



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

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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)