

NOTICE 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



A handwritten signature in blue ink that reads '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: 11 February 2025

SIXTEENTH AFFIDAVIT OF LINDA METHVEN SMITH

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Filed on behalf of (name & role of party) Linda and Rob Kirman, as joint and several court-appointed receivers and managers
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[Version 3 form approved 02/05/2019]

Linda Methven

Linda Methven

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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.
9. In this affidavit, I depose to:
 - (a) certain matters, by way of update to this Honourable Court, including as to:
 - i. the performance of the model portfolios which are being monitored and managed by BML Funds as Interim Fund Manager pursuant to orders made by this Honourable Court on 6 March 2024;
 - ii. the identity verification process being undertaken by the Receivers pursuant to order 8 of the Framework Distribution Orders, including in relation to the status of Beneficiary deceased estates;



- iii. the entitlement verification process being undertaken by the Receivers pursuant to order 10 of the Framework Distribution Orders, including in relation to:
 - 1. the issuing of Valuation Notices to Beneficiaries;
 - 2. the disputes that Beneficiaries have raised in response to their Valuation Notice in accordance with order 10(e) of the Framework Distribution Orders;
 - 3. the Receivers' response to those disputes; and
 - 4. the Receivers' proposed next steps with respect to the entitlement verification process;
- (b) feedback received by the Receivers from Beneficiaries, Corporate Trustees and others in response to the Explanatory Memorandum published by the Receivers on McGrathNicol's Brite Advisors' webpage (**Creditor Website**) on 16 December 2024 pursuant to orders made by this Honourable Court on 13 December 2024; and
- (c) the basis upon which the Receivers seek directions and orders that:
 - i. the Receivers are permitted to deal with certain bespoke asset holdings in the Client AuM as set out below at paragraphs 81 to 97 (**Bespoke Trading Application**);
 - ii. the pension withdrawal protocol as set out by orders 11 and 12 of the orders made by this Honourable Court on 2 September 2024 (**Framework Distribution Orders**) be varied such that the Receivers are permitted to access or process withdrawal requests from Beneficiaries which relate to bespoke portfolio assets, as set out at paragraphs 98 to 103 below;
 - iii. the Receivers are justified in rejecting certain disputes raised by Beneficiaries in response to their Valuation Notices relating to interest and surrender rebates (**Disputed Matters**), as set out in paragraphs 44 to 62 below;
 - iv. the Receivers are justified in disclosing personal and valuation data of certain Beneficiaries to Corporate Trustees, as set out in paragraphs 63 to 79 below;



- v. the Receivers are justified in dealing with the claims of certain unknown Beneficiaries with interests in a USD\$4.1m portfolio held in the name of "Corinthian Pension Trustees Limited re Bishops Clients" (**Bishops Clients**) in the manner set out in paragraphs 104 to 110 below; and
- vi. the Receivers are justified in taking no further steps to identify the authorised representative of the Deceased Estates with a valuation as at 13 December 2023 of less than USD\$10,000 and once final distribution orders are made, including those Deceased Estates entitlement in the amount to be paid in respect of those deceased Beneficiaries, as set out in paragraphs 40 to 43 below.

PART A: UPDATE TO COURT

Performance of the Fund

- 10. Pursuant to orders made by this Honourable Court on 6 March 2024, the Receivers appointed BML Funds as Interim Fund Manager to rebalance the model portfolios in accordance with the relevant mandates and risk profiles of each specific model portfolio, and regularly monitor and manage the Client AuM.
- 11. Since this time, BML has continued to monitor and manage the model portfolios. BML also publishes a weekly report on the Creditor Website to keep Beneficiaries informed.
- 12. I am informed by Ted Alexander of BML Funds and verily believe that the value of the Client AuM under BML Funds' management as at close of trade on 31 January 2025 was £564.7 million GBP which is equivalent to approximately \$699.8 million USD or \$1,126 million AUD. This is an aggregated growth in the portfolio of 14.01% since our appointment on 13 December 2023, as measured in USD.
- 13. Exhibited hereto behind "**Tab-1**" is a true and correct copy of a report prepared by Ted Alexander of BML Funds dated 3 February 2025 which has been published on the Creditor Website.



