



28 August 2024

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

Update and FAQ – Distribution Framework Application

I refer to:

- the orders of the Federal Court of Australia (**the Court**) dated 6 February 2024, appointing Rob Kirman and I as (i) Court appointed receivers and managers of the property, assets and undertakings held by Brite Advisors on trust for others (**Receivers**), and (ii) joint and several court-appointed liquidators of Brite Advisors (**Liquidators**); and
- previous correspondence issued to Beneficiaries and Corporate Trustees, regarding the Distribution Framework Application (**Application**).

Set out below is an update and FAQ relating to the Application.

As per our previous update, the matter has been listed for further hearing at **9am on Monday, 2 September 2024**. We expect that the Court will livestream the hearing on its YouTube channel, which can be accessed here: <https://www.youtube.com/@FederalCourtAus>

1 Orders made by the Court on 21 August 2024

I refer to our update dated 22 August 2024 in which we advised of the adjournment of the 21 August 2024 hearing, together with confirmation that the Court gave permission to the Receivers to publish both the Receivers' Fourth Report to the Court (**Fourth Report**) and the Tenth Affidavit of Linda Methven Smith (**Tenth Affidavit**).

A copy of the Court's orders are enclosed.

2 Publication of Court Material

The Fourth Report is available on our website, which can be accessed here:

<https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd/>.

The purpose of the Fourth Report is to explain the rationale behind the proposed timeline to distribution orders, which necessarily involved providing the Court with the Receivers' further analysis of Brite Advisor's operations and misuse of Client Assets under Management (**Client AuM**).

The Tenth Affidavit is also available on our website, which can be accessed here:

<https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd/>.

This affidavit was made in support of the orders sought by the Receivers to:

- approve the procedural framework for the distribution of the Client AuM;
- undertake an identity verification process for Beneficiaries; and



- amend the prior orders relating to permitted pension withdrawals.

The Receivers recognise the importance of ensuring that Beneficiaries who rely on their pension for living costs continue to be able to rely on regular payments. **If you do need funds from your pension to meet your living costs or to avoid financial hardship, please speak with your pension administrator.**

In the event you have invested directly with Brite Advisors, please send your pension payment withdrawal requests by email to briteadvisors@mcgrathnicol.com, including all necessary supporting documentation. Please include "Pension payment withdrawal request" in the email subject line to allow the request to be efficiently categorised and allocated to a member of the Receivers' team for processing.

3 Frequently Asked Questions (FAQ)

The Receivers sought the adjournment of 21 August 2024 hearing to allow sufficient time to consider responses received from Beneficiaries following the issue of 9 August 2024 update.

The Receivers address the more frequent questions that have been directed to them below. The Receivers will also respond individually to those Beneficiaries who have raised specific questions.

The FAQ should be read in conjunction with the Fourth Report.

- 3.1 *It is my understanding that US beneficiaries' assets are held separately and are therefore unaffected by the shortfall. Can a distribution occur quickly in relation to those beneficiaries?*

The Receivers do not agree that there has been any effective segregation of the Client AuM. However, the Receivers are aware that Brite USA has informed its clients that it believes their assets are segregated from Client AuM held for other Beneficiaries.

The assets held in the Interactive Brokers Australia Pty Ltd (IBA) omnibus account were separated into sub-accounts (within the omnibus account) in June 2021. One was designated as purporting to hold the assets of US-based Beneficiaries. The Receivers have considered the circumstances of this separation, and the information provided by Brite USA.

Whilst the Receivers' investigations are still ongoing, the Receivers do not consider that the separation of assets into different IBA accounts in this way protected those assets from Brite Advisors conduct which has resulted in the shortfall in Client AuM. This is explained in further detail in the Fourth Report at [2.1.24] – [2.1.26], [4.6.9] – [4.6.12], [6.3.16] – [6.3.22], and [6.4].

The Receivers are progressing their investigations into how and why Brite Advisors separated the IBA omnibus account and will provide a further report upon completion of this investigation.

- 3.2 *Why can't the Receivers determine the assets contributed by each beneficiary and distribute those?*

A simple distribution by reference to the records held by Brite Advisors is not possible.

Beneficiaries may have understood that certain investments were held for them by Brite Advisors, received account statements that identified specific asset holdings with Brite Advisors at various times, or otherwise received reassurance from Brite Advisors (or other parties) relating to the assets held for them. However, this *does not* necessarily mean that those investments were *actually* held by Brite Advisors. This applies regardless of (i) whether the investments were in the form of a model portfolio or bespoke investment or (ii) whether Beneficiaries understood that their assets were purported to be held on a "segregated" basis. See the Receivers' Fourth Report at [2.1.14], [2.1.17] – [2.1.18], [2.1.23] – [2.1.26], [5.6.1] – [5.6.2], [5.6.27] – [5.6.48], [6.8], and [6.9].



3.3 *If the Receivers know there is a 10% variance, why can't they make an immediate distribution of 80%?*

The Receivers are considering whether, how and when an interim distribution could be made. In setting the approach to any interim distribution in terms of quantum and timing, the Receivers must be prudent to ensure that the distribution will not later prejudice any Beneficiaries. Considering the circumstances outlined in the Fourth Report, formulating an approach to any potential interim distribution is complex.

