them also presently entitled to trust income derived since 13 December 2023 in proportion to their 'entitlements' for the purpose of reg 7.08.03 of the *Corporations Regulations 2001* (Cth): paragraph 160.
 - (c) Throughout that period, Clients have been absolutely entitled to CGT assets comprising the Client AuM and will be treated as disposing of those assets when the Client AuM is liquidated: paragraphs 155 to 158.
11. Those three propositions will, assuming they are right, ensure that Brite Advisors will not be subject to any income tax as trustee. However, there is likely to be some Australian-sourced interest and unfranked dividend income to which non-residents are presently entitled meaning that Brite Advisors might be required to withhold amounts from that income and remit those amounts to the ATO (or, indeed, in the case of income already derived Brite Advisors might have been required to withhold and remitted those amounts in the past). The Receivers currently estimate the required withholding to be in the order of up to AUD \$1.5 million.¹ The Receivers intend to include that amount in the Retained Fund pending a more accurate determination of any amounts owing to the ATO.²
 12. However, if Brite Advisors is subject to income tax as trustee on all income and capital gains derived on the Client AuM (ie if the three propositions in paragraph 10 above are wrong) the Receivers have estimated that the total tax liabilities for which the Receivers would need to make provision in the Retained Fund would be in the order of AUD \$140 million, including an allowance for GIC. Attached as Appendix A is a breakdown of this estimate. Attached as Appendix B is a breakdown of the income and expenses from the Interactive Brokers reports on which the estimate is based.
 13. As is apparent from the information set out at Appendices A and B, the largest component of Brite Advisor's potential tax liability relates to the net capital gain expected to be made on liquidation of the Client AuM. If that potential tax liability could be excluded by agreement with the ATO before the Retained Fund application, the Receivers' conservative estimate of Brite Advisor's potential tax liability would reduce to approximately \$65 million, representing the total potential tax liability less the estimated FY2026 capital gains tax liability shown at Appendix A.
 14. **We request that the ATO provide confirmation in writing, in advance of the Retained Funds application, that neither Brite Advisors nor the Receivers will be liable to income tax on the capital gain arising from the liquidation of the Client AuM, to occur once the Court has made orders for the distribution of the Client AuM.** That could, if necessary, be in the form of a short private ruling dealing with only that question.

¹ For the purposes of this estimate, the Receivers have only considered the four years before their appointment.

² There are a number of technical issues that will need to be resolved in relation to the withholding requirement including whether any of the Clients are superannuation funds for non-residents so that the exemption in s 128B(3)(b) applies and whether the ATO can recover from Client AuM any amounts that should have been withheld before the Receivers' appointment but were not.

15. We note that this conclusion could be reached on any one of the following three, alternative bases:
 - (a) Clients are absolutely entitled to CGT assets comprising the Client AuM and will be treated as disposing of those assets when the Client AuM is liquidated (i.e. our primary position as put in the Position Paper); or
 - (b) each Client will be specifically entitled to a share of the capital gain in proportion to their 'entitlement' for the purpose of reg 7.8.03 of the *Corporations Regulations* and Brite Advisors is the trustee of a fixed trust for the purpose of s 855-40 of the *Income Tax Assessment Act 1997* (Cth) (such that Brite Advisors is not liable to pay tax in respect of the capital gain on behalf of non-residents under s 98(3) of the *Income Tax Assessment Act 1936* (Cth)); or
 - (c) each Client is presently entitled to the income of the trust, including any capital gains arising on liquidation for which there is no specific entitlement, in proportion to their 'entitlement' for the purpose of reg 7.8.03 and Brite Advisors is the trustee of a fixed trust for the purpose of s 855-40 of the *ITAA 1997* (such that Brite Advisors is not liable to pay capital gains tax on behalf of non-residents under s 98(3) of the *ITAA 1936*).
16. These three approaches could lead to different tax consequences for Clients. However, for the purpose of the Retained Fund application, it would not be necessary to specify which of the approaches is correct. All that would be required is that the ATO confirms that one of the approaches is correct so that the Receivers can be confident that Brite Advisors will not be liable to any tax as trustee. On that basis the Receivers could exclude potential tax on the capital gains from their calculation of the Retained Fund and distribute that amount to Clients.
17. We make observations about the three alternative bases outlined above in a supplementary position paper attached to this letter as Appendix C.
18. **We ask that the ATO please confirm its position on these issue as a matter of urgency and in any event by 18 August 2025.** If you have any questions or require any further information or submissions, please contact the authors.

The ATO as a party to the proceedings

19. In the circumstances outlined above, and given the ATO's interest in the proceedings, the Receivers consider it appropriate that the ATO now becomes a party to the proceedings. This will facilitate the ATO being able to appear at the distribution hearing to explain to the Court its position on the tax issues to put into context the impact that position will have on the amount which can be distributed. It would also facilitate the ATO committing to a position in the proceedings relating to the issue of capital gains as outlined above.

20. We note that the ATO is able to make an application for leave to be heard in WAD 13/2024 as an interested person under rule 2.13 of the *Corporations Rules*. This is the basis upon which other third parties with an interest in the matter have been joined as interested parties. The Receivers would support such an application. **We would appreciate if the ATO could please confirm whether it intends to make such an application by 18 August 2025.**
21. In the event the ATO does not make such an application, the Receivers propose to bring an application to join the ATO as a party to the proceedings under rule 9.05 of the *Federal Court Rules 2011* (Cth).

Yours sincerely



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Appendix A: Estimate of total tax liabilities for which the Receivers would need to make provision in the Retained Fund if Brite Advisors is subject to income tax as trustee on all income and capital gains derived on the Client AuM

Summary of tax liabilities

Year	Interest withholding tax	Dividend withholding tax	Trustee tax on all income (s99A)	GIC	Total
FY2020 (part year only)	-	-	230,335	131,991	230,335
FY2021	-	-	4,480,740	2,098,826	4,480,740
FY2022	-	-	7,735,042	2,822,838	7,735,042
FY2023	-	-	7,453,378	1,744,828	7,453,378
FY2024 (pre-appointment)	-	-	3,946,304	333,775	3,946,304
Sub-total – pre-appointment liability	-	-	23,845,798	7,132,257	30,978,055
FY2024 (post-appointment)	-	-	14,769,483	1,249,191	16,018,674
FY2025	-	-	14,823,622	-	14,823,622
FY2026 (forecast) – interest and dividends	-	-	3,758,097	-	3,758,097
FY2026 (forecast) – capital gains	-	-	75,401,082		75,401,082³
Sub-total – post-appointment liability	-	-	108,752,284	1,249,191	110,001,475
	-	-			
Total estimated liability for Brite AU⁴	-	-	132,598,081	8,381,449	140,979,530

³ Representing expected capital gain assuming the Client AuM is liquidated in FY2026 based on the value of the portfolio as at 4 July 2025.

⁴ Including estimated GIC but not including any allowance for penalties.

Appendix B: Summary of all income and expense categories from IBA reports, by income tax year

Income Item	30 June 2020	30 June 2021	30 June 2022	30 June 2023	30 June 2024 pre-appointment	30 June 2024 post-appointment	30 June 2025	30 June 2026 (forecast) ⁵	Total
Interest									
Australian sourced	2,485	-	10,258	2,195,321	1,645,884	3,349,242	4,225,905	1,536,908	12,966,004
Foreign sourced	-	-	8,576	91,076	59,798	41,686	81,247	30,386	312,768
Total interest	2,485	-	18,834	2,286,397	1,705,682	3,390,928	4,307,152	1,567,294	13,278,772
Dividends									
Unfranked Australian sourced	36,597	145,024	167,320	80,165	33,421	47,734	194,817	44,969	750,048
Foreign sourced and franked Australian sourced	629,726	4,044,283	13,960,329	15,077,569	6,800,651	11,188,280	20,338,757	6,388,974	78,428,568
Total dividends	666,323	4,189,307	14,127,649	15,157,734	6,834,072	11,236,014	20,533,574	6,433,943	79,178,616
CGT assets (all non-TAP)									
Realised gains/(losses)	(1,928,371)	7,648,557	3,033,371	(27,272,836)	12,873	16,885,375	6,719,744		5,098,713
Unrealised, to be realised in FY26								160,346,061 ⁶	160,346,061
Total gains/(losses)	(1,928,371)	7,648,557	3,033,371	(27,272,836)	12,873	16,885,375	6,719,744	160,346,061	165,444,774

⁵ Includes projected dividend and interest income through to 31 October 2025 based on average income received in these categories from the 30 June 2024 and 30 June 2025 years.

⁶ Representing estimated capital gain from liquidation of the Client AuM in FY2026 based on the value of the portfolio as at 4 July 2025. The estimate assumes that CGT assets retain their historical cost bases and that there was no CGT event or reset of asset cost bases when the Receivers were appointed on 13 December 2023. If there was a CGT event when the Receivers were appointed, the FY2026 capital gain would decrease to approximately \$138 million.

Total income	(1,259,563)	11,837,864	17,179,854	(9,828,705)	2,402,627	31,512,317	31,560,470	168,347,298	257,902,162
Expenses									
Fees	(7,986)	(16,424)	(32,604)	(35,609)	(11,302)	(25,527)	(10,867)	(3,622)	(140,320)
Commissions	(61,842)	(244,530)	(162,128)	(288,358)	(49,408)	(59,279)	(4,990)	(1,663)	(870,536)
Broker interest	(108,803)	(112,192)	(528,069)	(1,261,913)	(82,654)	(3,080)	(4,991)	(1,664)	(2,101,701)
Total expenses	(178,632)	(373,146)	(722,801)	(1,585,879)	(143,363)	(87,886)	(20,849)	(6,950)	(3,112,557)

Appendix C: Supplementary Tax Issues Paper – Brite Advisors – 7 August 2025

1. The purpose of this paper is to help the Commissioner understand the tax issues in relation to which the Receivers of Brite Advisors Pty Ltd seek urgent resolution (see paragraphs 13 – 17 of the letter to which this paper is attached). This paper supplements the Position Paper dated 28 March 2025 on this matter.

Absolute entitlement

2. The Receivers' primary position is that Clients remain absolutely entitled to the CGT Assets that were recorded as held in their names in Brite Advisor's systems on 13 December 2023 and, when the Client AuM is liquidated, each Client will be treated as disposing of the assets they are absolutely entitled to, including assets that were in fact misappropriated before the Receivers' appointment (see paragraphs 72 and 152 to 158 of the Position Paper). If that is correct, Brite Advisors will not be liable for tax in respect of the capital gain arising from the liquidation of the Client AuM.
3. However, we recognise that, as we have discussed, this issue involves difficult questions regarding the nature of the statutory trust arising under s 981H of the *Corporations Act 2001* (Cth) and the application of s 106-60 of the *ITAA 1997* to the circumstances of the Receivers' appointment. To facilitate the Retained Fund application, we therefore propose to focus on the alternative positions, which arise on the assumption that Clients are not absolutely entitled to the Client AuM.

Specific entitlement

4. The first alternative basis on which Brite Advisors would not be liable for tax on the capital gain on liquidation is that Clients will, between them, be specifically entitled to 100% of the capital gains.⁷
5. A beneficiary is specifically entitled to an amount of a capital gain if they receive, or can be reasonably expected to receive, an amount referable to the capital gain and the amount is recorded, in its character as referable to the capital gain, in the accounts or records of the trust no later than 2 months after the end of the income year (s 115-228 of the *ITAA 1997*). The amount of the beneficiary's specific entitlement is taken into account in calculating the beneficiary's share of a capital gain under s 115-227 of the *ITAA 1997*.
6. The effect of the proposed distribution orders will be to declare that the Receivers are justified and would be acting properly in liquidating the Client AuM and distributing the proceeds to Clients in accordance with the proportions calculated by the formula in order 3.
7. It is the Receivers' view that the distribution orders will give effect to, and recognise, the previously existing 'entitlements' of Clients to the Client AuM under reg 7.8.03 of the *Corporations Regulations*. Therefore, once the orders are made, Clients will be taken to have been presently entitled to all income derived on the Client AuM since the date of the Receivers' appointment, in proportion to their entitlements (see

⁷ See s 115-227(a).

Harmer v FCT (1991) 173 CLR 263 at 272-2 and paragraphs 162 to 166 of our Position Paper).

8. However, even if that argument is not accepted, it should be uncontroversial that each Client will be specifically entitled to a share of each capital gain that is made on liquidation, as the assets will not be liquidated until after the orders are made. After the orders are made there can be no question that Clients are simply entitled to all of the Client AuM, including the capital gains, in fixed proportions. Although, strictly speaking, it should not matter, we confirm that the Receivers expect the initial distribution to exceed the amount of the net capital gain made on liquidation of the Client AuM.
9. We would be happy to discuss with you exactly what records should be kept to satisfy the 'recorded in the accounts or records' requirement for specific entitlement but obviously that is an administrative requirement that can easily be met.

Present entitlement

10. The second alternative basis on which Brite Advisors would not be liable for tax on the capital gains on liquidation is that if Clients are not specifically entitled to all of the capital gains they are nonetheless presently entitled to all income derived from the Client AuM in the income year in which the liquidation occurs.
11. As noted above, the Receivers' primary position is that, once the proposed distribution orders are made, the Clients will be treated as having being presently entitled to to all income derived on the Client AuM since the date of the Receivers' appointment in proportion to their 'entitlements'. Again, even if that argument is not accepted, it should be uncontroversial that, once the proposed distribution orders are made, Clients will be presently entitled to all income derived on the Client AuM in the year in which the orders are made in proportion to their entitlements.⁸ After the orders are made there can be no question that Clients are simply entitled to all of the Client AuM, including the capital gains, in fixed proportions.
12. Therefore, assuming that Clients are not absolutely entitled to the CGT assets comprising the Client AuM and not specifically entitled to the capital gains arising on liquidation of the Client AuM, the capital gains will still be taxed to Clients on the basis of their present entitlements to the income of the trust.

Fixed trust requirements

13. Even if the ATO accepts one of the above three bases, Brite Advisors could be liable to pay tax on behalf of non-resident Clients in relation to the capital gains made on liquidation under s 98 of the *ITAA 1936*. However, Brite Advisors will not be liable for tax under that provision if:

⁸ We note that this position appears to be consistent with Edited Version 1012676750071, in which it was decided that the liquidators were not liable to tax on any capital gains derived by the trust on the sale of shares in the year that the liquidators determined to make a final disbursement of corpus and income because beneficiaries were presently entitled to the income of the trust in that year.

- (a) none of the assets comprising the Client AuM are taxable Australian property; and
 - (b) the trust is a fixed trust for the purpose of s 855-40 of the *ITAA 1997*, so that non-resident Clients are entitled to disregard capital gains arising from the liquidation under s 855-40(2) (see s 855-40(3)).
- 14. The Receivers' analysis indicates that none of the assets comprising the Client AuM are taxable Australian property and we therefore request that the ATO assume that to be the case.
- 15. A trust is a fixed trust if the beneficiaries have fixed entitlements to all of the income and capital of the trust.⁹ A beneficiary with a vested and indefeasible interest under a trust instrument in a share of the income or capital of the trust has a fixed entitlement to that share of the income or capital.¹⁰
- 16. The proposed distribution orders will put the 'fixed' nature of the Clients' entitlements to the income and capital of the Client AuM beyond doubt. The orders will make clear that Clients are all entitled to a fixed proportion of the Client AuM, including all income and capital.
- 17. Therefore, Brite Advisors is the trustee of a fixed trust, non-resident Clients can disregard any capital gains they make in respect of their interest in the trust (i.e. on the assets in the Client AuM), and Brite Advisors will not be liable to pay tax as trustee in respect of the capital gains.

⁹ ITAA 1997, s 995 (definitions of "fixed trust" and "fixed entitlement").
¹⁰ ITAA 1936 Schedule 2F, s 272-5(1).

Annexure D ATO Letter

GPO BOX 9990 SYDNEY NSW 2001



Australian Government
Australian Taxation Office

HWL Ebsworth Lawyers
GPO Box 286 Adelaide SA 5001
Attention: Carman Boothman and Timothy Stokes

Our Reference: 1052442807949
Contact officer: Paul Scott
Phone: 0404027269
Client ID: ABN 35135024412

27 August 2025

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (in Liquidation)

Dear Carman and Timothy

We refer to your engagement (**Early Engagement**) with the ATO, initiated on 5 February 2025, and your letter, dated 7 August 2025.

Broadly, the Early Engagement relates to ascertaining the potential tax liabilities of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client assets under management (**Client AuM**).

You have indicated that:

- These potential tax liabilities emanate from the taxation issues (**Taxation Issues**) identified in the tax issues paper (**Receivers' Position Paper**) provided to the ATO on 28 March 2025.
- You intend to apply for a private ruling, in relation to the Taxation Issues relevant to the potential tax liabilities of the Receivers and Brite Advisors.

The Taxation Issues in the Receivers' Position Paper are currently being considered by the ATO.

HWLE letter of 7 August 2025

Your 7 August 2025 letter outlines that:

- The letter is in relation to the distribution hearing in the Federal Court in *ASIC v Brite Advisors Pty Ltd* (WAD 13/2024) listed for 15 September 2025.
- At the hearing on 15 September 2025, the Receivers will seek directions that they may hold back an amount of the Client AuM from distribution (**Retained Funds**). That amount must be approved by the Court.
- The Retained Funds will include:
 - "An amount reflecting a conservative estimate of the potential tax liabilities of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client AuM, including any interest or penalties, where there are unresolved tax issues at the time of determining the amount of any distribution"
- You anticipate that shortly following that hearing, the Federal Court will make orders as to how the Client AuM held on trust are to be distributed to the Clients with an entitlement to those assets.

NEED HELP?

If you have any questions, you can phone Paul Scott on 0404027269.

Alternatively, you can phone us on **13 28 69** between 8.00am and 5.00pm, Monday to Friday.

