



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

ORDER

JUDGE: Justice O'Sullivan

DATE OF ORDER: 29 October 2024

WHERE MADE: Perth

For the purposes of this order:

“13 December 2023 Data” means 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.

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

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

“Minerva Notes” means the Minerva notes purchased by the Defendant and identified in section 5.6 and Appendix A4 of the Receivers’ Fourth Report dated 9 August 2024.

“Pre-Appointment Accounts” means the following accounts held in the Defendant’s name with Westpac: 034 705 – 036 500, 034 702 – 136 274, and 034 703 – 011 086.

“Structured Notes” means the instruments held by the Defendant which are not on the Interactive Brokers platform.

“Trust Assets” means the property, assets and undertakings held by the Defendant on trust for another.

THE COURT ORDERS THAT:

1. Linda Smith and Robert Kirman of McGrathNicol (**Receivers**) would be acting properly and are justified in adopting the following approach to adjusting the 13 December 2023 Data in advance of the Receivers verifying the entitlement of each Beneficiary in accordance with the orders in this matter dated 2 September



2024.

- (a) The Receivers can amend the data relating to dividends and coupons paid such that the 13 December 2023 data reflects what the Receivers believe should have been paid in respect of the securities purportedly held by each Beneficiary at the relevant time.
- (b) The Receivers can remove entries in the data relating to withholding tax, and can proceed with verifying the entitlement of each Beneficiary in accordance with the orders in this matter dated 2 September 2024, with those verified entitlements being subject to later adjustment by the Court in respect of withholding tax which should have been applied by the Defendant.

2. For the purposes of valuing entitlements of Beneficiaries in accordance with order 9 of the orders made on 2 September 2024, the Receivers would be acting properly and justified in valuing the Minerva Notes at cost price.
3. Order 3 of the orders made on 2 September 2024 be amended by deleting the words "23 October 2024" and replacing them with "4 December 2024".
4. Order 9 of the orders made on 6 February 2024 (and as amended by order 1 made on 3 October 2024) be further amended by deleting the words "29 November 2024" and replacing them with "14 January 2025".
5. Order 10 of the orders made on 6 February 2024 (and as amended by order 2 made on 3 October) be further amended by deleting the words "29 November 2024" and replacing them with "14 January 2025".
6. The Receivers would be acting properly and are justified, for the purposes of exercising powers under Order 8 of the orders made on 6 February 2024 in this matter, in transferring balances held in the Pre-Appointment Accounts to an alternate Australian Authorised Deposit-Taking Institution to allow the Receivers to earn an increased return on Trust Assets.
7. The Receivers would be acting properly and are justified, for the purposes of calculating entitlements of Beneficiaries in accordance with Orders 9 and 10 of the orders made on 2 September 2024, in revising any Valuation Notice referred to in those orders, and:
 - (a) Giving notice to the Beneficiary of that revised Valuation Notice (but not requiring further acceptance of that Valuation Notice), even where the Valuation Notice has already been accepted, in circumstances where both of the following criteria are met:
 - (i) information is obtained by the Receivers which indicates there was an error in the Valuation Notice; and
 - (ii) that error resulted in the Valuation Notice understating the proper value of the entitlement;
 - (b) Otherwise where the error results in the Valuation Notice overstating the proper value of the entitlement, repeating the process set out in orders 10(b) to 10(e) of the orders made in this matter on 2 September 2024 in respect of the revised Valuation Notice.



8. The Receivers would be acting properly and are justified, for the purposes of exercising powers under Order 8 of the orders made on 6 February 2024 in this matter, in dealing with the shares in London Stock Exchange listed hVIVO (HVO:LSE) which appear to be beneficially owned by Mr Allan Rankin (**hVIVO Holding**) as follows:
 - (a) Seeking instructions from Mr Rankin to sell the hVIVO Holding;
 - (b) If instructions are given by Mr Rankin or his representative, the Receivers may (but not must) instruct the Interim Fund Manager to sell that shareholding in a manner and over a period of time considered to be appropriate on advice from the Interim Fund Manager;
 - (c) The Receivers are to deposit the cash proceeds of that sale in a bank account or term deposit, without converting the denominated currency and not commingled with any other funds, with an Australian Authorised Deposit-Taking Institution; and
 - (d) The Receivers are to hold the funds until such time as Mr Rankin's rights to those funds can be finally determined and a distribution can be made.
9. The hearing listed on Wednesday 13 November 2024 is vacated.
10. The hearing of the Explanatory Memorandum Application, the subject of Order 3 of these orders, is listed at **9.00am (AWST) | 11.30am (ACDT) on Friday 13 December 2024** with one hour set aside.

Date orders authenticated: 30 October 2024

Sia Lagoa
Registrar

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



Schedule

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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)