



20 May 2024

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

**ACN 135 024 412**

**(Brite Advisors)**

**Update – Progress on distribution 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 and FAQ documents issued to Beneficiaries and Trustees, regarding the steps the Receivers are taking towards distributing the Client Assets under Management (**Client AuM**) to Beneficiaries.

**1 Interim application to Court**

The Receivers have now filed their application to the Court for preliminary orders and directions which are a necessary part of planning for the distribution of the Client AuM to Beneficiaries.

As part of this preliminary application, the Receivers:

- seek a direction from the Court that the date for calculating Beneficiaries' entitlements or claims to the Client AuM is 13 December 2023, being the initial date of appointment of the Receivers and Managers of the Property of Brite Advisors; and
- seek a direction from the Court that they are justified in contacting Beneficiaries directly for the purposes of calculating their entitlements for the purposes of distributing the Client AuM.

The Court has listed the preliminary application for hearing at 9am AWST on Wednesday, 22 May 2024. We are informed by the Court that the hearing will be live streamed via the Court's YouTube channel which can be accessed at: <https://www.youtube.com/@FederalCourtAus>

Once the Court has confirmed the date at which Beneficiaries' entitlements should be calculated, the Receivers will then commence the process of:

- seeking feedback from Beneficiaries and Trustees as to matters that will inform distribution of the Client AuM;
- updating Beneficiaries' position to reflect the position of investments as at 13 December 2023; and
- contacting Beneficiaries to invite them to review their entitlements as disclosed by this updated data, and provide them with an opportunity to verify those entitlements.



## 2 Receivers to consult with Beneficiaries and Trustees on method of distribution of Client AuM

The Receivers have been investigating various methods by which the Client AuM might be distributed to Beneficiaries in the most efficient and cost effective manner. That investigation is ongoing, and the Receivers remain openminded as to how best to achieve this in a way that minimises, as best as possible, adverse financial impacts on the Beneficiaries. The Receivers have also been grateful for constructive feedback received from Beneficiaries and certain Trustees as to these matters.

The Receivers' present view is that liquidation of the Client AuM by sell down of the portfolio held on the Interactive Brokers trading platform, and distribution of the proceeds of that sale (i.e. cash) to Trustees will be the most appropriate way of getting funds returned to Beneficiaries.

In forming that view, the Receivers have also considered whether it might be possible to 'roll over' the Client AuM to a new appropriately qualified discretionary fund manager.

The Receivers recognise the importance of consulting with Beneficiaries and, where appropriate, their Trustees on the method of distribution of the Client AuM, to ensure that their proposed method appropriately balances the preferences of Beneficiaries (which may be competing depending on Beneficiaries' individual circumstances) and the duties of the Receivers.

With that in mind, the Receivers intend to issue a short survey to Beneficiaries and Trustees seeking feedback on certain matters that will inform the process that we recommend to the Court for distribution of the Client AuM. The Receivers expect to be in a position to issue that survey within the next two weeks (**Consultation Survey**).

We ask that Beneficiaries and Trustees wait to receive this survey rather than provide feedback on an ad-hoc basis, allowing feedback to be collated and considered in a structured and cost-effective manner.

## 3 Beneficiaries' concerns about their Trustees

We have received correspondence from several Beneficiaries indicating concern regarding their Trustee's independence or connection with Brite Group entities or associates.

The Receivers will seek feedback from Beneficiaries in the Consultation Survey regarding the extent to which they wish for their Trustee to be involved in the distribution of their Client AuM.

## 4 Update on operational matters

In advance of the next Court hearing the Receivers will provide the Court with an update on key operational matters, including the status of the Receivers' access to critical data systems and Brite Advisors' Interactive Brokers accounts. The Receivers intend to seek orders to publish this material on the Brite Advisors webpage. In the meantime, a high-level update is set out below.

### 4.1 *Salesforce*

Further to the Receivers' update to Beneficiaries and Trustees dated 19 April 2024, the Receivers have continued negotiations with Salesforce regarding regaining access to the Salesforce system and Client AuM related data.

Following months of negotiations with Salesforce, an agreement was reached between the Receivers and Salesforce to enter into a new contract for ongoing services. Shortly after this date, on 24 April 2024, the Receivers were advised that the Brite Advisors' "org" in Salesforce was inadvertently deleted from the Salesforce system by Salesforce, despite earlier assurances from Salesforce that this would not occur. The Receivers have secured a back-up of Brite Advisors' data which they understand was hosted in the now



deleted Salesforce Org, and are in the process of determining the most efficient and cost-effective way to rebuild the data, either using Salesforce or an alternative platform.