Identity Verification Process

Update on Identity Verification Process

14. Pursuant to the orders made by this Honourable Court on 2 September 2024, the Receivers engaged GBG Plc (**GBG**) to undertake the identity proofing for each Beneficiary on the Receivers' behalf. As set out at paragraph 4.4.11 of the Receivers' Fifth Report to the Court dated 4 December 2024 (**Fifth Report**), GBG sent an email to Beneficiaries containing an invitation to conduct the identity proofing process via GBG's website on 26 September 2024.
15. At the date of filing the Fifth Report, 132 Beneficiaries had not successfully completed the identity verification process.
16. The Receivers have taken a number of steps in order to ensure that the identity verification process has been completed by as many Beneficiaries as possible, including the following steps (only taken if the previous step did not yield results):
 - (a) sending multiple follow up reminders by way of email;
 - (b) sending a text message;
 - (c) contacting Beneficiaries directly via phone; and
 - (d) putting those Beneficiaries' Corporate Trustees (where applicable) on notice of their members' failure to complete the identity verification.
17. As a result of the steps being taken as set out at paragraph 16 above, additional Beneficiaries have now identified themselves.
18. However, at the date of affirming this affidavit, 69 Beneficiaries with estimated entitlements totalling approximately USD\$4.3 million have not successfully completed the identity verification process and have therefore been withheld from receiving access to Salesforce to enable them to confirm their Valuation Notices. Of the 69 Beneficiaries who have not completed the identity verification process, 50 Beneficiaries have not started the process, 10 Beneficiaries have started the process but failed to complete it and are under review, and 9 Beneficiaries have refused to complete the process and requested that the Receivers stop contacting them (as set out at paragraphs 76 to 80 below).



19. The Receivers will continue to take steps to engage with the remaining Beneficiaries with a view to having them completing the identity verification process, to the extent that those individuals are not Beneficiaries who are seeking to opt-out of the distribution process (as set out at paragraph 76).

Deceased Estates

20. I refer to paragraph 57 of the Twelfth Smith Affidavit in which I deposed that I had sought international legal advice regarding several Beneficiary deceased estates (**Deceased Estates**) to:
 - (a) confirm whether the deceased estate documentation provided to date is sufficient to enable the Receivers to deal with the empowered person(s) (or their appointed legal representative) in relation to the management and distribution of the deceased estates' assets; or
 - (b) advise whether further documentation is required, including what specific documents need to be provided from the relevant estates.
21. Since the filing of the Twelfth Smith Affidavit, I have:
 - (a) caused my staff to undertake further investigations in relation to the Deceased Estates and I have, at the time of affirming this affidavit, identified 28 Deceased Estates; and
 - (b) sought further international legal advice as to who is authorised under the relevant law to act on behalf of each Deceased Estate and am of the view that, once that is understood, it would be appropriate to admit that authorised person to the GBG ID verification process.
22. The Receivers have provided representatives (where identified) of the Deceased Estates with information as to which Beneficiary category/ies the Deceased Estate is allocated to, as set out in the Explanatory Memorandum. This is intended to provide an opportunity for that representative to contribute any feedback on the Explanatory Memorandum. Once the Valuation Notices for the Deceased Estates are released, the authorised representative will be afforded the full 21-day period to review their Valuation Notice, in line with all other Beneficiaries.



23. There are 8 Deceased Estates with a valuation as at 13 December 2023 of less than USD\$10,000 and, as explained further at paragraphs 40 to 43 below, the Receivers seek directions that they are justified in taking no further steps to identify the authorised representative of those Estates and once final distribution orders are made, including those Deceased Estates' entitlement in calculating the amount to be paid in respect of that deceased Beneficiary. The Receivers consider this threshold appropriate when the rationale for identification (as outlined in my affidavit filed in this matter, sworn on 9 August 2024) is considered against the circumstances relating to lower value Deceased Estates.