Ask for Vinnie Liew on extension 03 9285 1277.

Meeting held on 14 August 2025

On 14 August 2025 a meeting was held between HWLE, tax counsel engaged by the Receivers and the ATO to discuss the HWLE letter of 7 August 2025.

Following the meeting it was agreed that, by COB Tuesday 19 August 2025 the ATO will confirm, via written correspondence:

- a) the ATO's position on the Receivers' and Brite Advisor's potential tax liability, arising from the liquidation of the Client AuM, during the income year ended 30 June 2026 (expected to occur once the Court has made orders for the distribution of the Client AuM) - for the purpose of assisting the Receivers to estimate the potential tax liabilities, of Brite Advisors as trustee of the Client AuM (**ATO Preliminary View**); and
- b) whether the ATO intends to make an application to become an interested party in WAD 13/2024 (**Joinder Issue**).

The ATO provided this requested correspondence by COB Tuesday 19 August 2025.

HWLE email of 26 August 2025

On 26 August 2025 you sent an email the ATO in relation to the ATO's correspondence, dated 19 August 2025.

Your email requested that the Preliminary View, contained in the abovementioned ATO correspondence, be updated to:

- expressly address section 99A of the *Income Tax Assessment Act 1936* (ITAA 1936); and
- refer to the latest version of the proposed distribution orders (filed on 23 July 2025), which you attached to your email.

This letter incorporates changes to the ATO's correspondence, dated 19 August 2025, to address your request.

(a) ATO Preliminary View

Relevant material Facts and Assumptions in respect of the income year ended 30 June 2026

Facts

Our current understanding of the material Facts that are relevant to the Receivers' and Brite Advisor's potential tax liabilities relating to the net capital gain expected to be made on liquidation of the Client AuM include:

- On 13 December 2023, the Receivers were appointed as receivers and managers of the property, assets and undertakings held by Brite Advisors on trust (the **Trust**) for other persons.
- A distribution hearing in the Federal Court in *ASIC v Brite Advisors Pty Ltd* (WAD 13/2024) is listed for 15 September 2025.
- The Receivers will seek directions that they may hold back certain amounts of the Client AuM from distribution (the Retained Funds).
- You anticipate that shortly following that hearing the Federal Court will make orders (the **Distribution Orders**) as to how the Client AuM held on trust are to be distributed to the Clients with an entitlement to those assets.

Assumptions

We have made the following Assumptions for the purpose of providing a Preliminary View:

- The Distribution Orders that the Federal Court will make will reflect the Court Appointed Receivers And Managers' Minute Of Proposed Orders, filed with the Federal Court of Australia on 23 July 2025 (the **Draft Distribution Orders**).
- Prior to 30 June 2026 and in accordance with the Distribution Orders:
 - The Receivers will liquidate the Client AuM.
 - Prior to the liquidation of the Client AuM it includes only CGT assets that are not taxable Australian property (as that term is defined in section 855-15 of the *Income Tax Assessment Act 1997* (ITAA 1997)).
 - The Receivers will make the Distribution Payment to the Beneficiaries (as those terms are defined in the Draft Distribution Orders).
- The liquidation and distribution of assets will be consistent with the Distribution Orders and the facts that have been provided to the ATO. In particular, there will be no other circumstances which would prevent the Trust, after the Distribution Orders are made, from satisfying the requirements contained in safe harbour (6) of Practical Compliance Guideline PCG 2016/16 (paragraph 54).

Preliminary View - Receivers' and Brite Advisor's potential tax liabilities relating to the net capital gain expected to be made on liquidation of the Client AuM for the income year ended 30 June 2026

Our Preliminary View is that, in respect of the net capital gain, expected to be made on liquidation of the Client AuM:

- The Receivers and Brite Advisors will not be liable to pay tax on behalf of non-residents under subsection 98(3) of the ITAA 1936.
- The Receivers and Brite Advisors will not be liable to pay tax under section 99A of the ITAA 1936.
- A capital gain of a Beneficiary will be disregarded under subsection 855-40(2) of the ITAA 1997 where the Beneficiary is a foreign resident when the Receivers make the capital gain.
- The Receivers and Brite Advisors will not be liable to pay tax as trustee of the Trust in respect of an amount to the extent that the amount gives rise to a capital gain that is disregarded for a Beneficiary under subsection 855-40(2) of the ITAA 1997, for the purposes of subsection 855-40(3).

While this letter does not have the legally binding effect of a private ruling under subsection 357-60(1) of Schedule 1 to the *Taxation Administration Act 1953* (as at the date of this letter, an application for a private ruling has not been made to the ATO), the Preliminary View can be relied upon provided there are no material changes to the disclosed Facts and the Assumptions remain accurate.

We note that, if the ATO subsequently issues a private ruling on the issues covered in this letter, then the private ruling will provide the ATO's binding view on the Receivers' and Brite Advisor's potential tax liabilities relating to the net capital gain expected to be made on liquidation of the Client AuM for the income year ended 30 June 2026.

Joinder Issue

The ATO currently does not intend to make an application to become an interested party in WAD 13/2024.

Yours sincerely,

Louise Clarke

Deputy Commissioner of Taxation

Annexure E NRF Letter

30 September 2025



Email: cboothman@hwle.com.au; tstokes@hwle.com.au

Attention: Carmen Boothman and Timothy Stokes

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240 St Georges Terrace
PERTH WA 6000

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Your reference: **Our reference:**
4083585

Dear Carmen and Timothy

**Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation) (Brite)
Federal Court Proceedings numbered WAD 13 of 2024 (Proceedings)**

- 1 We continue to act for the Australian Taxation Office (ATO) and refer to the ATO's letter to you dated 27 August 2025 (**ATO Letter**).
- 2 If the Receivers require the Commissioner's binding view on the four Preliminary View issues set out in the ATO Letter, they can lodge a Private Binding Ruling Application (**PBR Application**) limited to those issues forthwith.
- 3 We are instructed that if the Receivers do so by no later than **6 October 2025**, and there are no material changes to the facts and assumptions already submitted to the ATO and relied upon in issuing the ATO Letter, then the Commissioner presently anticipates that a binding ruling could be issued by **31 October 2025**.
- 4 We are instructed to bring this letter to the attention of the Court in opposition of the application made by the Receivers to join the Commissioner to the Proceedings.

Please contact us if you seek to discuss.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kellie Link'.

Kellie Link
Partner
Norton Rose Fulbright Australia
Contact: Molly Urwin

APAC-#313649160-v1

Norton Rose Fulbright Australia is a law firm as defined in the legal profession legislation of the Australian states and territory in which it practises. Norton Rose Fulbright Australia, Norton Rose Fulbright LLP, Norton Rose Fulbright Canada LLP, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients. Details of each entity, with certain regulatory information, are available at nortonrosefulbright.com.

Annexure F 13 December 2023 Orders



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD262/2023

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

BRITE ADVISORS PTY LTD ACN 135 024 412
Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 13 December 2023

WHERE MADE: Perth

PENAL NOTICE

TO: BRITE ADVISORS PTY LTD

IF YOU:

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.



For the purpose of this Order:

"Corporations Act" means *Corporations Act 2001* (Cth).

"Property" means all real or personal property, assets or interests in property of any kind, within or outside Australia and includes, any property held otherwise than as sole beneficial owner (for example, as trustee for, as nominee for, or otherwise on behalf of or on account of, another person, or in a fiduciary capacity) and includes all such property held on behalf of or on account of the Defendant directly or indirectly by:

- (a) Brite Advisory Group Limited (Hong Kong Co number 2202650); and/or
- (b) Brite Hong Kong Limited (Hong Kong Co number 1633223).

THE COURT ORDERS THAT:

Appointment of Corporate Receivers and Managers

1. Linda Smith and Robert Kirman of McGrath Nicol (**Corporate Receivers and Managers**) cease to act as Investigative Accountants pursuant to paragraph 1 of the order of the Court made 9 November 2023, and instead be appointed, without giving security, as joint and several Receivers and Managers to the Property of Defendant for the purposes of further:
 - (a) identifying, collecting and securing the Property of the Defendant;
 - (b) identifying the assets and liabilities of the Defendant, including the amount owed by the Defendant pursuant to any margin loan;
 - (c) identifying the amount of client assets under management received by the Defendant from its current clients (**Client AuM**) as at the date of the appointment of the Corporate Receivers and Managers and the whereabouts of the Client AuM, including:
 - (i) the total value of assets currently held by the Defendant on behalf of clients;
 - (ii) the total amount of funds invested by the clients;
 - (iii) the extent to which the difference between the total in (i) and the total in (ii) is attributable to market movement;
 - (iv) the total amount of fees paid by the client or by the Defendant on behalf of the client at the commencement of contract with the



- Defendant (including exit fees paid to any previous scheme), with a breakdown description of all fees;
- (v) the total amount of all ongoing fees paid by the client, with a breakdown description of all fees;
 - (vi) the total amount of funds withdrawn by or paid to each client;
 - (vii) the current net balance of each client's investment, having regard to the matters in (i) to (vii) above;
 - (viii) the extent to which the current net balance of each client's investment is not explained by the amounts in (iii) to (vi) above;
 - (ix) details of all margin facilities created for or in respect of clients, including the initial opening balance and current balance of those facilities; and
 - (x) any other information necessary to enable assessment of the financial position of the Defendants' clients relating to their investment held with the Defendant;
- (d) providing an opinion as to the solvency of the Defendant;
 - (e) providing an opinion as to the likely return to creditors/investors in the event that the Defendant was wound up;
 - (f) providing an opinion as to whether the Defendant has kept adequate and accurate financial records;
 - (g) identifying any other information necessary to enable the financial position of the Defendant to be assessed;
 - (h) providing an opinion as to whether there are any suspected contraventions of any provisions of the Corporations Act by the Defendant;
 - (i) providing an opinion as to whether there are any suspected contraventions of the Corporations Act by the directors and officers of the Defendant;
 - (j) providing a further report to the Court within 42 days, to the extent possible, in relation to the matters referred to in sub-paragraphs 1(a)-(i) of this order;
 - (k) assessing any request of the Defendant or a client of the Defendant for a superannuation or pension withdrawal and if deemed appropriate by the Corporate Receivers and Managers processing the withdrawal.



2. For the purpose of attaining the objectives for which the Corporate Receivers and Managers are appointed, the Corporate Receivers and Managers shall have the following powers:
 - (a) the powers set out in sections 420(1), (2)(a), (b), (e), (f), (g), (h), (k), (n), (o) (p), (q), (r), (t) and (u) of the Corporations Act and can exercise those powers in respect of all of the Property of the Defendant, as if all references in those sections to "property" is taken to be a reference to "Property" as defined above;
 - (b) the power to investigate and report on the matters set out at sub-paragraphs 1(a)-(k) of this order; and
 - (c) the power to apply to the Court for directions or further orders.
3. The Corporate Receivers and Managers shall, within 42 days of their appointment, or such other time as the Court considers appropriate, provide to the Court and to the Plaintiff a report, including as to the matters set out at sub-paragraphs 1(a)-(h) of this order to the extent that the Corporate Receivers and Managers have been able to ascertain or form opinions in respect of those matters.
4. Subject to Order 5, the Corporate Receivers and Managers' reasonable costs and expenses be payable from the property of the Defendant.
5. The Corporate Receivers and Managers have liberty to apply to the Court for the payment of their reasonable costs and expenses from Property of the Defendant held by it otherwise than as sole beneficial owner with notice of such application to be given to each of the trustees who are clients of the Defendant.

Asset preservation orders

6. Until further order and subject to the terms of the order in paragraph 8 below, the Defendant, by itself and its servants, agents and employees is restrained from:
 - (a) removing, or causing or permitting to be removed from Australia all or any of the Property of the Defendant;
 - (b) selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of all or any of the Property of the Defendant;
 - (c) causing or permitting to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of their Property;



- (d) without limiting the terms of sub-paragraphs (a) to (c) above, incurring new liabilities including, without limitation, liabilities incurred either directly or indirectly, through a loan agreement, investment contract, the use of a credit card, a credit facility, a drawdown facility or a re-draw facility; and
- (e) without limiting the terms of sub-paragraphs (a) to (d) above, withdrawing, transferring or otherwise disposing of or dealing with, any monies available in any account with any bank, building society or other financial institution (in Australia and elsewhere), in which the Defendant has any legal or equitable interest.

7. The orders sought in the preceding paragraph shall not prevent:

- (a) the Corporate Receivers and Managers from doing any of those things referred to in 6(a) to 6(e) above;
- (b) the Defendant from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings arising from the Plaintiff's investigation into the affairs of the Defendant;
- (c) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to of the Defendant prior to the date of this Order.

Books and records and other materials

- 8. To the extent not already done so, the Defendant shall immediately deliver up to the Corporate Receivers and Managers all the books, records and other papers including, but not limited to, all files, computer records and data in their possession, custody or control which relate to the Property of the Defendant.
- 9. The Plaintiff provide to the Corporate Receivers and Managers within 7 days of the making of the order (to the extent not already provided):
 - (a) a copy of the affidavits filed in these proceedings;
 - (b) a copy of all documents produced to the Plaintiff in the course of its investigation into the Defendant (except from foreign regulators) including from:
 - (i) the Defendant (and its related entities), and/or its officers, employees, auditors, contractors, agent and lawyers; and
 - (ii) the Defendant's financial institutions and brokers;



- (c) a copy of all transcripts of examinations and interviews conducted in the course of ASIC's investigation into the Defendant.

Notice of orders to third parties

10. To the extent necessary, the Plaintiff has leave to give to:

- (a) the relevant authorities (domestic and overseas) that record, control and/or regulate the ownership of real Property;
- (b) the relevant authorities (domestic and overseas) that record, control and/or regulate the ownership of motor vehicles;
- (c) the relevant authorities and entities (domestic and overseas) that record, control and/or regulate the ownership of securities;
- (d) any bank, building society or other financial institution (domestic and overseas) at which, to the best of the Plaintiff's knowledge and belief, the Defendant operates any account; and
- (e) any other person or entity (domestic and overseas), holding or controlling Property which, to the best of the Plaintiff's knowledge and belief, belongs to the Defendant,

notice of these orders, by delivering a copy of a minute of the orders to that entity or person and/or any person apparently in the employ of that entity or person.

General orders

- 11. The Defendant pay ASIC's costs to be agreed or taxed.
- 12. There be liberty to any party to apply to the Court on 48 hours' notice.
- 13. There be liberty to the Corporate Receivers and Managers to apply to the Court on 48 hours' notice.

Date that entry is stamped: 13 December 2023

Sia Lagos
Registrar

Annexure G 6 February 2024 Orders



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

BRITE ADVISORS PTY LTD ACN 135 024 412
Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 06 February 2024

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

1. Leave be granted to the plaintiff, who is released from the implied undertaking to the extent necessary, to rely on all of the documents filed in related proceedings, WAD 262/2023, save for:
 - (a) the confidential affidavit affirmed by Linda Methven Smith on 20 December 2023; and
 - (b) any affidavit or report filed by Ms Smith marked confidential.
2. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Corporations Act**), the defendant is wound up on just and equitable grounds.
3. Pursuant to s 472(1) of the *Corporations Act*, Linda Smith and Robert Kirman of McGrathNicol are appointed joint and several liquidators of the defendant (**Liquidators**).
4. The defendant is to pay the plaintiff's cost of the proceedings, and such costs as taxed or agreed be reimbursed out of the property of the defendant in accordance with s 466(2) of the *Corporations Act*.
5. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Linda Smith and Robert Kirman of McGrathNicol are appointed, jointly and severally, as receivers and managers (**Receivers**) over the property, assets and undertakings held by the Defendant on trust for another (**Trust Assets**).
6. The need for the Receivers to file a guarantee under rr 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) is dispensed with.
7. The Receivers are authorised to take possession of, preserve, maintain and sell the Trust Assets.



8. The Receivers have the power:
- (a) to do all things (including, but not limited to, the signing of any documents) for the realisation of the Trust Assets;
 - (b) provided by s 420 of the Corporations Act as if the reference therein to 'the corporation' were to the trust on which the Trust Assets are held, together with the powers that a liquidator has in respect of property of a company (in its role as legal owner and trustee) pursuant to s 477(2) of the Corporations Act;
 - (c) without limiting the powers granted pursuant to paragraphs 8(a) and (b), and subject to paragraph 11, to do all things necessary to attend to the following identified tasks:
 - (i) the identification of the Trust Assets and the trust liabilities;
 - (ii) the identification of trust creditors and distinguishing them from non-trust creditors (if any);
 - (iii) the ascertaining of the state of the accounts between the beneficiaries and the trustee;
 - (iv) assessing any request of a client of the Defendant for a superannuation or pension withdrawal and if deemed appropriate by the Receivers processing the withdrawal;
 - (v) the recovering of, or attempting to recover, the Trust Assets, including debts due to the trust(s);
 - (vi) the taking of possession of, collecting and protecting the Trust Assets;
 - (vii) the carrying on of any business of the trust on which the Trust Assets are held;
 - (viii) the realisation, or attempted realisation, of the Trust Assets;
 - (ix) the distribution of any proceeds of realisation to meet the claims of the creditors or persons whose debts were incurred in relation to the trust(s); and
 - (x) any matter in the administration of the trust(s) which is ancillary to the above to the extent to which it had to be undertaken for the purposes of the identified tasks.
9. In the period up to 5:00pm (ACDT) on 4 March 2024, the Receivers would be acting properly and are justified in, for the purposes of exercising their powers under paragraph 8 of these orders:
- (a) subject to sub-paragraphs 9(b) to 9(f), assessing and processing only regular superannuation and pension withdrawals that were in place as at 9 November 2023;
 - (b) declining to assess or process any request for a superannuation or pension withdrawal to the extent that processing the requested withdrawal would result in the total withdrawals processed for an



individual beneficiary on and from 9 November 2023 to exceed 30% of the value of the beneficiary's investment recorded in Salesforce as at 9 November 2023;

- (c) directing any beneficiary that makes a request of the Receivers for a superannuation or pension withdrawal to submit that request to the relevant Corporate Trustee for that Corporate Trustee to make to the Receivers on the beneficiary's behalf;
 - (d) declining to assess or process any request for a superannuation or pension withdrawal received directly from a beneficiary, unless the beneficiary is unrepresented by a Corporate Trustee;
 - (e) requiring any request for a superannuation or pension withdrawal by a Corporate Trustee to be accompanied by such other information as the Receivers consider, in their sole discretion, is necessary to demonstrate to the satisfaction of the that it is appropriate for the requested withdrawal be processed by the Receivers under Order 8(c)(iv); and
 - (f) paying any superannuation or pension withdrawal that the Receivers deem appropriate to process in accordance with Order 8(c)(iv), from Trust Assets.
10. In the period up to 5:00pm (ACDT) on 4 March 2024, the Receivers are acting properly and are justified in paying from the Trust Assets:
- (a) trading expenses incurred by the defendant on and from 9 November 2023;
 - (b) trading expenses incurred by the defendant prior to 9 November 2023 but which the Receivers consider necessary to pay in order to continue to carry on the business of the defendant; and
 - (c) trading expenses incurred by any entity that is an 'associated entity' (as that term is defined in the Corporations Act) of the defendant which the Receivers and consider necessary to pay in order to perform and continue to perform their duties arising in or otherwise in connection with their appointment,
- to the extent that the cash held in the defendant's Westpac Operating Accounts is insufficient to meet those expenses.
11. Save for as permitted by these orders (including the orders and directions that apply in these proceedings by virtue of paragraph 9 above), the Receivers are justified and would be acting properly in not distributing any Trust Assets, or any part of them, to or for the benefit of any person asserting a claim to the Trust Assets (including the underlying individual beneficiaries) until further direction or order of the Court.
12. Subject to further order of the Court, WAD262/2023 and WAD13/2024 be case managed together.