For example, and as described in 3.1 above, a Corporate Trustee or group of Beneficiaries may assert that the separation of assets into IBA sub-accounts was effective in segregating those assets and insulating them from the shortfall. In that case, the Receivers need to withhold adequate funds pending a determination of this issue, which will mean that an interim distribution is unlikely to be feasible.

However, we will issue a further update to Corporate Trustees and Beneficiaries once this analysis is complete.

3.4 *The Receivers have already been appointed for 10 months, what has happened over this time?*

Since the Receivers appointment on 13 December 2023 (approximately 8 months ago), we have acted to (i) secure and preserve the Client AuM and (ii) work towards a distribution of the Client AuM. The steps taken by the Receivers are set out at Section 3 of the Fourth Report.

The key challenge the Receivers have faced in progressing towards a distribution of the Client AuM is not having unfettered access to Brite Advisors critical systems. Further information regarding how this has impacted the Receivers' work can be found in the Fourth Report at [3.4.7] – [3.4.12], [4.3.27], and [4.8.3] – [4.8.6].

3.5 *Why do the Receivers indicate that they require another 8-10 months before they can consider a distribution?*

In short, for the Court to order a distribution, the Receivers will need to confirm that they have identified who should receive the distribution and how much they should receive.

Unfortunately, the existence of a deficiency in the Client AuM combined with the barriers in the Receivers gaining access to the critical systems leaves a large volume of work to be done before these questions can be answered conclusively and a distribution made.

As we have described, apart from rebuilding the critical systems required to identify and verify beneficiary entitlements, there may be competing claims on the Client AuM and accordingly, it is important that (i) beneficiaries are provided an opportunity to verify their entitlements, (ii) interested parties are given an opportunity to be heard on the proposed method of distribution, and (iii) the Receivers are following a fair and equitable process.

The timing contained in the Framework Orders takes into account these factors.

The process to verify Beneficiaries' entitlements will occur concurrently with the preparation of the Explanatory Memorandum and is addressed in the Fourth Report at [3.4.27] – [3.4.34].

However, before verifying Beneficiaries' entitlements, the Receivers need to:

- complete the rebuild of Salesforce (which remains on track to complete by early September 2024); and
- verify the data, documentation and Salesforce environment to be made available to all beneficiaries to ensure this is accurate and functional.



The process and timetable to obtain orders from the Court relating to distribution of the Client AuM is detailed in the Fourth Report at [3.5.1] – [3.5.4].

In addition, before proposing an approach to distribution and seeking orders from the Court, the Receivers have the following further work to complete (addressed in the Receivers' Fourth Report at [2.1.25] and [5.6.21] – [5.6.25]).

- Further engagement with Corporate Trustees to confirm details of, (i) how the distribution will be dealt with once received by the Corporate Trustees, and (ii) the fee structure Corporate Trustees intend to impose on Beneficiaries in relation to that distribution. These are matters which the Receivers anticipate that the Court will want to be informed of prior to making any orders relating to the distribution of the Client AuM.
- Consideration of the regulatory and taxation issues arising in various jurisdictions, many of which have been raised through feedback from the Corporate Trustees and Beneficiaries, which may impact the approach to distribution.
- Investigation into the significant volume of trading activity which occurred in respective IB accounts prior to events of purported segregation. See 3.1 above.

These matters are addressed in the Fourth Report at [3.4.7] – [3.4.26].

3.6 *I'm concerned about potential volatility in the market and the impact on my assets over the period up to distribution, what action is the Receivers taking?*

The Receivers acknowledge this risk and note that Client AuM performance is sensitive to global market movements and will fluctuate over time.

In relation to model portfolio investments, the rebalanced Client AuM is now invested in accordance with portfolio mandates, which comprises a broadly diversified portfolio and will continue to be managed accordingly.

In relation to bespoke investments, these assets are being monitored and reconciled on a regular basis.

As reported in the Fourth Report, Client AuM invested on the IB Platform (both model portfolio and bespoke assets) have performed favourably following aggregated growth of approximately 11% for the period from 13 December 2023 to 16 August 2024.

Weekly portfolio reports produced by the Interim Fund Manager are available via the Brite Advisors portal on the McGrathNicol website.

3.7 *I hold bespoke investments, my assets are not being managed by the Interim Fund Manager and will be subject to market fluctuations in the period up to distribution. Why am I not permitted to exercise trades during this time.*

In short, the Receivers have not yet identified any bespoke investments held on the IBA platform which are conclusively traceable to a particular beneficiary and are not infected by the shortfall in assets. For further detail regarding the shortfall relating to bespoke assets, see the Fourth Report at [5.6.39] – [5.6.48], [5.6.83] – [5.6.86], [6.9] and Appendix A6. The Receivers are considering options for Beneficiaries to de-risk bespoke investments in circumstances where they may have an entitlement to particular assets.