Entitlement verification process

Valuation Notices

24. Following the making of the Framework Distribution Orders, I caused staff of the Receivers to release Valuation Notices to Beneficiaries in order for them to review and verify their entitlements. The current status of the Receivers' ongoing process to verify Beneficiaries' entitlements (excluding deceased estates and those Beneficiaries where identity verification is yet to take place, which is referred to above), as at 5 February 2025, is set out below:
- (a) 1,453 Beneficiaries with verified entitlements totalling USD\$578.5 million have accepted their Valuation Notice;
 - (b) 111 Beneficiaries with estimated entitlements totalling USD\$43.9 million have disputed their Valuation Notice;
 - (c) 40 Beneficiaries with estimated entitlements totalling USD\$9.2 million have received access to Salesforce but have not accepted or disputed their Valuation Notice and are still within the 21 day period;
 - (d) 332 Beneficiaries with verified entitlements totalling USD\$92.9 million have not responded to their Valuation Notices within the 21 day period that the Framework Distribution Orders required them to. As a result, the Receivers will proceed with the process on the basis that the entitlements for these Beneficiaries are as set out in their Valuation Notice; and



- (e) 9 Beneficiaries with estimated entitlements totalling USD\$14.1 million have not received access to Salesforce yet as there are outstanding matters that must be resolved before the Receivers can calculate those Beneficiaries' entitlement (**Withheld Valuation Notices**).
25. The number of Withheld Valuation Notices (as a result of data verification issues) has reduced from 181, as outlined in the Fifth Report, as the Receivers have resolved the majority of the data verification issues.
26. Eight of the Nine Withheld Valuation Notices are being withheld because the Receivers are unable to reconcile the cash deposit(s) made by the Beneficiary to Brite Advisors. The Receivers have taken steps to investigate this, which include the following (where relevant):
- (a) the Receivers have written to each Beneficiary to request information and assistance in reconciling the deposit/s;
 - (b) the Receivers have written to the Beneficiary's Corporate Trustee to request information and assistance in reconciling the deposit/s; and
 - (c) the Receivers have written to the Beneficiary's former pension fund to request information and assistance in reconciling the deposit/s.
27. The Receivers are seeking to resolve the outstanding matters and release the Withheld Valuation Notices as soon as possible. The Receivers have provided the Beneficiaries who have Withheld Valuation Notices with the current value of their Valuation Notice (in draft) and advised them which Beneficiary category they are allocated to as set out in the Explanatory Memorandum. Once the Valuation Notices for these Beneficiaries are released, the Beneficiaries will be afforded the full 21-day period to review their Valuation Notice, in line with all other Beneficiaries.
28. The final Withheld Valuation Notice relates to a USD\$4.1m portfolio of assets held on the IB Platform which is recorded in the 13 December 2023 Data in the name of "Corinthian Pension Trustees Limited re Bishops Clients" (**Bishop Client Funds**). The circumstances surrounding the Bishop Client Funds are outlined further at paragraphs 104 to 111 below.

Handwritten signatures of Miller and Smith in blue ink.

Disputes raised by Beneficiaries

29. As required by order 10(e) of the Framework Distribution Orders, once a Beneficiary has completed the identity verification process, the Receivers have issued the Beneficiary with their Valuation Notice which they can either accept or dispute.
30. As at 5 February 2025, 111 Beneficiaries have active disputes with the Receivers disputing their entitlements as at 13 December 2023. The total value of the Valuation Notices of the Beneficiaries with active disputes is circa USD\$43.9 million.
31. Exhibited hereto behind "**Tab-2**" is a true and correct copy of a bundle of the dispute notices received by the Receivers as at 5 February 2025.
32. Whilst each of these disputes are being considered by the Receivers on a case-by-case basis, they broadly fall into the following categories:
 - (a) Beneficiaries raising queries in relation to Surrender Rebates, on the basis that the Beneficiary (i) does not understand the Surrender Rebate, (ii) does not consider it reasonable for the Surrender Rebate loan to be deducted from their portfolio, and/or (iii) considers if the Surrender Rebate must be deducted, then a discount should be applied to reflect that the Surrender Rebate would have been repaid through regular payments over an extended period;
 - (b) Beneficiaries disputing certain fees charged;
 - (c) Beneficiaries asserting an entitlement to interest on their cash holdings;
 - (d) Beneficiaries comparing a historic Brite Advisors' statement or a statement from their former pension fund to their Valuation Notice, and raising a dispute because the statement relating to an earlier point in time shows a higher valuation than the Valuation Notice, which the Beneficiary believes suggests their Valuation Notice is incorrect;
 - (e) Disputes in relation to the currency the Valuation Notice is presented in, currency exchange rates used and/or the currency exchange transactions present in the portfolio;
 - (f) Disputes in relation to a purchase and/or sale of securities which the Beneficiary claims occurred without the Beneficiary's permission;