Remuneration, costs and expenses

13. The Liquidators shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Liquidators to a Registrar (in such form as the Registrar directs and at no more than 14 day intervals), together with all costs and expenses, to be paid from the property of the defendant.
14. The Receivers shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Receivers to a Registrar (in such form as the Registrar directs and at no more than 14 day intervals), together with all costs and expenses, to be paid from Trust Assets.
15. There be liberty to any party to apply to the Court on 48 hours' notice.
16. There be liberty to the Liquidators and Receivers to apply to the Court on 48 hours' notice.

Date that entry is stamped: 6 February 2024

Sia Lagos
Registrar

Annexure H 5 June 2024 Orders



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and another/others
named in the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 05 June 2024

WHERE MADE: Adelaide

For the purposes of this Order:

"applicant" means Linda Smith and Rob Kirman (as Court appointed Receivers & Managers and Liquidators of Brite Advisors Pty Ltd ACN 135 024 412)

"Brite Advisors" means the defendant in this matter, Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

"IBAU Accounts" means the following IBAU accounts held by Interactive Brokers Australia Pty Ltd in the name of Brite Advisors and containing Property to which the applicant has been appointed as Receivers and Managers:

- (a) I5876295;
- (b) UL3311311;
- (c) UL3311312;
- (d) I6075976;
- (e) UL6060948;
- (f) US6060949;
- (g) I3214939;
- (h) U3214940;
- (i) U11423761;
- (j) I12469256;
- (k) UL9224189; and



(l) US9224190.

"Margin Loan" means the lending facility provided by Interactive Brokers Australia Pty Ltd to Brite Advisors.

"Brite Assets" means all cash or securities held by Interactive Brokers Australia Pty Ltd for or on behalf of Brite Advisors.

THE COURT ORDERS THAT:

1. Interactive Brokers Australia Pty Ltd is joined as a respondent to these proceedings for the limited purpose of these orders, and any matters or circumstances arising from the matters contemplated therein.
2. Subject to order 3 below, the respondent is to immediately and by no later than 7 business days after the making of these orders:
 - a. transfer all Brite Assets, held in the IBAU Accounts (save for those the subject of the applicant's agreement given in accordance with order 3.a below) to account U3214940;
 - b. deliver up to the applicant viewing access to all IBAU Accounts to enable full visibility of the Brite Assets held in those accounts;
 - c. comply with the applicant's direction to provide Mr Ted Alexander of BML Funds Management Pty Ltd with trading access to account U3214940 as the applicant's agent to undertake trading on IBAU's platform in accordance with the orders made in these proceedings on 6 March 2024; and
 - d. provide to the applicants a full accounting of all transactions by which Brite Advisors' liability to the respondent relating to the Margin Loan was reduced, including by way of set-off of cash holdings, dividend income and interest income, from the period 1 October 2023 to the date on which the respondent complies with order 2.b above.
3. On and from the making of these orders, the applicant:
 - a. agrees that the respondent is to retain cash in master accounts I5876295, I6075976 and I1246925 (and the sub-accounts associated with them) equal to the short cash balances in those accounts and in the currency of those accounts (where possible) or otherwise in another currency as at the date of this order plus an amount to cover projected interest charges and foreign exchange changes for the 24 months following the date of this order;
 - b. undertakes to the Court and to the respondent to maintain, and to instruct Mr Alexander to maintain, in account U3214940 securities with a value equivalent to not less than USD\$20million from the date of this order until such further order of the court;
 - c. undertakes to the Court and to the respondent to provide prior written notice of any application to amend or lift the undertaking referred to in order 3.b above to the respondent;
 - d. undertakes to the Court and to the respondent that the respondent's compliance with these orders, and the trading to be undertaken by the defendant or its agent as contemplated in these orders, and the respondent's acceptance of the



undertakings given by the applicant in these orders, does not:

- i. in any way prejudice any or all of the respondent's rights with respect to the Margin Loan or otherwise relating to or arising out of or in connection with its relationship with Brite Advisors, including without limitation any security interest or set-off rights it has over any assets affected by these orders; or
- ii. amount to a concession or agreement by the respondent that it is not entitled to interest and dividend amounts earned on the Brite Assets whilst any short cash balance remains on any of the IBAU Accounts, nor does it constitute any waiver of any such entitlement,

and that the applicant will not make any argument to the contrary.

4. Order 6 of the orders made in WAD262/2023 on 13 December 2023 shall not prevent the respondent from complying with order 2.a of these orders.
5. The orders made in WAD262/2023 on 13 December 2023 be varied by adding order 7A, which reads as follows:

"The exception stated in Order 7(c) above shall not apply to Interactive Brokers Australia Pty Ltd, who as from 14 June 2024, until such further order of the Court, will not be permitted to exercise any right of set-off which it may have in respect of a credit facility afforded by it to the Defendant against any Brite Assets held in Interactive Brokers Australia Pty Ltd account number U3214940."

6. The Court notes that nothing in order 5 hereof in any way prejudices the right of the Receivers and Managers of the defendant to raise any or all arguments with respect to any right of set-off which Interactive Brokers Australia Pty Ltd may assert in respect of any credit facility afforded by it to the defendant.
7. On and from the making of these orders, within 15 business days of the end of each calendar month, the respondent will provide to the applicant a monthly report accounting for all interest earned on the long cash balances held in the IBAU Accounts and all interest accrued on the short cash balances held in the IBAU Accounts during that calendar month and on a gross basis (before any netting).
8. Linda Smith and Robert Kirman of McGrathNicol (**Receivers and Managers**) would be acting properly and are justified, for the purposes of exercising their powers under Order 8 of the orders made on 6 February 2024 in this matter, in taking the following steps:
 - a. communicating directly with any person who has or may have an entitlement to assets and undertakings held by the Defendant on trust for another, including persons who have a beneficial entitlement through an intermediary (**Beneficiaries**) for the purpose of sharing with the Beneficiaries, through Salesforce (or any other equivalent means) the value of their investments held by the Defendant as at 13 December 2023 as calculated by the Receivers and Managers based on the Raw Data (as defined in the Ninth Affidavit of Linda Methven Smith affirmed on 31 May 2024 and filed in these proceedings) (**Investment Verification Information**), and any other correspondence relating to the Investment Verification Information; and
 - b. adopting 13 December 2023, being the date of appointment of the Receivers

"Tab-7"

- 4 -



and Managers, as the relevant date at which to determine Beneficiaries' entitlements.

Date that entry is stamped: 6 June 2024

Sia Lagos
Registrar



Schedule

No: WAD13/2024

Federal Court of Australia

District Registry: Western Australia

Division: General

Interested Person LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR
CAPACITY AS RECEIVERS AND MANAGERS OF BRITE
ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)

Interested Person ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN
THEIR CAPACITIES AS JOINT ADMINISTRATORS OF
RELAY ADMINISTRATION LIMITED, CORINTHIAN
PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES
LIMITED (ALL IN ADMINISTRATION)

Annexure I 2 September 2024 Orders



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and another/others
named in the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 02 September 2024

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

Framework for Distribution

1. There will be three further hearings in these proceedings before any orders are made with respect to the distribution of the property, assets and undertakings held by the Defendant on trust for another (**Trust Assets**), and over which Linda Smith and Robert Kirman of McGrathNicol are appointed, jointly and severally, as receivers and managers (**Receivers**), to beneficiaries of those assets:
 - a. the **Explanatory Memorandum Application Hearing** will be held to approve an explanatory memorandum addressing the distribution proposed by the Receivers (**Proposed Distribution**), such memorandum to be provided to interested parties;
 - b. the **Interested Parties Leave to Appear Hearing** will be held to grant leave to those parties wishing to be heard in the Distribution Methodology Application Hearing (see below);
 - c. the **Distribution Methodology Application Hearing**, where, subject to the Court granting them leave to do so, interested parties can be heard before orders are made in respect of the distribution of the Trust Assets.
2. Interested parties in Order 1 refers to both:
 - a. any corporate trustee or pension administrator who itself holds its interest in the Trust Assets on trust for underlying beneficiaries (**Corporate Trustees**);



- b. any person with a beneficial interest in the Trust Assets, either directly or through a Corporate Trustee (**Beneficiaries**); and
 - c. any other person with a legal or equitable interest in the Trust Assets.
3. By on or before 23 October 2024, the Receivers shall file with this Court an application for directions relating to the distribution of the Trust Assets. That application shall include:
- a. a minute of orders which are sought to give effect to the Proposed Distribution;
 - b. if necessary, a report prepared by the Receivers which provides any additional factual information required to explain the Proposed Distribution; and
 - c. an explanatory memorandum which explains the rationale for the Proposed Distribution and provides one or more alternative scenarios as a point of comparison.

(Explanatory Memorandum Application)

- 4. The Explanatory Memorandum Application Hearing shall take place on **Wednesday 13 November 2024 at 9am (AWST) / 11.30am (ACDT)**.
- 5. At the Explanatory Memorandum Application Hearing, the Court will consider whether it is appropriate to give a direction that the Receivers issue the explanatory memorandum to Corporate Trustees and Beneficiaries as drafted.
- 6. If the Court directs the Receivers as set out in order 5 above, the Court will adjourn the matter to a further hearing on a date to be fixed.
- 7. Following the Explanatory Memorandum Application Hearing, unless otherwise ordered by the Court the Receivers shall distribute the explanatory memorandum to all Corporate Trustees and Beneficiaries, and publish it on the Receivers' website, as soon as reasonably possible.

Verifying identities of Beneficiaries

- 8. The Receivers are justified and acting properly in taking steps to verify the identities of each of the Beneficiaries including, but not limited to:
 - a. engaging a third party contractor to verify the identity of each Beneficiary (**Identity Proofing**), with the costs of such an engagement to be paid only with the approval of this Court; and
 - b. requiring all Beneficiaries to successfully complete the Identity Proofing process prior to, and as a condition of, being permitted to access their Valuation Notice (defined at paragraph 10.a below).

Calculating entitlements of Beneficiaries

- 9. The Receivers are justified in calculating Beneficiaries' entitlements:
 - a. by reference to the value of the money and investments, where possible assessed on a mark-to-market basis, which were recorded as being held by each such Beneficiary in the defendant's systems as at 13 December 2023; and



- b. setting off positive balances and investment values held by a particular Beneficiary against negative account balances or debts incurred by the same Beneficiary.
10. The Receivers are justified in adopting the following approach to verification of Beneficiaries' entitlements, such process to take place concurrently with orders 1 to 7 above.
- a. The Receivers are to email each Beneficiary (or, if email is not, in the Receivers' opinion, possible, viable, or the most appropriate means of communication with an individual Beneficiary, post to the Beneficiary's last known address) a notification providing them with unique login details to a secure, web-based portal ("**Beneficiary Portal**") and instructing them that, upon logging into the Beneficiary Portal, and subject to successfully completing the Identity Proofing process, they will be notified of the value of their entitlement as at the Relevant Date and the basis for that valuation ("**Valuation Notice**"). For clarity, the value of each Beneficiary's distribution will not be stated in the Valuation Notice.
 - b. In the Beneficiary Portal, the Receivers are to ask clients to confirm that the value of their entitlement is as stated in the Valuation Notice.
 - c. If a Beneficiary disputes the value of their entitlement, the Receivers must ask the Beneficiary to notify the Receivers of this and provide reasons and supporting documentation (if any) in support of their position.
 - d. Beneficiaries are to be given 21 days to respond to the Valuation Notice by logging into the Beneficiary Portal and completing the step identified above, after which the Receivers can treat that Valuation Notice as having been accepted. In circumstances where Beneficiaries have not successfully completed their Identity Proofing at the time when the Valuation Notice is ready, the Receivers may, in their discretion, grant an extension of up to 7 calendar days to respond.
 - e. If a Beneficiary affirmatively disputes the value of their entitlement then, on the condition that their response is accompanied by both reasons and any necessary supporting documents:
 - i. the Receivers are to assess whether the dispute is well-founded;
 - ii. if the dispute is well-founded, the Receivers are to notify the Beneficiary that the Receivers agree with the issues raised in the dispute and have agreed to amend the value of the entitlement, issuing concurrently a revised Valuation Notice;
 - iii. if there is insufficient particularity or insufficient supporting documentation, the Receivers are to notify the Beneficiary as such and that their dispute must be further particularised or supported within 21 days of this notification being sent, failing which the dispute will be determined to be not well-founded;
 - iv. if the dispute is not well-founded, the Receivers are to notify the Beneficiary that they may apply to the Court (in this proceeding) if the Beneficiary considers that their dispute is well-founded and that



otherwise the Receivers may, if no such application is made within 21 days, proceed to distribution on the basis of the value of the entitlement as set out in the Valuation Notice.

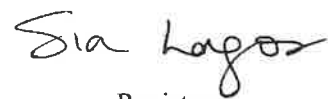
Increase to cap on pension withdrawals

11. Order 4(b) of the Orders made on 21 December 2023 in WAD262/2023 be varied by deleting the words "30% of the value of the Beneficiary's investment recorded in Salesforce as at 9 November 2023" and replacing them with "50% of the value of the Beneficiary's cash holdings and model portfolio assets recorded in the transactional data set obtained by the Receivers showing the value of each Beneficiaries' investments they ought to have had as at 13 December 2023, and referred to in the Receivers' Fourth Report dated 9 August 2024 as the 13 December 2023 Data".
12. Order 9(b) of the Orders made on 6 February 2024 in WAD13/2024 be varied by deleting the words "30% of the value of the Beneficiary's investment recorded in Salesforce as at 9 November 2023" and replacing them with "50% of the value of the Beneficiary's cash holdings and model portfolio assets the transactional data set obtained by the Receivers showing the value of each Beneficiaries' investments they ought to have had as at 13 December 2023, and referred to in the Receivers' Fourth Report dated 9 August 2024 as the 13 December 2023 Data 13 December 2023 Data".

Publication of materials

13. The Receivers be authorised to publish the eleventh affidavit of Linda Methven Smith affirmed on 30 August 2024 filed in these proceedings on the creditor website established by them with respect to their appointment.

Date orders authenticated: 2 September 2024


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: WAD13/2024

Federal Court of Australia

District Registry: Western Australia

Division: General

Interested Person LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR
CAPACITY AS RECEIVERS AND MANAGERS OF BRITE
ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)

Interested Person ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN
THEIR CAPACITIES AS JOINT ADMINISTRATORS OF
RELAY ADMINISTRATION LIMITED, CORINTHIAN
PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES
LIMITED (ALL IN ADMINISTRATION)

Annexure J Distribution Orders



Federal Court of Australia

District Registry: Western Australia Registry

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and others named in
the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

AMENDED ORDER

(Amended pursuant to r 39.05(e) of the *Federal Court Rules 2011* (Cth))

JUDGE: Justice O'Sullivan

DATE OF ORDER: 15 September 2025

WHERE MADE: Perth

For the purposes of this order:

“Beneficiaries” or “Beneficiary” means those people or any person with a beneficial interest in the Trust Assets, either directly or through a Corporate Trustee.

“Corporate Trustee” means any trustee or pension administrator who itself holds its interest in the Trust Assets on trust for underlying beneficiaries.

“Deficient Mixed Fund” means the pooled fund defined in order 2 below.

“Excluded Assets” means the cash identified in orders 8 and 9 below, and the Moventum Assets.

“IB Accounts” means the following accounts held in the name of Brite Advisors with Interactive Brokers Australia Pty Ltd and containing the Trust Assets:

a) I5876295

b) UL3311311



c) UL3311312

d) I6075976

e) UL6060948

f) UL6060949

g) I3214939

h) U3214940

i) I12469256

j) UL9224189

k) US9224190

“Interim Funds Manager” means BML Funds Management Pty Ltd in its role as interim fund manager appointed pursuant to orders in this matter dated 6 March 2024.

“Minerva Notes” means the financial notes held by Brite Advisors and which were issued by Minerva Lending Plc.