Notwithstanding this, whilst bespoke investments (or non-model portfolio investments) held in Brite Advisors' IB accounts have not been actively managed or traded by the Interim Funds Manager, these assets



are being monitored and reconciled on a regular basis. As noted in 3.6 above, Client AuM invested on the IB Platform (both model portfolio and bespoke assets) have performed favourably since 13 December 2023.

The Receivers obtained orders from the Court on 27 March 2024 that they would be acting properly and are justified in refusing to act on specific trading instructions received from any third party, including individual Beneficiaries, the Corporate Trustees, and any financial advisor to those persons.

The Receivers obtained these orders because they were of the view that it is not possible to action such dealing instructions due to (i) the difficulty with forming a view as to any individual Beneficiary's interest in the specific assets the subject of the instruction and (ii) the risk that actioning any dealing instruction will prejudice another Beneficiaries' position with respect to the Client AuM. This is addressed in the affidavit of Linda Methven Smith dated 26 March 2024, available here: <https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd/>.

We note that there are now some instances where the Receivers can identify certain assets on the IBA platform to which an individual Beneficiary is entitled according to the 13 December 2023 data. However, even in relation to those assets, there remains a risk that actioning a dealing instruction would prejudice another Beneficiaries' position with respect to the Client AuM. This is on the basis that the conduct which resulted in the shortfall, as described in section 6 of the Fourth Report, may give rise to claims against those assets by other Beneficiaries.

3.8 *When will I receive a Valuation Statement?*

As part of the entitlement verification process, Beneficiaries will be provided a valuation notice and the supporting information. The entitlement verification process and its timing is explained in further detail in the Fourth Report at [3.4.20] – [3.4.34].

3.9 *Are the Receivers considering the jurisdictional tax implications as part of their distribution strategy?*

The Receivers have engaged Linklaters, UK Lawyers, to advise on the impact of pension regulations under the law of England and Wales, including taxation impacts. The Receivers will also consider the regulatory and taxation issues arising in various jurisdictions, many of which have been raised through feedback from the Corporate Trustees and Beneficiaries, which may impact the approach to distribution.

These considerations will ultimately inform distribution methodology.

3.10 *What action is being taken against the Directors and Officers of Brite Advisors? Why are they not being held accountable?*

The Receivers' investigations have identified suspected misuse of Client AuM and related suspected breaches of the law over a prolonged period of time.

The Receivers continue to investigate, with legal input, whether any recovery actions are available and able to be pursued against various third parties, having regard to factors including prospects, costs and commerciality considerations.

If recovery actions are pursued, any recoveries from those actions may be available to respond to Beneficiaries' entitlements (after deduction of costs, and any other relevant deductions, including any deductions required to be paid under a litigation funding agreement, if applicable).

At this stage, it is expected that it will take some time before the Receivers will be able to conclude their investigations. As such, recovery actions are currently unquantified, could be protracted and any return



available to satisfy Beneficiaries' entitlements is uncertain. Accordingly, the Receivers have not factored in any potential recoveries into the estimated shortfall.

Outside recoveries for the benefit of Beneficiaries, the Receivers' role in relation to holding third parties accountable is limited to reporting on suspected breaches of law in its report to the Court dated 24 January 2024, which was done in compliance with Court orders.

3.11 *Who is responsible for overseeing the Receivers' ongoing fees?*

The Receivers were appointed by the Court on the application of the Australian Securities and Investments Commission. As such, it is the Court who oversees the Receivers' ongoing fees. Prior to payment of any of the Receivers' costs and expenses, approval is obtained from the Court following submission of detailed and itemised remuneration reporting. All Corporate Trustees are notified of the respective amounts and provided with the Receivers' remuneration reporting immediately after it is submitted to the Court. This is addressed in the Fourth Report at [3.3.3].

4 Ongoing updates

The Receivers will continue to keep Corporate Trustees and Beneficiaries apprised of the conduct of the receivership and issue further correspondence when there are material developments. Correspondence issued to Corporate Trustees and Beneficiaries can be downloaded from our website at the following link - <https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd>.

If you have any queries, please refer to the Frequently Asked Questions page on our website, which can be accessed here: <https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd>. This page will be continually updated as new information that is relevant to Beneficiaries and Corporate Trustees becomes available.

If you have any queries which are not addressed in the Frequently Asked Questions, please contact the Receivers at briteadvisors@mcgrathnicol.com.

Yours faithfully

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

A handwritten signature in cursive script, reading 'Linda Smith'.

Linda Smith

Receiver and Liquidator



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: 21 August 2024

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

1. The Receivers be authorised to publish the following materials filed in these proceedings on the creditor website established by them with respect to their appointment, with such redactions as permitted by the Court:
 - a. the tenth affidavit of Linda Methven Smith affirmed on 6 August 2024; and
 - b. the Receivers' Fourth Report to the Court including the Appendices and the documents referred to in Appendix A1, with the following redactions:
 - i. all personal client information to be redacted from Documents 4 - 12 (inclusive), 15 and 33; and
 - ii. all beneficiary names in the transaction descriptions of Documents 29 and 30.
2. The matter is listed for a case management hearing at **9.00am (AWST) | 10.30am (ACST) on Monday 2 September 2024** with hour set aside.

Date orders authenticated: 22 August 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)