- (g) Beneficiaries disputing the value of securities, including structured notes; and
 - (h) A variety of other matters relating to the veracity of the 13 December 2023 Data and the method used to calculate their Valuation Notice.
33. Of the disputes received:
- (a) the Receivers have identified 4 disputes which they consider are well founded as a result of errors identified in the 13 December 2023 Data for these Beneficiaries, which will require changes to the 13 December 2023 Data, and the relevant Beneficiaries' Valuation Notices;
 - (b) among the disputes which the Receivers do not consider to be well founded, there are two issues that have been raised by a material number of Beneficiaries, relating to Surrender Rebates and interest. The Receivers seek directions that they are justified in rejecting disputes to the extent they are raised on these bases. Those two categories and the basis for the Receivers seeking directions in relation to them are explained further at paragraphs 44 to 62 below; and
 - (c) the Receivers intend to invite beneficiaries to provide more information or documentation in relation to their dispute where the disputes raised are insufficiently particularised or evidenced.
34. The Receivers are still in the process of conducting investigations into the disputes and preparing responses (especially in relation to recently raised/articulated disputes). Preparation of responses to all disputes has taken longer than anticipated as the Receivers seek to ensure that the responses are considered, consistent and explained in a way that the Beneficiary raising the dispute will understand.

Explanatory Memorandum Consultation Period Feedback

35. Pursuant to the orders made by this Honourable Court on 16 December 2024, the Receivers published the following documents on the Receivers' website on 16 December 2024:
- (a) Explanatory Memorandum dated 4 December 2024; and
 - (b) the Receivers' Fifth Report to the Court dated 4 December 2024 (**Fifth Report**).




36. The Receivers also published on the website an Update to Corporate Trustees and Beneficiaries dated 16 December 2024 in relation to the Explanatory Memorandum and Fifth Report. Exhibited hereto behind "**Tab-3**" is a true and correct copy of that Update dated 16 December 2024.
37. Since publishing the Explanatory Memorandum and Fifth Report, as at 4 February 2025, the Receivers have received feedback from approximately:
 - (a) 6 Corporate Trustees;
 - (b) 19 Beneficiaries; and
 - (c) 4 other persons (**Other Persons**),with respect to the Explanatory Memorandum.
38. Exhibited hereto behind:
 - (a) "**Tab-4**" is a bundle of the correspondence that the Receivers received containing feedback referred to at paragraph 37 above (**Feedback**); and
 - (b) "**Tab-5**" is a summary of some of the areas addressed by the Feedback.
39. The Receivers are in the process of considering and responding to the Feedback.

PART B: ORDERS AND DIRECTIONS SOUGHT BY RECEIVERS

Directions regarding low value Deceased Estates

40. At paragraph 23 above, I refer to 8 Deceased Estates which have been identified by the Receivers where:
 - (a) the authorised representative of those Deceased Estates has not been identified; and
 - (b) the Deceased Estate Beneficiary's entitlement as at 13 December 2023 is less than USD\$10,000.

(Low Value Deceased Estates).

The image shows two handwritten signatures in blue ink. The signature on the left is "T. Miller" and the signature on the right is "J. Smith".

41. The Receivers hold concerns as to the potential costs which will be associated with the Low Value Deceased Estates, specifically the costs associated with taking the following steps:
 - (a) obtaining any further legal advice, both in Australia and internationally, in order to establish who is authorised under the relevant law to act on behalf of the Low Value Deceased Estates;
 - (b) establishing the authority of that representative by reference documentary evidence supporting any such authority;
 - (c) admitting that authorised representative to the GBG ID verification process; and
 - (d) issuing a Valuation Notice to that authorised person and affording the full 21-day period for the authorised person to review the Valuation Notice.
42. The Receivers are concerned as to the commerciality of incurring the costs set out in the preceding paragraph given the low value of entitlements and risk that those costs may exceed the value of the entitlement.
43. For the reasons above, the Receivers consider that it is appropriate that the Receivers:
 - (a) cease attempts to take further steps to establish the authority and identity of the executor of the Low Value Deceased Estates;
 - (b) calculate the Low Value Deceased Estates entitlement in accordance with the Orders made on 2 September 2024 in WAD 13/2024 and treating that as that Beneficiary's verified entitlement; and
 - (c) following final distribution orders being made by this Honorable Court, using that Beneficiary's verified entitlement in calculating the amount to be paid in respect of that Beneficiary.