“Moventum Assets” means the financial notes held by Brite Advisors on trust for certain Beneficiaries which are held on the platform provided by Moventum S.C.A.

“Receivers” means Linda Methven Smith and Robert Michael Kirman in their capacity as joint and several court-appointed receivers and managers of the Trust Assets.

“Structured Notes” means the financial notes held by Brite Advisors on trust for certain Beneficiaries, not being the Minerva Notes or the Moventum Assets.

“Trust Assets” means the property, assets and undertakings held by the Defendant on trust for another to which the Receivers have been appointed, jointly and severally, as receivers and managers.



“Verified Entitlement” means the entitlement of each Beneficiary as calculated and verified in accordance with the orders in this matter dated 2 September 2024.

“Westpac Client Accounts” means the following accounts held in the name of Brite Advisors with Westpac Banking Corporation:

- a) AUD – 036-237 450549
- b) CHF – 034-770 001769
- c) ZAR – 034-762 003019
- d) EUR – 034-705 036500
- e) USD – 034-702 136274
- f) GBP – 034-703 011086
- g) NZD – 034-748 032163

“Westpac Operating Accounts” means the following accounts held in the name of Brite Advisors with Westpac Banking Corporation:

- a) AUD – 036-230 149905
- b) CHF – 034-770 001857
- c) ZAR – 034-762 002649
- d) EUR – 034-705 040737
- e) USD – 034-702 241939
- f) GBP – 034-703 025840

THE COURT ORDERS THAT:

1. The Receivers would be acting properly and are justified in adopting the following approach to determining and making a distribution from the Trust Assets to Corporate Trustees or Beneficiaries.



Deficient Mixed Fund

2. The Receivers can treat:
 - (a) the assets and cash contained in the IB Accounts;
 - (b) the cash contained in the Westpac Client Accounts which does not form a part of the Excluded Assets;
 - (c) the cash contained in the Westpac Operating Accounts;
 - (d) the proceeds of any assets in the IB Accounts that have, pursuant to orders of the Court, been liquidated and transferred out of the IB Accounts;
 - (e) the assets and cash contained in the EU Moventum Account;
 - (f) any future recoveries as contemplated by orders 6 and 38 below; and
 - (g) any interest accrued on (b), (c), (d), (e) or (f),

as a pooled fund (together the **Deficient Mixed Fund**), with each Beneficiary having an equitable charge over the entire pooled fund to the value of their Verified Entitlement (to the extent it includes assets and cash which Brite Advisors held or purported to hold in the IB Accounts), but without any traceable interest to specific assets or cash in the Deficient Mixed Fund.
3. In respect of Beneficiaries whose Verified Entitlement includes an entitlement to the Deficient Mixed Fund, the Receivers can calculate the amount of their distribution relating to such assets (**Beneficiary's Deficient Mixed Fund Distribution**) on a *pari passu* basis as follows.

$$\text{Beneficiary's Deficient Mixed Fund Distribution} = \frac{\text{BE} - \text{Loans}}{\text{TE} - \text{TL}} * \text{Final Total Value} - (\text{Withdrawals} + \text{Tax}) - \text{JD}$$

Where:

BE (Beneficiary Entitlement) is the total value of an individual Beneficiary's Verified Entitlement relating to assets and cash which Brite Advisors held or purported to hold in the IB Accounts.

TE (Total Entitlements) is the sum of each and every BE.



TL (Total Loans) is the sum of each and every Loan.

Final Total Value is the total value of the Deficient Mixed Fund, less any amount representing the value of the Retained Funds identified in order 20 and the IB Margin Loan Security Assets identified in order 17 below, plus any pension withdrawals paid to Beneficiaries after 13 December 2023 as required by order 27 and any Tax that has been paid by the Receivers before the Valuation Date. The Final Value is to be determined as at the Valuation Date, as defined in order 27. For clarity, the Deficient Mixed Fund does not include the Excluded Assets.

Withdrawals are post-appointment pension/hardship withdrawals paid to that Beneficiary. This represents a set-off against the Beneficiary's distribution.

Loans are any funds provided by Brite Advisors to that Beneficiary pursuant to a loan agreement and which have not been repaid. This represents a reduction of the Beneficiary's Verified Entitlement.

Tax is any tax liability which the Receivers or Brite Advisors must pay or has paid on behalf of a Corporate Trustee or Beneficiary or an amount that must be withheld or has been withheld in respect of a Corporate Trustee or Beneficiary's tax liability. This represents a deduction against the Beneficiary's distribution.

ID (Interim Distribution) is any distribution already paid for the benefit of that Beneficiary pursuant to an order made by this Court in this matter and as contemplated by order 24B.

4. For the purposes of the calculation of each Beneficiary's Deficient Mixed Fund Distribution in accordance with the above paragraph, the Receivers can treat the following matters as having no impact on that calculation:
 - (a) whether Brite Advisors held or purported to hold model portfolio assets, bespoke portfolio assets or both for the Beneficiary;



- (b) the "Master Account" in which Brite Advisors held or purported to hold that Beneficiary's assets in;
- (c) the business unit designation or financial advisor appointed (or any other jurisdictional identifier) for that Beneficiary, as reflected in Brite Advisors' systems;
- (d) any reassurance provided by Brite Advisors or a related or third party that the Beneficiary's assets were segregated; and
- (e) any representation by Brite Advisors or a related or third party that the Beneficiary held certain identifiable assets in the IB Accounts.

Minerva Notes

- 5. The Receivers can treat Beneficiaries who held Minerva Notes through Brite Advisors as at 13 December 2023 as having an entitlement to the Deficient Mixed Fund equal to the price paid by the Beneficiaries for the notes.
- 6. To the extent Brite Advisors is able to recover any funds linked with the Minerva Notes, such recoveries are to form a part of the Deficient Mixed Fund and are to be distributed in accordance with the Deficient Mixed Fund Distribution formula.

Structured Notes

- 7. The Receivers can treat Beneficiaries on whose behalf Brite Advisors should have held Structured Notes as at 13 December 2023, but where those Structured Notes are not actually held, as having an entitlement to the Deficient Mixed Fund equal to the estimated market value of the Structured Notes as at 13 December 2023.

Excluded Assets

Cash held in Westpac Client Accounts

- 8. The Receivers can distribute the cash held in Brite Advisors' Westpac Client Accounts as follows.
- 9. In respect of any cash deposited in these accounts by a Beneficiary on or after 16 October 2023 and where that cash remained in the relevant Westpac Account until



the appointment of the Receivers on 13 December 2023, the Receivers can distribute such deposits along with any associated interest accrued back to the depositing Beneficiaries in full.

10. Prior to making the transfer contemplated in the previous order, the Receivers can require that the Beneficiary who is to receive this distribution pay to the Receivers a fee representing a proportionate share of fees and expenses of the Receivers concerning their work in relation to the cash (including investigation, administration and realisation) as approved by the Court. The Receivers can allow a Beneficiary to offset the fee against the cash to be transferred.
11. In respect of any cash deposited in these accounts which represent the proceeds of matured structured notes which were held on the Moventum platform, these funds are to be distributed to Beneficiaries who hold a proprietary right to those notes in accordance with order 13 below.
12. In respect of the remaining cash in the Westpac Client Accounts (excluding amounts withheld in respect of potential tax liabilities), the Receivers are to treat this as part of the Deficient Mixed Fund.

Moventum Assets

13. The Receivers can transfer the structured notes held on the Moventum platform in the USD and GBP accounts, and any proceeds deposited into the Westpac Client Accounts, which are the subject of a Beneficiary's Verified Entitlement, back to the Beneficiary or the Corporate Trustee for the benefit of the Beneficiary entitled to those notes *in specie*. Where notes have matured, the Receivers can transfer the cash received upon maturity along with any interest received to the Beneficiary or the Corporate Trustee for the Beneficiary entitled to that cash.
14. Prior to making the transfer contemplated in the previous order, the Receivers can require that the Beneficiary who is to receive this distribution pay to the Receivers a fee representing a proportionate share of fees and expenses of the Receivers concerning their work in relation to the Moventum Assets (including investigation, administration and transfer) as approved by the Court. The



Receivers can allow a Beneficiary who is entitled to a distribution from the Deficient Mixed Fund to offset the fee against their Deficient Mixed Fund Distribution.

Retention of tax estimate

15. In making the distributions referred to in orders 9, 11, and 13 the Receivers can retain from each such distribution an amount reflecting a conservative estimate of any related tax liability, including any withholding tax liability, of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries required to be satisfied from the Client AuM.
16. The Receivers can use those retained amounts to satisfy those tax liabilities and any amount not needed for that purpose will be distributed in accordance with orders 9, 11, and 13 as appropriate.

IB Margin Loan Security Assets

17. The Receivers will not distribute the cash held in the IB Accounts I5876295, I6075976, and I1246925 and will retain assets adequate to comply with the orders made in this matter dated 5 June 2024 (**IB Margin Loan Security Assets**).
18. Nothing in these orders affects the ongoing operation and effect of the agreements and undertakings recorded in order 3 of the orders made in this matter on 5 June 2024.
19. Until the determination of the Retained Funds as referred to in orders 20 and 21 below, and without limiting or affecting orders 17 and 18 above,
 - (a) the Receivers agree and undertake to the Court that nothing in these orders:
 - (i) has the effect of in any way prejudicing any of the rights of Interactive Brokers Australia Pty Ltd (**IBA**) with respect to the Margin Loan (as that term is defined in the orders made in this matter on 5 June 2024), IBA's contractual arrangements with the Defendant or the Receivers or otherwise relating to or arising out of or in connection with its relationship with Brite Advisors, including



without limitation any security interest or set-off rights it has over any assets affected by these orders; or

- (ii) amounts to a concession or agreement by IBA that it is not entitled to interest and dividend amounts earned on the Brite Assets whilst any short cash balance remains on any of the IB Accounts, nor does it constitute any waiver of any such entitlement, and the Receivers will not make any argument to the contrary; and
- (b) IBA agrees and undertakes to the Court that nothing in these orders:
 - (i) has the effect of in any way prejudicing any of the rights of the Defendant or the Receivers with respect to the Margin Loan, the contractual arrangements with IBA, or otherwise relating to or arising out of or in connection with the relationship with IBA;
 - (ii) amounts to a concession or agreement by the Defendant or the Receivers that it is not entitled to challenge the right of IBA to interest and dividend amounts earned on the Brite Assets, and IBA will not make any argument to the contrary; and
- (c) the Receivers agree and undertake to the Court that they will not transfer or cause to be transferred *in specie* assets held in the IB Accounts from IBA's trading platform to a third party trading platform without giving 14 days' notice to IBA.

Retention of Funds

- 20. The Receivers must deduct from the Final Total Value, referred to above in order 3, an amount to be determined and approved by the Court. These funds are to be deducted prior to the Valuation Date and retained by the Receivers **(Retained Funds)**.
- 21. The quantum of the Retained Fund is to be comprised of the following amounts, each to be specified on application to the Court and supported with evidence:
 - (a) An amount reflecting a conservative estimate of the potential tax liabilities



of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client AuM, including any interest or penalties, where there are unresolved tax issues at the time of determining the amount of any distribution;

- (b) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in investigating and pursuing claims against third parties;
 - (c) An amount reflecting the Receivers' reasonable remuneration, costs and expenses to resolve any other outstanding matter and a conservative estimate of any other potential liability identified at the time of determining the amount of any distribution, including without limitation, any potential adverse costs order that may be made against the Receivers or Brite Advisors; and
 - (d) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in managing the Retained Funds for the anticipated remaining length of the Receivership.
22. The Retained Funds are to be managed by the Interim Funds Manager and are to remain held on trust for the Beneficiaries who receive a distribution from the Deficient Mixed Fund pursuant to these orders in proportion to their Beneficiary Entitlement – Loans (as defined in order 3 above).
23. The Retained Funds remain subject to prior orders of this Court relating to Trust Assets, including orders 9 and 10 of the orders made in this matter on 6 February 2024 (as amended).
24. Following any distribution in accordance with orders 25 to 31 and retention of the Retained Funds, the Receivers are to:
- (a) retain the Retained Funds until further order of the Court; and
 - (b) before any further distribution but no later than four months from the completion of the interim distribution contemplated by these orders, report to the Court on the progress of the outstanding matters and on any



proposed further distribution.

Interim Distribution

24A. Any application for an interim distribution is to be supported by evidence relating to:

- (a) the value of the interim distribution;
- (b) the timing of the liquidation; and
- (c) the timing of the distribution.

Final Distribution Payment

- 25. Once the Retained Funds have been determined and approved by the Court in accordance with orders 20 and 21 above, the Receivers can, with the assistance of the Interim Funds Manager, liquidate the assets in the IB Accounts (except the IB Margin Loan Security Assets) over such period as is necessary in their opinion to achieve a fair price for those assets.
- 26. The proceeds of this liquidation, less the Retained Funds, will be available for distribution (**Distributable Amount**).
- 27. The Distributable Amount will be valued for the purposes of a distribution on a single date to be set by the Receivers (**Valuation Date**) and in US dollars, applying the prevailing exchange rates on that date as identified by the Receivers to the extent any cash is held in another currency. The total amount of pension withdrawals (or the USD equivalent calculated as at the date of each payment) paid to Beneficiaries after 13 December 2023 will be added to this value (**Final Total Value**).
- 28. The distribution owing to each Beneficiary will be calculated by reference to the formula in order 3 applied to the Final Total Value at the Valuation Date.
 - (a) Where a Beneficiary has received a pension withdrawal, this will be deducted from the amount to be distributed to them or to their Corporate Trustee.



- (b) Where Brite Advisors is liable to pay any tax on behalf of a Corporate Trustee or Beneficiary or withhold an amount in respect of a Corporate Trustee or Beneficiary's tax liability, that amount will be deducted from the amount to be distributed.
29. Where a Corporate Trustee or Beneficiary is to be paid a distribution or part thereof in a currency other than US dollars, the Receivers will convert such funds to that currency as required on or shortly after the Valuation Date at the prevailing exchange rate where necessary.
30. A cash payment will be made to each Corporate Trustee or Beneficiary, the recipient to be determined by orders 31 to 35 below, in the currency or currencies nominated in accordance with a process to be established by the Receivers.
31. The Receivers are to make payment to any Beneficiary who does not have a Corporate Trustee and to the relevant trustee entities controlled by the following Corporate Trustees:
- (a) STM Malta Pension Services Limited - Company number C 51028;
 - (b) Corinthian Pension Trustees Limited (Administrators Appointed) - Company number 110658;
 - (c) Pantheon Pension Trustees Limited (Administrators Appointed) - Company number 112310;
 - (d) IFG Pensions Limited - Company number 04826217;
 - (e) The Pensioneer Trustee Company (Guernsey) Limited - Company number CMP27891;
 - (f) Pathlines Pensions UK Limited (formerly London & Colonial Services Limited) - Company number 2966313;
 - (g) Praxis Pes Malta Limited (formerly known as Trireme Pension Services (Malta) Limited) - Company number C 58492;
 - (h) Sovereign Trust (Guernsey) Limited - Company number CMP51015;



- (i) Sovereign Trust International Limited - Company number 44491;
 - (j) Sovereign Pension Services Limited - Company number C 56627;
 - (k) Concept Group Limited - Company number CMP41012;
 - (l) Boal and Co (Pensions) Limited - Company number 104242C;
 - (m) Mattioli Woods Limited - Company number 03140521; and
 - (n) iPensions Group Limited - Company number 03683070.
32. Any amount of the Distributable Amount that is not distributed in accordance with order 31 because the Corporate Trustee is not listed in that order will continue to be held on trust.

Distribution Recipient

33. Where a Beneficiary has a Corporate Trustee in respect of an account with Brite Advisors in relation to which their entitlement arises, the Receivers are to make the distribution payment or transfer the asset, as applicable, to that Corporate Trustee or Substituted Corporate Trustee, subject to any notice received as contemplated in order 35 below, provided that Corporate Trustee or Substituted Corporate Trustee is listed in order 31 above.
34. Where a Beneficiary has an account with Brite Advisors without an intermediary Corporate Trustee, the Receivers are to make the distribution payment or transfer the asset, as applicable, to that Beneficiary.
35. Where a Beneficiary has changed their trustee, from a Corporate Trustee to a new trustee (the **Substituted Corporate Trustee**), and the Beneficiary, Corporate Trustee and Substituted Corporate Trustee have, in accordance with a procedure to be established by the Receivers, jointly advised the Receivers of this change and jointly instructed the Receivers that they wish for the payment of any distribution relating to that Beneficiary's entitlement to be made to the Substituted Corporate Trustee, the Receivers can make such payment to the Substituted Corporate Trustee, provided the Substituted Corporate Trustee is listed in order 31 above.



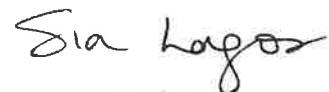
Pension Withdrawals

36. The Receivers may cease assessing and processing pension withdrawals if the Receivers anticipate making a distribution payment to that Beneficiary in accordance with the above orders within 60 calendar days.
37. Once the Receivers have made a distribution payment to a Beneficiary, even if the Receivers have retained Client AuM and anticipate making a further payment to that Beneficiary in future, the Receivers may cease assessing and processing withdrawal requests from that Beneficiary.

Future Recoveries

38. Any recoveries that Brite Advisors may obtain which are related to the losses incurred by the trust will form a part of the Deficient Mixed Fund and will be distributed in accordance with the formula in order 3 and the approach specified in orders 28 – 35 above.