This is a frustrating and untimely development, which Salesforce has informed us was an error on its part and should never have occurred. The matter continues to be the subject of ongoing correspondence with Salesforce as to its ultimate resolution including coverage of unnecessary costs incurred. The Receivers have expressly reserved their and Brite Advisors' rights in respect of the deletion, but the immediate focus is to ensure an efficient and effective rebuild of the data.

#### 4.2 *AutoRek access*

AutoRek continue to provide the Receivers with access to the AutoRek data which has been critical to maintaining Beneficiaries' positions. The Receivers are continuing to engage with the Liquidators of Brite Technologies Limited, a UK entity in the Brite Group, and AutoRek in relation to commercial and contractual arrangements.

#### 4.3 *Access to Brite Advisors' Interactive Brokers accounts*

Since our last update, the Receivers have continued dialogue with Interactive Brokers in relation to obtaining full access to Brite Advisors' Interactive Brokers accounts for the purpose of (i) managing Beneficiary drawdown processes autonomously and without the need for manual transfer processes to be performed by Interactive Brokers, and (ii) facilitating the proposed rebalance of the Client AuM model portfolios which has been approved by the Court.

To date, the Receivers have obtained viewing access to some but not all of Brite Advisors' Interactive Brokers accounts and are in dialogue with Interactive Brokers in relation to obtaining full access for both the Receivers and the proposed Interim Fund Manager.

Whilst Interactive Brokers' approach to the Receivers' requests that they provide access to the Brite Advisors' Interactive Brokers accounts has been protracted and has impacted on the ability of the Receivers to make timely withdrawal payments to Beneficiaries, we are hopeful that full access will be obtained in the short-term and these issues will be resolved.

#### 4.4 *Interactive Brokers margin loan set-off*

As set out in our previous update, Interactive Brokers has been applying dividend income and interest received into the Brite Advisors' Interactive Brokers accounts in reduction of the margin loan liability outstanding, having the effect of decreasing the balance outstanding (that is, paying down the margin loan liability owed to Interactive Brokers) from circa \$19.9 million (as at 9 November 2023) to circa \$16.2 million (as at 15 February 2024).

Since our last update, the Receivers have continued dialogue with Interactive Brokers and their lawyers regarding the margin lending arrangements with Brite Advisors.

The Receivers' lawyers have demanded that Interactive Brokers forbears from setting off any further amounts against the margin loan liability until such time as the Receivers can form a final view on the validity and enforceability of the margin loan liability. In addition, the Receivers have, via their lawyers, requested a full accounting of all amounts set off by Interactive Brokers since October 2023. Interactive Brokers and its lawyers have to date, declined to agree to forbear and have not provided any substantive response to the concerns raised by the Receivers as to the validity and enforceability of the margin loan liability and Interactive Brokers' asserted entitlement to set-off.

The Receivers are currently seeking legal advice in relation to the matter.



#### 4.5 *Interim Fund Manager*

As previously advised, the Receivers have obtained orders from the Court that they are justified in appointing an Interim Fund Manager to rebalance the Client AuM model portfolios to re-align them with their investment mandates.

Subject to obtaining the necessary trading-level access to Brite Advisors' Interactive Brokers accounts (which Interactive Brokers have not, to date, provided despite request), the Receivers anticipate the formal appointment of the Interim Fund Manager will occur within the next one to two weeks.

In the interim, the proposed Interim Fund Manager has determined and communicated details of the proposed rebalancing trades, which have also been provided to Interactive Brokers to assist with finalising access authorities and parameters to be activated by Interactive Brokers as soon as possible.

#### 5 **Key next steps and timeline**

The Receivers will proceed to:

- Progress preparation for the hearing of the interim application on 22 May 2024.
- Issue the Consultation Survey to Beneficiaries and Trustees seeking feedback on certain matters relating to the distribution of the Client AuM.
- Continue to progress the operational matters as set out in section 4 of this update.

#### 6 **Ongoing updates**

The Receivers will continue to keep Trustees and Beneficiaries apprised of the conduct of the receivership and issue further correspondence when there are material developments. Correspondence issued to 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 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](mailto:briteadvisors@mcgrathnicol.com).

Yours faithfully

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

A handwritten signature in black ink that reads 'Linda Smith'.

Linda Smith  
*Receiver and Liquidator*