Directions regarding certain categories of disputes

44. At paragraph 33 above, I refer to two key categories of disputes that the Receivers do not consider to be well founded. Those are:



- (a) where Beneficiaries have asserted that in applying the set-off of positive balances and investment values against negative account balances or debts, as contemplated by Order 9(b) of the Framework Distribution Orders:
 - i. their outstanding Surrender Rebate loan should not be set-off as a negative account balance because (i) according to them, there is nothing in the documentation they entered into which sets out the position if Brite Advisors exited the arrangement earlier than the 10 year period, rather than the Beneficiary exiting the arrangement, and (ii) as a result of the Receivership, Brite Advisors has breached its obligations to the Beneficiary by not allowing the Beneficiary sufficient time to repay the Surrender Rebate loan; and/or
 - ii. they have mistaken the Surrender Rebate as an 'exit fee' which Brite Advisors is charging them to leave Brite Advisors (when, as explained below, in actual fact it is repayment of an interest free loan provided by Brite Advisors so that the Beneficiary could pay the exit fee they were charged to leave their former pension fund); and/or
 - iii. since the Surrender Rebates loans were repayable over ten years, if they are to be off-set for the purposes of calculating entitlements in circumstances where the term had not yet expired as at 13 December 2023, there should be some adjustment to the amount to be offset as a negative balance to account for the time value of money,

(Surrender Rebate Disputes); and

- (b) where Beneficiaries have asserted an entitlement to interest on their cash holdings (**Interest Disputes**),
(together, the **Relevant Disputes**).
45. Exhibited hereto behind "Tab-6" is a true and correct copy of a bundle of correspondence from Beneficiaries in relation to the Relevant Disputes.

Surrender Rebate Disputes

46. Surrender Rebates are explained in paragraphs 4.3.17, 4.6.22, 5.2.5, and 5.6.9 of the Receivers' Fourth Report.



47. It was common that Beneficiaries wanting to roll over their pension assets from an existing pension provider to Brite Advisors would be charged a surrender or exit fee by the existing pension provider. This fee would be deducted from the value of the pension assets at the time of roll over, such that the pension assets received by Brite Advisors on behalf of that Beneficiary were reduced by the fee.
48. Brite Advisors offered Beneficiaries in these circumstances an interest free loan to essentially "top up" the rolled over investment by the amount of the surrender or exit fee charged by the prior pension provider. This loan did not attract interest and was repayable by the Beneficiary to Brite Advisors in monthly instalments (by way of deduction from the value of the Beneficiary's pension assets) over a 10-year period. This loan was referred to within Brite Advisors as a 'Surrender Rebate'.
49. The investment information that Beneficiaries were able to view via Salesforce prior to the Receivers' appointment did not show the outstanding balance of a Beneficiary's Surrender Rebate loan. However, that information would have shown the monthly repayments being made to Brite Advisors in respect of the Surrender Rebate loan.
50. A total of 35 Beneficiaries so far have disputed their Valuation Notices by raising the Surrender Rebate Dispute.
51. Based on the Receivers' investigations to date:
- (a) Beneficiaries who took advantage of this interest free loan were able to use it for investment purposes and generate returns;
 - (b) by topping up the amount the Beneficiary could re-invest with Brite, the loan had the practical effect of discharging a liability the Beneficiaries owed to their previous pension provider;
 - (c) approximately 54% of Beneficiaries (who are owed entitlements) by number are subject to a Surrender Rebate; and
 - (d) if the Surrender Rebates were not set-off against positive investment balances, the burden of the approximately US\$16.7m owing to Brite Advisors by this subset of Beneficiaries would simply be spread across the entire Beneficiary population in proportion to the size of their entitlement.