Date orders authenticated: 16 September 2025


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: WAD13/2024

Federal Court of Australia

District Registry: Western Australia Registry

Division: General

Interested Person	LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR CAPACITY AS RECEIVERS AND MANAGERS OF BRITE ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Interested Person	ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN THEIR CAPACITIES AS JOINT ADMINISTRATORS OF RELAY ADMINISTRATION LIMITED, CORINTHIAN PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES LIMITED (ALL IN ADMINISTRATION)
Interested Person	INTERACTIVE BROKERS AUSTRALIA PTY LTD ACN 166 929 568

Annexure K Interim Distribution Application Orders



Federal Court of Australia

District Registry: Western Australia Registry

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and others named in
the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

AMENDED ORDER

(Amended pursuant to r 39.05(e) of the *Federal Court Rules 2011* (Cth))

JUDGE: Justice O'Sullivan

DATE OF ORDER: 15 September 2025

WHERE MADE: Perth

For the purposes of this order:

The same definitions used in the Distribution Methodology Orders made on 15 September 2025 in these proceedings apply to these orders unless stated otherwise.

THE COURT NOTES THAT:

1. The Receivers must deduct from the Final Total Value, referred to above in order 3, an amount to be determined and approved by the Court. These funds are to be deducted prior to the Valuation Date and retained by the Receivers (**Retained Funds**).
2. The quantum of the Retained Fund is to be comprised of the following amounts, each to be specified on application to the Court and supported with evidence:
 - (a) An amount reflecting a conservative estimate of the potential tax liabilities of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client AuM, including any interest or penalties, where there are unresolved tax issues at the time of determining the amount of any distribution;



- (b) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in investigating and pursuing claims against third parties;
- (c) An amount reflecting the Receivers' reasonable remuneration, costs and expenses to resolve any other outstanding matter and a conservative estimate of any other potential liability identified at the time of determining the amount of any distribution, including without limitation, any potential adverse costs order that may be made against the Receivers or Brite Advisors; and
- (d) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in managing the Retained Funds for the anticipated remaining length of the Receivership.

THE COURT ORDERS THAT:

Interim Distribution Application

1. The Receivers would be acting properly and are justified in bringing an interlocutory application, as set out in Orders 2 to 11 below, to make an interim distribution from the Trust Assets to Corporate Trustees and Beneficiaries (**Interim Distribution Application**).
2. By 7 October 2025, the Receivers are to:
 - (a) file and serve a minute of proposed orders that the Receivers seek by the Interim Distribution Application; and
 - (b) file and serve any affidavit evidence and any written outline of submissions, with such submissions being limited to 10 pages.
3. Any person who has been granted leave to be heard as an interested party in this matter without becoming a party to the proceeding is granted leave to be heard, if they so wish, in relation to the Interim Distribution Application.
4. Any person may seek leave pursuant to r 2.13(1) of the *Federal Court (Corporations) Rules 2000* (Cth) to be heard as an interested party in relation to the Interim Distribution Application. Any application for leave to be heard as an interested party must be filed with the Court and served on the Receivers by on or before 14 October



2025.

5. Any application for leave to be heard as an interested party pursuant to order 4 shall be determined by the Court on the papers.
6. By 28 October 2025, any interested party may file any affidavit evidence and any written outline of submissions, with such submissions being limited to 10 pages.
7. Any person who is not an interested party may provide the Receivers with any submissions or evidence they seek to put before the Court to determine the Interim Distribution Application by 28 October 2025. The Receiver must file with the Court an affidavit including any submissions or evidence so received by 30 October 2025.
8. By 4 November 2025, the Receivers may file any affidavit evidence and any outline of submissions in reply, with such submissions being limited to 5 pages.
9. Any outlines of submissions and affidavits must be easily legible using a font size of at least 12 points and 1 ½ line spacing throughout.
10. The Receivers are to file and serve a Court Book by 5 November 2025.
11. The Interim Distribution Application hearing be listed for a full day hearing on **Wednesday 12 November 2025 at 9am AWST / 11.30am ACDT.**
12. The Receivers and each interested party have liberty to apply on 48 hours' written notice.

Joining the ATO

13. The Receivers would be acting properly and are justified in bringing an interlocutory application under r 2.13 of the *Federal Court (Corporations) Rules 2000* (Cth) for the Commissioner of Taxation for the Commonwealth of Australia to be joined as an interested party to be heard on the Interim Distribution Application and any further interlocutory application brought by the Receivers in relation to the distribution or retention of Trust Assets in this proceeding.
14. The following interested parties be granted access to the Court file (excluding any material which the Court has marked as confidential) in this matter:
 - (a) the Administrators of Relay Administration Ltd;
 - (b) Alltrust Services Ltd;



- (c) Bourse Pension Administrators (Malta) Limited;
- (d) Commissioner of Taxation for the Commonwealth of Australia; and
- (e) Interactive Brokers Australia Pty Ltd.

Surrender Rebate and Interest

- 15. The Receivers would be acting properly and are justified in treating any balance of a Surrender Rebate as a deduction in the calculation of the respective Beneficiary's total entitlement in accordance with Order 9(b) of the orders made in this matter on 2 September 2024.
- 16. The Receivers would be acting properly and are justified in not adding any interest to any cash holding recorded in the 13 December 2023 Data.

Date orders authenticated: 16 September 2025

Sia Lagos
Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: WAD13/2024

Federal Court of Australia

District Registry: Western Australia Registry

Division: General

Interested Person	LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR CAPACITY AS RECEIVERS AND MANAGERS OF BRITE ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Interested Person	ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN THEIR CAPACITIES AS JOINT ADMINISTRATORS OF RELAY ADMINISTRATION LIMITED, CORINTHIAN PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES LIMITED (ALL IN ADMINISTRATION)
Interested Person	INTERACTIVE BROKERS AUSTRALIA PTY LTD ACN 166 929 568

Annexure L Proposed Interim Distribution Orders

NOTICE OF FILING

Details of Filing

Document Lodged:	Non-Prescribed Notice/Request
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	7/10/2025 5:24:26 PM AWST
Date Accepted for Filing:	7/10/2025 5:24:31 PM AWST
File Number:	WAD13/2024
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Federal Court of Australia
District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Defendant

**COURT APPOINTED RECEIVERS AND MANAGERS'
MINUTE OF PROPOSED ORDERS**

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: ---

WHERE MADE: Adelaide

For the purposes of this order:

"Distribution Orders" means the orders made by this Court relating to the distribution methodology on 15 September 2025 in these proceedings. The same definitions used in Distribution Orders apply to these orders unless stated otherwise.

"Interim Distribution Valuation Date" means a date chosen by the Receivers on which the Interim Distributable Amount will be valued for the purposes of the distribution, as contemplated by order 4(f) of these orders.

"Margin Loan" means the debt owing under lending arrangements in place prior to the appointment of the Receivers between Brite Advisors and Interactive Brokers Australia Pty Ltd (IBAU).

"Non-Distributable Amount" is an amount determined by order 6 of these orders.

Filed on behalf of (name & role of party)	Linda Smith and Rob Kirman, as joint and several court-appointed receivers and managers
Prepared by (name of person/lawyer)	C A L Boothman
Law firm (if applicable)	HWL Ebsworth Lawyers
Tel (08) 6559 6500	Fax 1300 704 211
Email	cboothman@hwle.com.au
Address for service (include state and postcode)	Level 20, 240 St Georges Terrace, Perth WA 6000

THE COURT ORDERS THAT:

Termination of Margin Loan arrangements

1. The Receivers would be acting properly and are justified in repaying to IBAU the amount owing under the Margin Loan from the Trust Assets and terminating any contractual arrangement associated with the Margin Loan.
2. Upon repayment of the Margin Loan, the following orders are discharged and of no ongoing effect:
 - (a) Orders 3 and 7 of the orders made in this matter on 5 June 2024; and
 - (b) Orders 17, 18 and 19 of the Distribution Orders.

Interim Distribution

3. The Receivers would be acting properly and are justified in making an interim distribution from the Trust Assets to Corporate Trustees and Beneficiaries, as contemplated by Order 24A of the Distribution Orders, in accordance with Orders 2 to 7 of the Distribution Orders and these orders.
4. To give effect to an interim distribution, which can take place before any application relating to the Retained Funds has been made, the Receivers are to take the following steps.
 - (a) With the advice and assistance of the Interim Funds Manager, identify the assets to be liquidated, which once liquidated will leave assets invested on the IB Platform with a value at or around the Non-Distributable Amount (**Liquidation Assets**).
 - (b) With the advice and assistance of the Interim Funds Manager, liquidate the Liquidation Assets, with such liquidation to occur within twenty-one business days of these orders (**Liquidation Window**).
 - (c) With the advice and assistance of the Interim Funds Manager, manage the currencies in which cash is held, during the Liquidation Window and as the liquidation occurs, to minimize foreign exchange risk and in contemplation of the target currencies for the interim distribution.
 - (d) With the advice and assistance of the Interim Funds Manager and where appropriate, as the Liquidation Assets are liquidated, adopt a hedging strategy

to reduce the period during which the Liquidation Assets are not exposed to market risk.

- (e) On the expiration of the Liquidation Window, the Receivers will commence all reasonable steps to distribute the proceeds of the liquidation of the Liquidation Assets (**Interim Distributable Amount**), with such steps to be completed within twenty business days (**Distribution Window**).
- (f) At the start of the Distribution Window the Interim Distributable Amount will be valued on a single date, being the Interim Distribution Valuation Date, and in US dollars, applying prevailing exchange rates on that date as identified by the Receivers to the extent any cash is held in another currency. The total amount of pension withdrawals (or the USD equivalent calculated as at the date of each payment of such pension withdrawal) paid to Beneficiaries after 13 December 2023 will be added to this value (**Interim Total Value**).
- (g) The interim distribution to be paid to a Corporate Trustee for the benefit of a Beneficiary, or direct to a Beneficiary, as applicable, will thereafter be calculated by reference to the formula in order 7. Where a Beneficiary has received a Withdrawal, this will be deducted from the amount to be distributed to them or to their Corporate Trustee.
- (h) Orders 29 through 37 of the Distribution Orders apply to the Interim Distributable Amount in the same way as these orders apply to the Distributable Amount as defined in the Distribution Orders.
- (i) Any amount of the Interim Distributable Amount continued to be held on trust in accordance with Order 32 of the Distribution Orders, will be held as cash in the IB Accounts.
- (j) After the commencement of the Distribution Window, the Receivers will seek orders from this Court to pay each Corporate Trustee for the benefit of a Beneficiary, or a Beneficiary directly (as applicable), identifying the specific amount to be paid and the currency of that payment (**Payment Orders**):
 - (i) The Receivers are to file the application for the Payment Orders, supported by affidavit evidence, by Thursday 18 December 2025.
 - (ii) The hearing relating to the application for the Payment Orders be

listed on **Tuesday 23 December 2025 at 9am AWST / 11.30 ACDT.**

- (k) Upon receipt of the Payment Orders, the Receivers will make payment of the interim distribution in accordance with those orders and before the conclusion of the Distribution Window.
- 5. IBAU must provide all reasonable and necessary assistance to the Receivers and the Interim Fund Manager to facilitate the expeditious carrying out of these orders, including making the transfer of funds out of the IB Accounts within three business days of receiving instructions from the Receivers.
- 6. The Non-Distributable Amount is:
 - (a) USD\$22,455,609; plus
 - (b) GBP£5,233,636; plus
 - (c) AUD\$19,738,772; plus
 - (d) any amount which as at 14 November 2025 is the subject of an application to a Registrar of the Court for approval for payment and which has not yet been approved or paid.
- 7. In respect of Beneficiaries whose Verified Entitlement includes an entitlement to the Deficient Mixed Fund, the Receivers can calculate the amount of their interim distribution relating to such assets (**Beneficiary's Deficient Mixed Fund Interim Distribution**) on a *pari passu* basis as follows.

$$\text{Beneficiary's Deficient Mixed Fund Interim Distribution} = \frac{\text{BE} - \text{Loans}}{\text{TE} - \text{TL}} * \text{Interim Total Value} - (\text{Withdrawals})$$

Where:

BE (Beneficiary Entitlement) is the total value of an individual Beneficiary's Verified Entitlement relating to assets and cash which Brite Advisors held or purported to hold in the IB Accounts.

TE (Total Entitlements) is the sum of each and every BE.

TL (Total Loans) is the sum of each and every Loan.

Interim Total Value is the Interim Distributable Amount plus any pension withdrawals paid to Beneficiaries after 13 December 2023. The Interim

Total Value is to be determined as at the Interim Distribution Valuation Date, as defined in order 4(f) above.

Withdrawals are post-appointment pension/hardship withdrawals paid to that Beneficiary. This represents a set-off against the Beneficiary's distribution.

Loans are any funds provided by Brite Advisors to that Beneficiary pursuant to a loan agreement and which have not been repaid. This represents a reduction of the Beneficiary's Verified Entitlement.

8. The Interim Distribution need not account for or deduct any liability for tax which the Receivers or Brite Advisors must pay or withhold, or has paid or withheld, on behalf of a Corporate Trustee or Beneficiary. The Receivers may deduct such taxes from a future distribution.
9. For the purpose of these orders, a business day means any day other than:
 - (a) a Saturday or Sunday; or
 - (b) a day that is a public holiday in Western Australia; or
 - (c) 24, 29, 30 or 31 December 2025; or
 - (d) 2 January 2026,and includes days on which the Registry of the Federal Court in Western Australia is closed.

Amendment of Distribution Orders

10. Order 31 of the orders dated 15 September 2025 relating to distribution methodology is amended to add after subparagraph (n) in that order:
 - “(o) Alltrust Services Limited (CRN 05365396);
 - (p) Bourse Pension Administrators (Malta) Limited (C66425)”



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Detailed work packages

Work to be undertaken from post 12 November 2025 hearing to finalisation		
Period		12 November 2025 to completion
Estimated Amount (AUD ex GST)		\$5.0 million
Task Area	General Description	Tasks
Books and Records \$100,000	Books and Records \$100,000	<ul style="list-style-type: none"> Maintenance and upkeep of internal document review platform by Forensic Technology team. Arrange to archive or destroy records stored on internal document review platform when receivership and liquidation finalised. Maintenance of Salesforce and data held in associated services in a limited capacity to completion of the Receivership. Engaging with i-Convergence as to the wind down of Salesforce and associated data system services following final distribution (or earlier if determined not necessary).
Dealings with Beneficiaries / Trustees \$750,000	Correspondence with Beneficiaries / Trustees \$600,000	<ul style="list-style-type: none"> Continuous review and update of contact list of Trustees and Beneficiaries for the purposes of issuing correspondence. Updating list of frequently asked questions page on Receivers' website. Seeking and considering legal advice in relation to queries received from Trustees and Beneficiaries where required. Attending to Beneficiary, Trustee and Advisors' queries via telephone and email, including final review and sign off from experienced senior staff members due to the complex and high-risk nature of the matter. Correspondence and telephone calls with Beneficiaries regarding wind down of pension withdrawal requests. Prepare and issue updates to Beneficiaries and Trustees regarding the Receivership. Prepare and issue updates to Beneficiaries and Trustees addressing specific queries in regard to the Receivers' distribution application and indicative timeline to distribution, including seeking Counsel's input in drafting of bespoke responses to such queries. Reviewing data in Salesforce for the purposes of drafting responses to Beneficiaries' queries. Consider and respond to requests for information. Consider Beneficiaries correspondence regarding change of trustee and prepare responses. Review and make redactions to remuneration and cost claims before provision to Trustees. Issue final update to Beneficiaries and Trustees regarding finalisation of receivership.
	Assessment of pension withdrawal requests \$150,000	<ul style="list-style-type: none"> Requesting further particulars from Beneficiaries/Trustees in relation to pension withdrawal requests. Review of reports extracted from Salesforce for purposes of assessing pension withdrawal requests. Review/assess all beneficiary pension withdrawal requests based on the protocol provided from the Court Orders. Filing pension withdrawal requests. Internal discussions regarding pension withdrawal requests. Updating pension withdrawal request tracking spreadsheet on ongoing basis.



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		<ul style="list-style-type: none"> ▪ Arrange payment of pension withdrawals to continue until the Interim Distribution is paid. ▪ Preparing and issuing correspondence to Beneficiaries informing of the 60-day cut-off prior to the interim distribution for non-payment of withdrawal requests. ▪ Arrange payment of final pension withdrawals to 60-day cut-off prior to interim distribution. ▪ Consider if a hardship provision is to be included to allow payments within the 60-day cut-off to pay pension withdrawals. ▪ Correspondence to Trustees and Beneficiaries regarding remittances for pension withdrawal payments made. ▪ Liaising with i-Convergence regarding pension withdrawal requests. ▪ Internal discussions regarding the above. ▪ Internal discussions regarding pension withdrawal request process. ▪ Liaise with HWLE and Counsel regarding correspondence to be issued to Trustees.
Other trading matters \$500,000	Management of Client AuM \$250,000	<p>Work to be completed to Interim Distribution</p> <ul style="list-style-type: none"> ▪ Liaising with the Interim Fund Manager, BML Funds Management Pty Ltd (BML), with respect to managing and trading Client AuM and other Client AuM matters. ▪ Considering weekly portfolio reports prepared by BML and internal discussions regarding same. ▪ Liaising with BML funds with respect to post Interim Distribution investment strategy. ▪ Review/finalisation and publication of BML weekly reports on investment portfolio to website for Beneficiaries and Trustees. ▪ Determining values required to be drawn from IB to satisfy pension withdrawals and operating expenses. ▪ Facilitating drawdowns from IB for pension withdrawal payments (to Interim Distribution), and arrangements regarding ongoing processes of authority and segregation of duties. ▪ Ongoing maintenance of CBA term deposit accounts to Interim Distribution. ▪ Consider the treatment of cash on the Moventum platform. <p>Post-Interim Distribution work</p> <ul style="list-style-type: none"> ▪ Liaising with CBA regarding closure of term deposits and completion of requisite forms for closure. ▪ Arrange closure of IB accounts after all Trust Assets withdrawn from accounts. ▪ Regular assessment of investment strategy for non-distributed amounts.
	Matters relating to service providers \$100,000	<ul style="list-style-type: none"> ▪ Engaging with service providers, including Ownbackup, Salesforce, GBG, and AutoRek regarding their contract for services and renewals. ▪ Reviewing contracts with service providers. ▪ Liaising with solicitors regarding the above as required. ▪ Terminate contract with service provides once final distribution is made ▪ Terminate contract with BML Funds once management of Client AuM is no longer needed.
	Insurance \$50,000	<ul style="list-style-type: none"> ▪ Maintaining insurance coverage as required to completion of the Receivership. ▪ Liaise with HWLE regarding insurance position. ▪ Consider insurance invoices for payment.



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		<ul style="list-style-type: none"> Finalise insurance arrangements on finalisation of receivership.
	Other trading matters \$100,000	<ul style="list-style-type: none"> Maintaining ongoing trading budget and cost forecast. Internal discussions regarding trading budget and cost forecast. Collating and approving operational payments. Regular internal discussions/correspondence to manage task lists and inform progression of operational work streams. Reviewing receipts and payments recording. Supplier wind down and closing out trading costs. Ensuring all invoices have been paid. Obtaining confirmation from each supplier that the Receivership accounts have been closed and are paid off.
Finalising investigations \$75,000 <i>Note: The Receivers have excluded detail where they consider there is risk of prejudice to recovery actions or potential claims.</i>	Examinations applications \$25,000	<ul style="list-style-type: none"> Prepare and finalise public examination application, seeking examination summonses and/or document production orders be issued to parties as authorised by the Court. Attending to service of the summonses/orders once received. Attendance at hearings as required to facilitate document production in accordance with orders. Liaising with HWLE and Counsel regarding the above.
	Litigation funders \$25,000	<ul style="list-style-type: none"> Preparing brief to provide to litigation funders. Preparing confidentiality agreement. Liaise with litigation funders regarding confidentiality agreement. Provision of brief to litigation funders. Liaise with litigation funders regarding funding of investigations/claims. Negotiating and entering into funding agreements with litigation funders as applicable.
	Other claims \$25,000	<ul style="list-style-type: none"> Correspondence regarding other claims. Further investigations, evidence collation and analysis to support other claims as required. Liaising with solicitors regarding the above as required.
Distribution \$2,325,000 <i>Note: The Receivers have excluded detail where they consider there is risk of potential fraud.</i>	Resolving Beneficiary Entitlements \$250,000	<ul style="list-style-type: none"> Resolve STM Life Beneficiaries and Tribune Beneficiaries Valuation Notices. Resolve dispute with one beneficiary regarding a purported swap agreement. Release Valuation Notices to Corporate Trustees of Deceased Estates and deal with queries or issues in relation to same. Resolve all Valuation Notice disputes, including with respect to Structured Notes. Liaise with Beneficiaries with loan accounts and investigate disputes in relation to same. Liaise with Connaught West Limited and their legal representatives regarding the proof of debt submitted to the Receivers claiming an entitlement to the Client AUM. Liaise with two GFS2 Scheme Beneficiaries who purport to have a claim to the Client AUM in respect of funds previously held by the GFS2 Scheme. Complete investigation into a purported property investment made by a beneficiary which has been allocated as a withdrawal in the 13 December 2023 Data. Liaise with the Relay Administrators regarding funds purportedly swept to Brite Advisors and conclude on the matter. Complete Interactive Brokers deposit matching exercise and obtain court approval where relevant.



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	Liquidation of Client AuM in preparation for distribution \$500,000	<ul style="list-style-type: none"> ▪ Calculate amount of Client AuM to be liquidated in each respective currency required for distribution and provide to the Interim Fund Manager. ▪ Liaise with Interim Fund Manager regarding liquidation of Client AuM held on Interactive Brokers following 12 November 2025 Hearing. ▪ Consider Interim Fund Manager's strategy proposal for liquidation of the Client AuM, including timeframes. ▪ Provide feedback to Interim Fund Manager regarding proposal for the liquidation of the Client AuM. ▪ Discussions with HWLE and Counsel regarding Interim Fund Manager's proposal for the liquidation of the Client AuM. ▪ Review Interim Fund Manager's pre- and post-trade analysis on sale of positions. ▪ Consider quantum of securities to be retained and selection of securities to be retained proposed by Interim Fund Manager. ▪ Consider circumstances where low-liquidity assets are not able to be traded within the proposed trading window. ▪ Prepare mechanism to allow Interim Fund Manager to trade low-liquidity assets outside of the prescribed four-week trading window, if required. ▪ Prepare and issue correspondence to Trustees and Beneficiaries regarding progress of the liquidation of the Client AuM. ▪ Provide Interim Fund Manager with target currency amounts for conversions of proceeds of liquidated Client AuM for distribution.
	Interim Distribution \$750,000	<p>Beneficiaries with claims to the Deficient Mixed Fund (Including Model and Mixed Bespoke investors, Minerva Notes investors & Structured Notes investors)</p> <ul style="list-style-type: none"> ▪ Prepare a model to calculate amounts to be distributed to Beneficiaries with a claim to the Deficient Mixed Fund in accordance with the Distribution Framework Orders dated 15 September 2025. ▪ Circulate distribution model internally for comments and update accordingly. ▪ Significant internal discussions regarding the above. ▪ Liaising with HWLE and Counsel regarding the distribution model. ▪ Liaising with third parties (including Interim Fund Manager and i-Convergence) regarding inputs required for the distribution model. ▪ Resolving Beneficiary mapping issues with Trustees. ▪ Conducting reconciliations and investigations into Beneficiary Trustees as required. ▪ Prepare and issue correspondence to each impacted Trustee advising the results of the Receivers investigations. ▪ Liaise with i-Convergence to update impacted Beneficiaries' Trustee in Salesforce. ▪ Preparing to release reconciled Beneficiaries to the relevant trustees in Salesforce. ▪ Liaising with i-Convergence to action reconciliation updates. ▪ Ensure correct Beneficiaries are reflected for each Trustee. ▪ Release additional Beneficiaries' investment information to each relevant Trustee on Salesforce. ▪ Liaise with i-Convergence for proposed changes to Salesforce for displaying distributable amounts to Beneficiaries and Trustees. ▪ Agree information to be displayed on updated Salesforce dashboard. ▪ Liaise with HWLE tax team regarding taxation disclaimer to be included on Salesforce portal.



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		<ul style="list-style-type: none"> ▪ Prepare and issue correspondence to Trustees who we do not propose to distribute to. ▪ Liaise with HWLE & Counsel regarding the above. ▪ Engage with Alltrust regarding the acceptance of bulk payments. ▪ Conducting bank account verification processes. ▪ Engage with GBG to formalise the process required to obtain bank details for Direct and SMSF Beneficiaries. ▪ Liaise with Professional Practice & McGrathNicol Cyber team regarding safe storage of bank account information. ▪ Liaise with Professional Practice and internal Treasury team regarding potential daily transaction limits on any bank accounts. ▪ Liaise with i-Convergence to integrate GBG link within Salesforce. ▪ Ensuring bank account confirmations are correctly reported to the relevant Client Number. ▪ Prepare and upload disclaimer wording regarding the appropriate account to make payment to for Direct Beneficiaries. ▪ Prepare and issue correspondence to Direct Beneficiaries advising of their requirement to complete the bank account verification process. ▪ Verification of correct Trustee for Self-Managed Superannuation Fund Direct Beneficiaries. ▪ Liaising with i-Convergence to troubleshoot any Salesforce log-in issues encountered. ▪ Prepare and maintain register of Salesforce issues for action. ▪ Internal discussions regarding the above. ▪ Conducting bank account verification processes. ▪ Preparing distribution payments to Trustees. ▪ Approving payments. ▪ Preparing remittance advice to each Trustee. ▪ Preparing distribution payments to Direct Beneficiaries. ▪ Approving payments. ▪ Preparing remittance advice to each Direct Beneficiary. <p>Late Investors</p> <ul style="list-style-type: none"> ▪ Prepare a model to calculate amounts to be distributed to Late Investors in accordance with the Distribution Framework Orders dated 15 September 2025. ▪ Circulate distribution model internally for comments and update accordingly. ▪ Significant internal discussions regarding the above. ▪ Liaising with HWLE and Counsel regarding the above. ▪ Finalising views on appropriate method to apply Receivers' costs and fees to the Late Investor asset pool and incorporating into the model. ▪ Liaising with HWLE and Counsel regarding the above. ▪ Reimbursing the Deficient Mixed Fund for costs incurred and paid regarding Late Investor Assets prior to the Interim Distribution. ▪ Consider the most appropriate method to apportion interest accrued in term deposits to the Late Investors. ▪ Liaising with i-Convergence to update Late Investor Salesforce Valuation Notice amounts for interest accrued by Late Investor Beneficiaries. ▪ Resolving Beneficiary mapping issues with Trustees prior to distribution. ▪ Conducting reconciliations and investigations into Beneficiary Trustees as required.
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		<ul style="list-style-type: none"> ▪ Prepare and issue correspondence to each impacted Trustee advising the results of the Receivers investigations. ▪ Liaise with i-Convergence to update impacted Beneficiaries trustee in Salesforce. ▪ Preparing to release reconciled Beneficiaries to the relevant trustees in Salesforce. ▪ Liaising with i-Convergence to action reconciliation updates. ▪ Ensure correct Beneficiaries are reflected for each Trustee. ▪ Release additional Beneficiaries' investment information to each relevant Trustee on Salesforce. ▪ Liaise with i-Convergence for proposed changes to Salesforce for displaying distributable amounts to Beneficiaries and Trustees. ▪ Agree information to be displayed on updated Salesforce dashboard. ▪ Liaise with HWLE tax team regarding taxation disclaimer to be included on Salesforce portal. ▪ Conducting bank account verification processes. ▪ Liaise with McGrathNicol treasury team to determine the most appropriate method to break term deposits and make payment to the relevant Trustee. ▪ Determine whether payments can be made directly from CBA accounts without receipt into the Receivers' accounts with NAB. ▪ Preparing distribution payments to Trustees and Direct Beneficiaries. ▪ Approving payments. ▪ Preparing remittance advice to each Trustee and Direct Beneficiary. <p>Movement Investors</p> <ul style="list-style-type: none"> ▪ Prepare a model to calculate amounts to be distributed to Movement Investors in accordance with the Distribution Framework Orders dated 15 September 2025. ▪ Circulate distribution model internally for comments and update accordingly. ▪ Significant internal discussions regarding the above. ▪ Liaising with HWLE and Counsel regarding the above. ▪ Finalising views on appropriate method to apply Receivers costs and fees to Movement assets. ▪ Liaising with HWLE and Counsel regarding the above. ▪ Reimbursing the Deficient Mixed Fund for costs incurred regarding Movement Assets prior to the Interim Distribution. ▪ Resolving Beneficiary mapping issues with Trustees. ▪ Conducting reconciliations and investigations into Beneficiary Trustees as required. ▪ Prepare and issue correspondence to each impacted Trustee advising the results of the Receivers investigations. ▪ Liaise with i-Convergence to update impacted Beneficiaries trustee in Salesforce. ▪ Preparing to release reconciled Beneficiaries to the relevant trustees in Salesforce. ▪ Liaising with i-Convergence to action reconciliation updates. ▪ Ensure correct Beneficiaries are reflected for each Trustee. ▪ Release additional Beneficiaries' investment information to each relevant Trustee on Salesforce. ▪ Liaise with i-Convergence for proposed changes to Salesforce for displaying distributable amounts to Beneficiaries and Trustees. ▪ Agree information to be displayed on updated Salesforce dashboard.
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		<ul style="list-style-type: none"> ▪ Liaise with HWLE tax team regarding taxation disclaimer to be included on Salesforce portal. ▪ Engaging with the Administrators of Relay Administration Limited (Relay Administrators) regarding the transfer of Moventum funds to Relay Administration Limited for distribution to Beneficiaries. ▪ Assess the proper method for distributing these funds to the Relay Administrators. ▪ Engaging with Moventum and assessing distribution options from the Moventum Platform. ▪ Engaging with HWLE and Counsel regarding the above. ▪ If required: <ul style="list-style-type: none"> – Conducting bank account verification processes. – Liaise with Professional Practice and internal Treasury team regarding potential daily transaction limits on any bank accounts. – Preparing distribution payment to the Relay Administrators. – Approving payments. – Preparing remittance advice to the Relay Administrators.
	Subsequent distributions (assumes one further interim distribution and one final distribution only) \$200,000	<ul style="list-style-type: none"> ▪ Utilising the distribution model for subsequent interim and final distribution amounts. ▪ Preparing and issuing correspondence to Trustees and Beneficiaries advising of the Receivers intention to pay a subsequent interim distribution. ▪ Advising Trustees and Direct Beneficiaries of the intention to make a distribution to the bank accounts verified in the first interim distribution. ▪ Tasks associated with the additional verification where Trustees or Beneficiaries have requested payment to an account different to original verified bank account information. ▪ Conducting bank account verification processes. ▪ Liaising with internal Treasury team to prepare distribution payments to Trustees and Direct Beneficiaries. ▪ Approving payments. ▪ Preparing remittance advice to each Trustee and Direct Beneficiary. ▪ Following final distribution, issuing correspondence to all Trustees and Beneficiaries disclosing that the Receivers have made their final distribution and do not intend to make another distribution to Trustees and Beneficiaries.
	Foreign and domestic taxation issues \$625,000	<ul style="list-style-type: none"> ▪ Reviewing analysis and calculations regarding Beneficiary and Trustee withholding tax on distribution. ▪ Issuing taxation statements to Beneficiaries and Trustees regarding the interim distribution payment. ▪ Liaising with Crowe and Norton Rose Fulbright US regarding the above. ▪ Liaise with Crowe Horwath/Crowe US and HWLE regarding engagement to provide advice regarding distribution and other tax matters. ▪ Attend regular meetings with HWLE, Crowe Horwath and tax Counsel in relation to taxation matters. ▪ Undertaking additional analysis as required. ▪ Consider/review Crowe Horwath calculations of estimated tax liabilities. <p>Australian taxation issues</p> <ul style="list-style-type: none"> ▪ Engage with the ATO regarding position paper and confirm taxation position with the ATO.



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		<ul style="list-style-type: none"> Apply for a Private Binding Ruling to finalise the taxation position with the ATO. Apply for a trust Tax File Number to be established for lodgement of trust returns. Preparation and lodgement of Australian taxation returns for the financial years ended: <ul style="list-style-type: none"> 30 June 2020 30 June 2021 30 June 2022 30 June 2023 30 June 2024 30 June 2025 Preparation and lodgement of Australian taxation returns for future financial years until the completion of the receivership. Undertaking additional analysis as required. Consider/review Crowe Horwath calculations of estimated tax liabilities. Internal discussions regarding the above. Liaising with HWLE and Counsel regarding the above. <p>United States taxation issues</p> <ul style="list-style-type: none"> Consider legal advice received in relation to the outstanding 2023 and 2024 returns and previously lodged returns. Preparation of United States taxation returns to be lodged with the Internal Revenue Service (IRS) for the 2023 and 2024 US tax years. Preparation of amended taxation returns for 2020 to 2022 US tax years if required. Undertaking additional analysis as required. Engagement with the IRS as required to resolve US taxation matters. Consider/review Crowe Horwath calculations of estimated tax liabilities. Investigating withholding tax movements in IBA accounts, in particular the June 2024 increase in US withholding tax rates. Internal discussions regarding the above.
Legal Proceedings \$500,000	Preparation of affidavits \$400,000	<ul style="list-style-type: none"> Preparing, reviewing and affirming affidavits relevant to the proceedings following the 12 November 2025 Hearing, as required. Collating supporting annexures as required. Preparing supporting analysis as required. Liaising with HWLE/Counsel. Detailed inspection of all affidavits prior to affirmation and filing with Court. Considering past affidavits for annexures provided to Court for the purpose of identifying the relevant annexures to provide to Court. Considering proposed redactions to past affidavits and submissions. Reviewing draft legal submissions and other documents before filed with the Court. Extensive internal discussions regarding all of the above. Extensive discussions with HWLE & Counsel regarding the above. Providing updates on the progression of various matters to the Court, as required.
	Attendance at various Court hearings \$100,000	<ul style="list-style-type: none"> Attending Interim Distribution Application Hearing scheduled for 12 November 2025. Attending various Court hearings as determined by the Federal Court of Australia. Seeking retirement orders at the completion of the receivership.



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Statutory & Administration \$750,000	Statutory and administrative requirements \$300,000	<ul style="list-style-type: none"> ▪ Maintaining Receivership bank accounts, being Client and Operating accounts in various required currencies. ▪ Correspondence with current and new banking institutions regarding ongoing bank account requirements and payment matters. ▪ Arrange payment of various invoices. ▪ Treasury management and maintenance of accounting procedures. ▪ Liaise with Crowe Horwath regarding post-appointment GST returns. ▪ Obtain and consider legal advice on the Receivers ability to GST input credit refunds on Brite Advisors BAS lodgements. ▪ Discussions with taxation lawyers and Counsel regarding above. ▪ Finalise post-appointment GST position. ▪ Preparation of quarterly BAS returns.
	Risk and strategy \$100,000	<ul style="list-style-type: none"> ▪ Internal discussions regarding appointment strategy and ongoing execution. ▪ Second Appointee review of various documents and contracts as required.
	ASIC and other regulators \$100,000	<ul style="list-style-type: none"> ▪ Internal discussions regarding action items arising from meetings with ASIC. ▪ Providing ASIC updates/information/evidence with respect to ongoing investigations at ASIC's request. ▪ Preparation of responses to future ASIC information requests. ▪ Collation of documentation in response to ASIC information requests. ▪ Preparation of information and conducting analysis for brief of evidence to ASIC. ▪ Collation of evidence regarding the above. ▪ Internal discussions regarding the above. ▪ Liaising with HWLE and Counsel regarding the above. ▪ Preparation of supplementary investigations memos to ASIC. ▪ Internal discussions and liaising with HWLE regarding the above as required. ▪ Correspondence with ASIC regarding distribution application. ▪ Engaging with AFCA and the CSLR regarding complaints made regarding Brite Advisors pre-appointment conduct. ▪ Maintaining workbook summarising and tracking complaints received by AFCA through the AFCA Portal. ▪ Downloading documents lodged with AFCA from the AFCA Portal. ▪ Preparing template response to AFCA case management information requests. ▪ Liaising with HWLE and Counsel regarding the above.
	Project management \$200,000	<ul style="list-style-type: none"> ▪ Regular review of workstreams and resourcing requirements. ▪ Regular internal discussions/correspondence to manage task lists and inform progression of key work streams. ▪ Weekly scheduled external discussions with HWLE regarding progression with legal workstreams and other communications. ▪ Maintaining internal checklists and rolling task lists and diarising statutory deadlines.
	Finalisation tasks \$50,000	<ul style="list-style-type: none"> ▪ Preparation of final statutory reports. ▪ Notifying relevant regulators (domestic and international) of the Receivers retirement. ▪ Closing numerous Receivership bank accounts. ▪ Cancel ABN/GST registration. ▪ Removal of the engagement from the McGrathNicol website. ▪ Prepare formal ASIC notice notifying of retirement.