- 52. As such, the Receivers consider that it is appropriate that the Surrender Rebate loans are treated as a negative account balance that is to be set-off against the positive value of the Beneficiaries' investments in calculating their entitlements.
- 53. For the reasons outlined in the preceding paragraph (as applicable), the Receivers have given, or intend to give, formal notice to those Beneficiaries who raised the Surrender Rebate Disputes that the Receivers consider their dispute is not well-founded.

Interest Disputes

- 54. A total of 5 Beneficiaries so far have formally disputed their Valuation Notices by raising the Interest Dispute. In addition to formal disputes raised, the Receivers have also received a number of general enquiries in relation to interest.
- 55. The Receivers are not aware of any contractual agreements that Brite Advisors had in place with any Corporate Trustees, or directly with any Beneficiaries, that provided an express entitlement to receive interest on cash holdings.
- 56. The Platform Agreement, a copy of which is exhibited to the Third Smith Affidavit dated 20 December 2023 at LMS-2, which Brite entered into with a number of Corporate Trustees on the same terms relevantly provides:

"Interest on Money"

If Interactive Brokers holds money which is not immediately required to settle an investment transaction, such money will be held in accordance with the 'Your Money' section of this Platform Agreement. Money may earn interest at a rate determined by the relevant bank or credit institution. However, the amount of any interest on money held in your Account that will be credited to your Account will be determined by the Discretionary Account Manager. Where any applicable interest rate depends on a central bank base rate, please note that we will not advise you of changes to the base rate."

- 57. In practice, where interest did accrue in the IB Accounts historically, this occurred on an aggregate basis and Brite Advisors did not allocate any interest to specific Beneficiary accounts (as was contemplated may occur under the terms of the Platform Agreement extracted above).




58. For each currency held within the IB Accounts, the long cash position in that currency was netted against the short cash position (i.e. the amount owing under the margin loan), with interest only being paid on any net long position. As detailed in 4.6 of the Fourth Report, Brite Advisors owed amounts under the margin loan for a significant period, meaning that interest would not actually have been earned by Brite Advisors on the full amount of the aggregate gross long cash positions which Beneficiaries understood were held on their behalf.
59. No Beneficiary has been paid interest on their cash holdings in the 13 December 2023 Data (i.e. Brite Advisors did not credit interest historically).
60. No Beneficiary has otherwise identified a written entitlement, contractual or otherwise, to be paid interest on their cash holdings.
61. If the Receivers were required to adjust Beneficiaries entitlements to include interest on cash over time, the Receivers would need to take the following steps:
 - (a) develop a financial model which calculates the interest on each Beneficiaries' cash balance over time. This will include determining the following assumptions to the model:
 - i. an appropriate interest rate to apply over time;
 - ii. when interest should commence accruing (i.e. at commencement of the investment or 13 December 2023); and
 - iii. whether interest earnt should be compounded, and if so, the period in which it should be compounded.
 - (b) prepare the appropriate adjustments to the 13 December 2023 Data as a result of the interest calculated and liaise with I-Convergence to (i) process the changes in Salesforce, and (ii) prepare supporting schedules to explain the calculation and upload them to Salesforce; and
 - (c) correspond with Beneficiaries in relation to the interest applied, including responding to queries/disputes in relation to the assumptions and calculation applied.



62. For the reasons outlined in the preceding paragraphs, the Receivers have given, or intend to give, formal notice to those Beneficiaries who raised the Interest Disputes that the Receivers consider their dispute is not well-founded.