"Tab-8"



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		▪ Complete internal checklist matters.
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Work undertaken by HWLE and Counsel team (Legal Advisors) from post 12 November 2025 to finalisation		
Period		12 November 2025 to finalisation
Task Area	General Description	Tasks
Dealings with Beneficiaries / Trustees	Correspondence with beneficiaries / Trustees \$250,000 HWLE \$100,000 Counsel	<ul style="list-style-type: none"> Reviewing and settling and / or preparing list of frequently asked questions for maintenance on Receivers' website for the benefit of Beneficiaries and Trustees. Providing legal advice in relation to queries received from Trustees and Beneficiaries. Reviewing and settling updates to Beneficiaries and Trustees addressing specific queries in respect of receivership, including conferral between legal advisors in drafting of bespoke responses to such queries. Reviewing and settling and / or preparing ongoing circulars to Trustees and Beneficiaries. Review and advising on any change of Trustee queries and settling / preparing responses as required. Reviewing and / or preparing and issuing ongoing circulars to Trustees and of remuneration and cost claims submitted to the Court in accordance with the Court's orders (non-chargeable). Assisting with any finalisation of receivership correspondence.
	Assessment of pension withdrawal requests \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> Provide advice in relation to certain Beneficiary pension withdrawal requests based on the protocol provided from the Court Orders. Reviewing and assist with correspondence to Beneficiaries informing of the 60-day cut-off prior to the interim distribution for non-payment of withdrawal requests.
Other trading matters	Management of Client AuM \$18,375 HWLE \$10,500 Counsel	<p>Work to be completed to Interim Distribution.</p> <ul style="list-style-type: none"> Conferral with Receivers and BML Funds with respect to the Interim Distribution and liquidation of Client AuM. Review and advising on determination of values for drawdown for IB. Engagement with Ashurst on behalf of IB in relation to same. Ongoing advice and engagement with Receivers in respect of Moventum assets <p>Work to be completed post-Interim Distribution</p> <ul style="list-style-type: none"> Ongoing advice on non-distributed amounts.
	Matters relating to service providers \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> Reviewing contractual agreements relating to the books and records of Brite Advisors which are required to be maintained or put in place with respect to the ongoing use, maintenance and / or termination including Ownbackup, Salesforce, GBG, AutoRe, i-Convergence and BML Funds. Ongoing data privacy advice, as required, in relation to the data comprising the books and records of Brite Advisors.

	Insurance \$26,250 HWLE	<ul style="list-style-type: none"> ▪ Ongoing legal advice in respect of insurance coverage and reporting matters.
	Other trading matters \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> ▪ Ongoing operational legal workstreams.
Finalising Investigations	Examination Applications \$15,000 HWLE \$5,000 Counsel	<ul style="list-style-type: none"> ▪ Prepare and finalise suite of Court Documents to obtain summonses for public examination application / document production orders. Witnessing and filing of affidavit material and notice on ASIC. ▪ Preparation for and attendance at first return hearing for issuing of summonses. ▪ Attending to personal service of summonses and associated service affidavits. ▪ Preparation for and attendance at first return hearings for document production (assumes no application to set aside or amend summonses and document production orders). ▪ Attendance to uplift documents produced to the Court (excluding any review of documents). ▪ Ongoing conferral with Receivers regarding the above.
	Litigation funders \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> ▪ Advise and assist with preparation of brief to provide to litigation funders. ▪ Drafting of confidentiality agreements for litigation funders. ▪ Advising on negotiation of proposed funding agreements with litigation funders as applicable. ▪ Obtaining necessary approvals to enter into funding agreement. ▪ Ongoing conferral with Receivers regarding the above.
	Tracing claims \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> ▪ Ongoing conferral and advice to Receivers in relation to the investigation and evidence to support tracing claims.
Distribution	Resolving Beneficiary Entitlements \$127,500 HWLE \$75,000 Counsel	<ul style="list-style-type: none"> ▪ Ongoing advice in relation to the STM Life Beneficiaries and Tribune Beneficiaries Valuation Notices. ▪ Advise Receivers on resolution of unresolved disputes including purported swap agreement. ▪ Advise Receivers on all Valuation Notice disputes, including with respect to Structured Notes. ▪ Advise Receivers on release of Valuation Notices to Corporate Trustees of Deceased Estates and advice on queries or issues in relation to same. ▪ Advise Receivers as required with respect to Beneficiaries with loan accounts and any further investigations / disputes in relation to same. ▪ Advise Receivers on Connaught West Limited and confer with legal representatives regarding the proof of debt submitted to the Receivers claiming an entitlement to the Client AUM. ▪ Advise Receivers on GFS2 Scheme Beneficiaries who purport to have a claim to the Client AUM in respect of funds previously held by the GFS2 Scheme.

		<ul style="list-style-type: none"> Advise Receivers with respect to Relay Administrators regarding funds purportedly swept to Brite Advisors.
	<p>Liquidation of Client AuM in preparation for distribution</p> <p>\$7,500 HWLE</p> <p>\$5,000 Counsel</p>	<ul style="list-style-type: none"> Ongoing advice in relation to liquidation including attendance and conferral with Receivers and BML Funds in relation to same.
	<p>Interim Distribution</p> <p>\$127,500 HWLE</p> <p>\$75,000 Counsel</p>	<p>Beneficiaries with claims to the Deficient Mixed Fund (Including Model and Mixed Bespoke investors, Minerva Notes investors & Structured Notes investors)</p> <ul style="list-style-type: none"> Advice and conferral with Receivers in relation to distribution model. Ongoing advice in relation to mapping of Beneficiaries with Trustees. Review and settle correspondence in relation to mapping. Advise and draft proposed taxation disclaimers. <p>Late Investors</p> <ul style="list-style-type: none"> Advice and conferral with Receivers in relation to late investor distribution model. Advice and conferral with Receivers in relation to method to apply Receivers' costs and fees for Late Investors. Ongoing advice in relation to mapping of Beneficiaries with Trustees. Review and settle correspondence in relation to mapping. Advise and draft proposed taxation disclaimers. <p>Moventum</p> <ul style="list-style-type: none"> Advice and conferral with Receivers in relation to Moventum distribution model. Advice and conferral with Receivers in relation to method to apply Receivers' costs and fees for Moventum. Ongoing advice in relation to mapping of Beneficiaries with Trustees. Review and settle correspondence in relation to mapping. Advise and draft proposed taxation disclaimers.
	<p>Subsequent distributions</p> <p>\$52,500 HWLE</p> <p>\$45,000 Counsel</p>	<ul style="list-style-type: none"> Advising on any further distributions - assuming one further interim and one final distribution. Advising and preparing necessary communications to give effect to subsequent distributions.
	<p>Foreign and domestic taxation issues</p> <p>\$87,500 HWLE</p> <p>\$150,000 Counsel</p>	<ul style="list-style-type: none"> Advice and conferral with Receivers in relation to taxation issues. Advising on taxation statements to be provided to Beneficiaries and Trustees regarding interim distribution. Advice and conferral with Receivers and AUS tax accountants. Engagement with the ATO and their legal representatives. Advancing Private Binding Rulings with respect to the ATO taxation position. Assisting Receivers and tax accountants with the preparation and lodgement of tax returns. Advice and conferral with the Receivers and US tax accountants and US tax legal team.

Legal Proceedings	Further Applications \$325,000 HWLE \$250,000 Counsel	<ul style="list-style-type: none"> All work associated with further applications to the Court including: <ul style="list-style-type: none"> Application to obtain payment orders; Application to approve entry into litigation funding agreement; Application for subsequent distributions (including one further interim and one final); Application for retirement of Receivers Preparation of suite of application materials including affidavit evidence. Prepare and advise on form of further orders required in the course of the Receivership. Advice and conferral with Receivers in relation to same. Preparation of legal submissions in support of any further applications required. Preparation of communications to Court, Interested Parties, Beneficiaries and Trustees in relation to any further applications required. Preparation and getting up for hearings as required.
Statutory & Administration	Statutory and administrative requirements \$87,500 HWLE \$75,000 Counsel	<ul style="list-style-type: none"> Advising on and conferral with Receivers and tax advisors in respect of post-appointment GST.
	Risk and strategy \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> Ongoing advice to Receivers regarding appointment strategy and protective measures.
	ASIC and other regulators \$85,000 HWLE \$60,000 Counsel	<ul style="list-style-type: none"> Attending ongoing weekly calls with ASIC and the Receivers Attending to support Receivers in responding to notices and requests from ASIC for information/evidence to support ASIC's investigations. Review, settle and / or prepare responses to ASIC's requests including collating materials where necessary. Review, settle and / or prepare criminal brief for ASIC. Review, settle and / or prepare supplementary memorandum's for ASIC. Attending to ongoing conferral with Receivers and AFCA and the CSLR regarding complaints lodged with AFCA regarding Brite Advisor's pre-appointment conduct. Review, settle an / or prepare responses to AFCA and CSLR as required.
	Project management \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> Attending weekly operation workstream calls with the Receivers and managing legal operational workstreams task list.
	Finalisation tasks \$18,375 HWLE \$10,500 Counsel	<ul style="list-style-type: none"> Review and advise on final statutory reports. Review and advise on notice to regulators of retirement.



ADDENDUM [X]

LEVERAGE FACILITY AGREEMENT

CORPORATE CUSTOMERS ONLY

1. INTRODUCTION

- A. If you apply, and IBAU agrees, this Leverage Facility Agreement will apply to you in addition to the Terms and form part of the contract between you and IBAU.
- B. To the extent of any inconsistency between this Addendum [X] and the Terms, this Addendum [X] prevails.
- C. You acknowledge and agree that all dealings in respect of Securities and Derivatives Products and the performance by IBAU of its obligations under these Terms are subject to the Corporations Act 2001 (Cth), the Market Integrity Rules, the Rules of the relevant Foreign Financial Market, and any other directions, decisions and requirements of the relevant Foreign Financial Market and their related entities and the customs, usages and practices of the relevant Foreign Financial Market and their related entities, as amended from time to time, insofar as they apply.

2. INTERPRETATION

In this Addendum [X], the following terms have the following meanings:

Equivalent Securities means, in respect of any Securities, Securities of an identical type, nominal value, description and amount to those Securities and which are part of the same issue and have the same rights as those Securities; provided that where any Securities have been converted, subdivided, consolidated, redeemed, made the subject of a takeover, merger, capitalisation issue, rights issue or event similar to any of the foregoing, IBAU may reasonably determine what Securities or other assets (which may include money or other property) are to be treated as "equivalent" for this purpose and "Equivalent Securities" shall be construed accordingly.

Derivatives Product means a product commonly regarded as a derivative and includes futures and options.

Foreign Financial Market Participant means a third party international broker or market participant, which may be an Affiliate of IBAU's, with whom IBAU enters into an execution and/or clearing arrangement in connection with Transactions governed by this Addendum [D] on Foreign Financial Markets.

Initial Margin means the amount of money that you must contribute towards a purchase of securities.

Maintenance Margin means the amount of money that you must maintain in your Account.

Margin means the amount of money you borrow according to these terms.

Margin Call means a demand from IBAU for you to deposit money into your Account, or as otherwise agreed with IBAU, which is immediately due and payable.

Leverage Facility is a loan facility that IBAU may make available to customers under this Addendum X in conjunction with a margin account.

Rules means the rules governing trading on any relevant Foreign Financial Market, as amended from time to time.

Securities includes quoted securities, equity or debt securities, managed investment products, collective investment schemes, exchange traded funds, and exchange traded notes on any Financial Market.

Transaction means a transaction for the sale and purchase of Cash Market Products and Derivatives Products.

Capitalised terms used in this Addendum [X] that are not defined herein, have the meanings given them in the Terms.

3. REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGEMENTS

A. You represent and warrant that:

- a. you are a corporation duly incorporated under the laws of a state or territory of Commonwealth of Australia which holds a valid ACN, ABN, or ARBN (as applicable) under the Corporations Act;
- b. you have full corporate power to enter into, and perform your obligations under, this Addendum [X] and the Terms;
- c. you have taken all necessary corporate action to authorise the performance of your obligations under this Addendum [X] and this Addendum [X] constitutes legal, valid and binding obligations, enforceable against you;
- d. your primary purpose in applying for the Leverage Facility is for investment purposes;
- e. trading through a margin account is highly risky and may result in the loss of funds greater than those you have deposited into your account and that you have accepted the risks of borrowing and your obligations to IBAU;
- f. you have read the "Disclosure of Risks of Margin Trading and Automatic Liquidation" document provided separately by IBAU.

B. You acknowledge and agree:

- a. that should any of 3.A. (a) to (d) cease to be true in any manner, you must notify IBAU immediately;
- b. that, if applicable, IBAU is entitled to accept instructions from all Directors of you, unless you and IBAU agree otherwise;
- c. that IBAU is entitled to charge you interest from time to time on any negative balances incurred through the use of a margin account and Leverage Facility, in whatever currency such balances may have been incurred, at the rates as specified on [IBAUs website]; and,
- d. that IBAU may disclose your personal information to any credit reporting agency for the purposes of assessing your credit worthiness.

4. FACILITY

- A. IBAU will only provide the Leverage Facility in conjunction with a margin account as contemplated under Clause 6.

5. SECURITY INTEREST

- A. Any debit balance on your Account is secured by all assets of any kind held by or on behalf of IBAU for you in accordance with clause 14 of the Terms.

6. MARGIN ACCOUNTS, MARGINS AND AUTOMATIC LIQUIDATION

- A. This clause 6 applies in relation to your margin account and the Leverage Facility.
- B. IBAU may do anything under this clause 6 without any prior notice to you.
- C. All Transactions within a margin account are subject to Initial Margin and Maintenance Margin requirements. IBAU may modify its margin requirements at any time in IBAU's sole discretion without prior notice to you. You are required to monitor your Account at all times to ensure that it meets its margin requirements at all times. IBAU may reject any order if your account does not meet its margin requirements (or would not do so on execution of the Order). Formulas for calculating margin requirements on IBAU's website are indicative only and may not reflect actual margin requirements.
- D. IBAU will generally not issue Margin Calls and will not notify you in advance if your account does

not meet the margin requirements. IBAU does not need to notify you prior to exercising any of its rights under this agreement if your Account does not meet the margin requirements at any time.

- E. If at any time your Account does not meet the margin requirements specified by IBAU, IBAU may, without limiting its other rights, sell, close out or otherwise liquidate all or part of your positions in any of your accounts held with IBAU or any international broker or Affiliate of IBAU with no prior notice to you. This liquidation will usually occur automatically but notwithstanding the foregoing, IBAU has no obligation to take any action if your Account does not meet the margin requirements.
- F. You will be liable and must promptly pay IBAU any amount owing to IBAU arising from any such liquidation or remaining after any such liquidation. IBAU has no liability to you for any loss arising from any such liquidation.
- G. IBAU may allow you to pre-request the order of liquidation of your assets in the event that you no longer meet the margin requirements, but you acknowledge that such requests are not binding on IBAU and IBAU retains sole discretion to determine the assets to be liquidated and the order of their liquidation.
- H. You acknowledge that the market values/prices used to calculate the equity in your Account and/or sub account to calculate the margin requirements, shall be determined by IBAU in its sole discretion and varied without prior notice to you and may differ from the values/prices disseminated by Financial Markets or other market data sources. Among other things, IBAU may calculate its own index values, exchange traded fund values or derivatives values, and value securities or futures or other Financial Products based on bid price, offer price, midpoint or using some other method.
- I. IBAU's margin requirements or risk control parameters may include leverage ratio limits or position size limits for securities, commodities, currencies or other Financial Products. If these limits are reached or exceeded, you may not be able to place new Orders and you authorise IBAU to liquidate existing positions and/or enter into risk-reducing Transactions on your behalf without notice, in order to bring your Account back into compliance with the relevant limits. You acknowledge that IBAU is under no obligation to do so.
- J. You acknowledge that IBAU and/or its Affiliates may take the other side of any liquidation transaction or enter into risk reducing transaction.
- K. You must reimburse and hold IBAU harmless for any acts, omissions, costs, fees or liabilities associated with any liquidation undertaken by IBAU.
- L. Notwithstanding the above, if for any reason you fail to meet the margin requirements and IBAU does not liquidate your positions but instead issues you with a Margin Call, you must satisfy such call immediately in any manner specified by, or otherwise acceptable to, IBAU. You acknowledge that even if a Margin Call is issued, IBAU does not waive any of its other rights against you.

7. RIGHT OF USE

- A. You hereby authorise IBAU and IBAU Nominees (without any further notice, consent or reference) from time to time to borrow, lend, pledge, hypothecate, charge, rehypothecate, dispose of or otherwise use any Securities for IBAU's own purposes and for their own benefit (including, for the avoidance of doubt, the retention of any profits, fees or other benefits generated as a result of such borrowing, lending or use (each a **Right of Use**)) including by transferring full title to such Securities to itself or to another person.

B. Exercise of Right of Use

a. Upon the exercise of a Right of Use by way of:

- i. a borrowing, lending, disposal or other use, such Securities will become the absolute property of IBAU (or that of the transferee) free from any security interest and from any equity, right, title or interest of the customer; and
- ii. a charge or hypothecation of any of your Securities, all of those Securities, including the your interest in those Securities, will be subject to the charge or other security created by such charge or hypothecation, you authorise IBAU to take such steps to deliver or credit the Securities to IBAU and execute such instruments of transfer or equivalent as IBAU considers necessary or desirable to vest the full legal and beneficial right, title and interest in and to

those Securities in IBAU. For the purposes of this authorisation, you irrevocably authorise and appoint IBAU, as your attorney (with full power of substitution), on your behalf and in your name or otherwise, at such time and in such manner as IBAU thinks fit to do anything required to deliver or credit the Securities to IBAU.

- b. Upon the exercise of a Right of Use, you will, subject to Clause Error: Reference sourcenot found 4 of the Terms, have a right to delivery by IBAU of Equivalent Securities.

C. Delivery of Equivalent Securities

- a. Upon credit to your Account of such Equivalent Securities, they shall automatically besubject to a security interest as set out under Clause 14 of the Terms.

D. Rights to dividends or distributions or ability to exercise voting rights or participate in othercorporate actions

- a. For the avoidance of doubt, your rights to dividends or distributions or ability to exercise voting rights or participate in other corporate actions in respect of any Securities transferred by IBAU to another person (transferee) may be limited.

CUSTOMER REPRESENTS THAT THE FOREGOING INFORMATION AND ALL OTHER INFORMATION PROVIDED DURING THE ACCOUNT APPLICATION PROCESS IS TRUE AND CORRECT AND AGREES TO NOTIFY IB-AU BY EMAIL OF ANY MATERIAL CHANGES THEREIN. CUSTOMER AUTHORIZES IB-AU TO CONFIRM THE ACCURACY OF THE INFORMATION AS IT DEEMS NECESSARY.

USER NAME: *franc0599*

ACCOUNT TITLE: *Brite Advisors Pty Ltd*

Dated: 2021-06-02 22:55:41.0

Signature:

Dean L Clarke

One of: Dean L Clarke

TYPING NAME IS EQUIVALENT TO A HANDWRITTEN SIGNATURE

BY TYPING MY SIGNATURE AND SENDING IT VIA THE INTERNET, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND ALL INFORMATION PROVIDED DURING THE APPLICATION PROCESS; THAT I INTEND IB-AU TO RELY UPON IT; THAT I INTEND TO BE BOUND THEREBY; AND THAT I UNDERSTAND AND AGREE THAT MY ELECTRONIC SIGNATURE IS THE EQUIVALENT OF A MANUAL WRITTEN SIGNATURE.

Our Ref: 1202928

3 October 2025

Camilla Clemente and Jesse Dwyer
Ashurst Australia
Level 11, 5 Martin Place
SYDNEY NSW 2000

Email: camilla.clemente@ashurst.com; jesse.dwyer@ashurst.com.au

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient, please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Camilla and Jesse

ASIC v Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

1. We refer to the above matter.
2. Subject to directions from the Court, our clients currently intend to terminate the Leverage Facility Agreement (and whatever other contractual arrangements by which funds were advanced or made available to Brite Advisors by IBAU) and repay whatever amounts are owing to IBAU in respect of those arrangements.
3. Please confirm the amount which must be repaid to IBAU to discharge any obligations of Brite Advisors under those arrangements as at 12 November 2025.

Yours sincerely



Carmen Boothman
Partner
HWLE Lawyers

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Jemma Huntsman
Special Counsel
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Our ref:
CCLEMENTJEDWYE\1000-
194-227

4 October 2025

By email

Ms Carmen Boothman and Ms Jemma Huntsman
HWL Ebsworth Lawyers
Level 20, 200 St Georges Terrace
Perth WA 6000

Dear Ms Boothman and Ms Huntsman

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

Introduction

1.

We refer to:

- (a) our letters dated 19 July 2024, 3 October 2024, 30 December 2024 (titled "Letter to HWLE regarding EM"), 17 January 2025, 4 March 2025, 14 April 2025, 28 April 2025, 2 May 2025, 1 July 2025, 22 August 2025, and 12 September 2025;
- (b) the hearing of the distribution methodology application on 15 September 2025 before his Honour Justice O'Sullivan; and
- (c) the distribution methodology framework orders made on 15 September 2025 (**Framework Orders**); and
- (d) the programming orders made in respect of your clients' proposed Interim Distribution Application made on 15 September 2025 (**ID Programming Orders**).

2.

Where terms are capitalised but not defined, they have the meaning given to them in our previous correspondence referred to in paragraph 1(d) above, or the Framework Orders or ID Programming Orders, as applicable.

3.

The purpose of this letter is to reiterate our client's expectations, as was ventilated during the hearing on 15 September 2025, as to the nature and extent of the evidence proposed to be served by your client in support of the Interim Distribution Application. In that respect, our client reiterates its support for beneficiaries receiving a distribution as soon as practicable. However, as set out below, our client's legitimate concern remains that its position as a secured creditor is not materially and irrevocably prejudiced by any such distribution, which is a concern that can only be addressed upon your clients' properly and clearly articulating the

nature and quantum of any potential claims your clients may intend to bring against our client.

The Receivers' evidence on the Interim Distribution Application

4. As we have indicated to you in our previous correspondence (most recently in our letter to you of 12 September 2025), and for reasons which have been set out in our previous correspondence and need not be repeated, our client has a significant interest in, and significant concern, regarding your clients' proposal to liquidate and distribute the cash and other assets held on the Interactive Brokers platform. The Receivers have indicated that the Interim Distribution Application will seek orders for the distribution of 'circa 90% of the assets available for distribution in the Deficient Mixed Fund'. On any view, that will amount to hundreds of millions of dollars' worth of Client AuM held on our client's platform. That 'circa 90%' distribution apparently does not allow for any amount to be retained in respect of potential claims by the Receivers and Brite Advisors against IBA beyond the IB Margin Loan Security Assets relating to disputed amounts connected to the current balance owing to IB, save (perhaps) for unquantified costs. In those circumstances, and for the reasons articulated previously, the proposed Interim Distribution Application is plainly of significance to our client.
5. There is no dispute between the parties that our client has security over Client AuM on our client's platform unless an order is made setting aside that security¹ (which order, if sought, will be opposed by our client). It is also trite that, as was acknowledged by the Court, IBA has a legitimate interest in ensuring that an appropriate level of Client AuM the subject of its security is maintained on the Interactive Brokers platform.²
6. During the hearing on 15 September 2025, it was made clear by our client, the Relay Group, Alltrust and the Court, that in order for the Court to be in a position to determine the interim distribution application, the Court would need to determine and be satisfied as to how much was to be retained including by reference to the nature and quantum of any potential claims your clients may intend to bring against our client.³ This was also made clear in the notations of the ID Programming Orders which arose from the exchange that occurred during the hearing. Our client understands that the Receivers now accept that they must serve complete evidence addressing those issues.⁴
7. Having regard to the events at the hearing on 15 September 2025, the Framework Orders and the ID Programming Orders, it is our client's expectation that the

¹ Transcript of hearing on 15 September 2025 (T)/28.42-43.

² T/27.44-28.4.

³ By way of example only: T/22.20-22, 22.44-25.9, 26.19-24, 29.39-42, 30.8-10, 30.40-31.7, 32.11-13, 32.19-22, 33.45-34.2, 34.14-34.31, 35.10-25, 35.43-36.6, 36.18-35, 37.7-9, 37.21-27, 38.9-13.

⁴ T/40.23-26, 41.1-3.

Receivers' evidence in the Interim Distribution Application will clearly and properly articulate, among other things:

- (a) the precise nature of any potential claim or claims that Brite Advisors and/or the Receivers may seek to assert against our client (including, to the extent applicable, in their capacity as liquidators of Brite Advisors);
- (b) the quantum of any such claim; and
- (c) the Receivers' conservative estimate, exposing the calculations and basis for any such estimate, in respect of any potential adverse costs order that may be made against the Receivers or Brite Advisors in respect of any such claim against our client.

8. It is essential to know the nature of the claim and quantum given Brite Advisors is in liquidation and our client will need to be in a position to calculate for itself what its costs are likely to be in relation to such proceedings as your clients may bring. Your client, being in liquidation, will need to provide security for costs in a form which does not leave our client exposed as an unsecured creditor later to claim a judgment debt for costs against the insolvent estate.

9. We also confirm for completeness that:

- (a) as a matter of procedural fairness, and in circumstances where our client's rights as a secured creditor may be materially and irrevocably prejudiced by the release of Client AuM from our client's platform, the above evidence must be disclosed to our client (that is, not subject to a confidentiality order). Our client understands from the hearing on 15 September 2025 that this is a matter the Receivers accept and will be giving effect to;⁵ and
- (b) it remains open to your clients to propose to our client, for its consideration, any undertakings that properly and appropriately qualify the nature of any claims, and/or capping the quantum of any claims, that the Receivers or Brite Advisors may bring against our client in the future to ensure that sufficient Client AuM over which our client has security remains on our client's platform.

10. Pursuant to order 2 of the ID Programming Orders, the Receivers are to file and serve their affidavit evidence and outline of submissions on the Interim Distribution Application by 7 October 2025. As an interested party, our client will have until 28 October 2025 (being a period of three weeks) to file any affidavit evidence and written submissions in response to the Receivers' evidence and submissions. The time available to our client to prepare its written evidence and submissions pursuant to the ID Programming Orders is short. Accordingly, it is essential for the Receivers' evidence to fully and properly address the matters referred to above, so that our client may have an adequate opportunity to respond to the Receivers' evidence and

⁵ T/40.38-39, 45.25-30.

Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

4 October 2025

submissions and put its position to the Court within the short period of time available to it for that purpose.

11. It would be disappointing, given the exchanges that occurred at the hearing on 15 September 2025 if our client had to relist the matter to seek orders for your client to file any evidence that it failed to file as set out above, which may lead to the hearing date being vacated.
12. Our client looks forward to receiving your clients' evidence on 7 October 2025.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ashurst', written in a cursive style.

Ashurst

Appointment details

Appointment type

Liquidation

Appointment date

23 November 2018

Appointees

Peter Quinlan and Peter Gothard

Companies subject to Administration

Halifax Investment Services Pty Ltd ACN 096 980 522

Office

Sydney

Investor updates will be posted on this website regularly, along with the latest court documents.

Investor and creditor queries should be sent via email to au-fmhalifaxportal@kpmg.com.au.

Disclaimer: Please note, the information in the documents below are for general information only, current at the time of publication, and should not be considered as a comprehensive statement on any matter, taken as constituting professional advice or be construed as a recommendation to take or not to take any action. While KPMG and the Liquidators of Halifax Investment Services Pty Limited (In Liquidation) and Halifax New Zealand Limited (In Liquidation) have taken all reasonable care to ensure that the information contained within the pages of this communication is accurate and current as at the date of issue, errors or omissions may occur due to circumstances outside our control. You should consider seeking independent legal, financial, taxation or other advice to check how the information in these communications relates to your unique circumstances.

au-fmhalifaxportal@kpmg.com.au

Background information

Halifax AU (the Company) carried on a financial services business in Australia under an Australian Financial Services Licence. It facilitated the acquisition of financial products by Investors via various online trading platforms.

Appointment of Voluntary Administrators and subsequently Liquidators

Morgan Kelly, Stewart McCallum and Phil Quinlan were appointed Administrators of the Company on 23 November 2018 pursuant to Section 436A of the Corporation Act 2001 (Act).

At the second meeting of creditors held on 20 March 2019, creditors resolved that the Company be wound up pursuant to Section 439C(c) of the Corporations Act 2001 and that the Administrators be appointed as Liquidators of the Company. On 13 March 2019, Stewart McCallum retired as Liquidator.

On 13 December 2022, Morgan Kelly retired as Liquidator and Peter Gothard was appointed as joint and several Liquidator in conjunction with Phil Quinlan who remains as Liquidator.

Meetings

First meeting of creditors





Halifax Investment Services Pty Ltd (In Liquidation)

ACN 096 980 522

Halifax New Zealand Ltd (In Liquidation)

Company Number 2130897

Report to Investors and Creditors

17 March 2023

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Second meeting of creditors	Background Communicatic	▼
Creditor meetings – Simplified Chinese 简化字		▼

Communications

Information and circulars for creditors.

Creditor communications	▼
Creditor communications – Simplified Chinese 简化字	▼
Other documents	▼

Court documents

Court directions proceedings and documentation relating to this matter.

5.1 Distribution overview

However, in accordance with the Client Money Orders, the proportion of available funds to be distributed to each Investor in light of the deficiency is calculated by reference to Investor account balances as at 27 November 2018. For the majority of Investors, this is the amount verified on the Investor Portal.

It is important to note that the beneficial entitlement of Investors, or the amount to which Investors are entitled as a result of the Client Money Orders is not capped at their 27 November 2018 account balance. A summary of distributions paid to date, as well as our revised future estimates is provided below:

5.2 First and Second Interim Distributions

We are continuing to work through remaining review and verification tasks to finalise First and Second Interim Distribution payments.

- abandoned or incomplete Investor Portal claim submissions;
- supporting documentation (including trust deeds and identification documents) not provided; and
- legal and statutory matters including deceased estates and deregistered corporate accounts holders.

- remaining eligible Investors have received their First and Second Interim Distributions; and
- the Investor Portal has been closed to the submission of new claims.

It is likely that a Final Distribution will be paid once the outcome of our recovery actions is known, and provisions held for unsubmitted claims and unresolved disputes have been unwound.

5.4 Unsubmitted Investor claims

A contingency of funds has been set-aside in an interest-bearing term deposit account to respond to late claims, disputes, and unforeseen costs. If this contingency is ultimately not required, these funds will be distributed to Investors in the Final Distribution.

5.5 Closure of the Investor Portal

Pursuant to the current directions, funds will only be distributed to Investors who have submitted a claim via the Investor Portal by the closure date.

The likely outcome is that unclaimed entitlements will be paid to government entities, such as ASIC/Revenue NSW and/or the New Zealand Inland Revenue Department. Our estimated return to Investors has therefore been prepared on this basis.

<https://creditors.accountants/Account/Login>

5.6 Category 3 and Category 5 Investors

The process of reviewing Investor applications was a complex and time-consuming task which required detailed tracing exercises to be undertaken.

We received a total of 154 claims, of which 126 were accepted (in part or full) and 28 were rejected in full. Reasons for which applications were rejected, partially rejected, or subject to dispute include:

- Misinterpretation of the eligibility criteria.
- Disputing the volume calculation of eligible shares.
- The allocation of dividends received, where the Investor account contained a mix of eligible and non-eligible shares.

Shares totalling **AU\$27.6 million** (valued at the date of transfer) were distributed in-specie to eligible Category 3 and Category 5 Investors. This resulted in a reduction of total Investor account balances as at 27 November 2018 of **AU\$16.9 million**.

Background

Communicatic

Appointment details

Appointment type	Liquidation
Appointee	Stephen Vaughan
Entities in Liquidation 22 June 2015	BBY Holdings Pty Ltd ACN 075 187 432 BBY Limited ACN 006 707 77 Broker Services Australia Pty Ltd ACN 074 976 364 BBY Advisory Services Pty Ltd ACN 102 761 008
Entities in Liquidation 8 October 2015	BBY Nominees Pty Ltd ACN 007 001 443
Entities subject to DOCA (Deed of Company Arrangement) (22 June 2015. Concluded upon deregistration on 1 June 2018)	SmarTrader Limited ACN 115 752 102 BBY Hometrader Pty Ltd ACN 134 838 207
Administrations ended 15 October 2015	BBY Protection Nominees Pty Ltd ACN 007 001 710 Options Research Pty Ltd ACN 006 770 627

Enquiries

bby@kpmg.com.au

Background information

This website was refreshed in 2025. The website previously contained a large volume of documents relating to Court direction proceedings relating to client entitlements between 2015 and 2018 as well as some subsequent proceedings. These are no longer required to be on the website and have been removed.

Key reports and other documents, detailing the chronology and conduct of the external administrations remain on the website under [Communications](#).

BBY Group



External administrations



Entitlements of former clients



At the time of the BBY collapse there were approximately 6,000 former clients of BBYL with \$65.5 million in claims to cash held in trust and assets held with

The Securities Exchanges Guarantee Corporation Limited, the trustee of the National Guarantee Fund met certain entitlements of former clients. Further information can be found at [Securities Exchanges Guarantee Corporation](#).

The value of client assets ultimately realised was approximately \$44.9 million and the estimated shortfall of assets against client claims is \$20.6 million before costs of investigations, recoveries, Court directions, adjudication of claims, administration and distributions.

There have been several distributions to former clients of BBYL in respect of client monies and recoveries from counterparties during the liquidation, including:

- In July 2017, distributions in respect of Erroneous Withdrawals and Erroneous Deposits in accordance with earlier orders of the Court.
- In September 2020, the first general distribution to clients in other product lines, representing approximately 85% of the total estimated return.
- In late 2020, to former clients with in specie claims for the return of assets in respect of the IB product line administered by Interactive Brokers.
- On 29 April 2022, the final general distribution to clients in Equities, ETO, IB and Pooled (Futures, FX, Saxo, Other) product lines was declared and paid.

Unclaimed money



Investigations



Prospects of returns to creditors of BBYL



BBY Nominees Pty Ltd (BBYN)