Provision of Beneficiaries' Valuation Data to Corporate Trustees

Access to Beneficiaries' valuation data

63. As set out above, pursuant to orders 10(e) of the Framework Distribution Orders, Beneficiaries who have completed the identity verification process have been issued with a Valuation Notice which they can either accept or dispute.
64. Where a Beneficiary has accepted their Valuation Notice, they are asked to:
- (a) confirm that their Corporate Trustee is as stated in the Valuation Notice (which reflects the Corporate Trustee recorded in Brite Advisors' books and records for that Beneficiary); or
 - (b) alternatively, to disagree that the Corporate Trustee stated in the Valuation Notice is correct in which case they are asked to provide the details of the correct Corporate Trustee to the Receivers via an email address.
65. Exhibited hereto behind "**Tab-7**" is a true copy of a sample accepted Valuation Notice.
66. To date, the Receivers have received notice from a small number of Beneficiaries that the Corporate Trustee in Brite Advisors' records is wrong. However, in each instance, the Receivers have provided the Beneficiary with documentation which shows that the Corporate Trustee is in fact correct. In most instances the Beneficiaries have forgotten they changed Corporate Trustees or were simply unfamiliar with the relationship between Brite Advisors and the Corporate Trustee.
67. On or around 20 November 2023 the Receivers wrote to the Corporate Trustees asking them to provide a schedule of their Beneficiaries. A further request was made on or around 5 July 2024 where this information had not been received. To date 14 of the Corporate Trustees have provided schedules of persons they say are their Beneficiaries (**Corporate Trustee Schedules**).




68. The Receivers conducted a reconciliation between (i) the Corporate Trustees Schedules, and (ii) the records on Salesforce which set out who Brite Advisors' say are the persons associated with the respective Corporate Trustees (**Brite Advisors' Schedule**). As a result of this process, the Receivers identified the following categories of Beneficiaries:
- (a) Category 1 - Corporate Trustee Schedules and Brite Advisors Schedule match (1,625 Beneficiaries);
 - (b) Category 2 - Beneficiaries on Brite Advisors' Schedule, but not on the Corporate Trustee Schedules (267 Beneficiaries);
 - (c) Category 3 - Beneficiaries recorded on the Corporate Trustee Schedules, but not on Brite Advisors Schedule (14 Beneficiaries);
 - (d) Category 4 - The Corporate Trustee has not responded and therefore the Receivers have nothing to compare the Brite Advisors' Schedule to (59 Beneficiaries); and
 - (e) Category 5 - The Beneficiaries do not have a Corporate Trustee and are invested directly (253 Beneficiaries).
69. In January 2025, the Receivers wrote to the Corporate Trustees setting out the above categories and requesting their assistance in reconciling the discrepancies identified. For privacy reasons, the Receivers only disclosed the full name of Beneficiaries who had accepted their Valuation Notice given these Beneficiaries had provided the consent outlined at paragraph 64 above. The Receivers have received responses to some of these emails and are investigating the information provided.
70. Exhibited hereto behind "**Tab-8**" is a true copy of the emails issued to Corporate Trustees.
71. Despite these discrepancies there is a significant portion of Beneficiaries where the Corporate Trustee Schedules and Brite Advisors' Schedule are consistent (i.e. 1,635 Beneficiaries).
72. We are concerned about disclosing a Beneficiary's Valuation Notice data (which includes sensitive commercial and personal information) to Corporate Trustees where



there is uncertainty as to whether that Beneficiary is in fact a beneficiary of that Corporate Trustee.

73. However, I consider that it is appropriate for the Receivers to disclose Valuation Notice data to Corporate Trustees where either:
- (a) the Beneficiary has expressly consented to the disclosure in accepting their Valuation Notice; or
 - (b) the Receivers have been able to reconcile Corporate Trustee Schedules with Brite Advisors' Schedule.
74. I do not intend to disclose the Valuation Notice data to the balance of Beneficiaries' Corporate Trustees where either:
- (a) the Beneficiary has *not* expressly consented to the disclosure as they have not accepted their Valuation Notice and the Receivers have been *unable* to reconcile the Corporate Trustee Schedules with Brite Advisors' Schedule; or
 - (b) the Corporate Trustee has not provided a schedule of persons they say are their Beneficiaries.
75. The Receivers' intended approach will see the valuation data of 83% of Beneficiaries (who have Corporate Trustees) being released to Corporate Trustees.

Access to valuation data for Beneficiaries who do not want to participate due to low amounts

76. In the course of progressing the Identity Verification Process, the Receivers have received feedback from certain Beneficiaries (which I refer to as **Opt-out Beneficiaries**) indicating that they will not complete the Identity Verification Process on the basis that they understand their entitlement to be a small or nil amount, and therefore:
- (a) do not wish to participate in either the Identity Verification Process or Entitlement Verification Process; and
 - (b) have requested that the Receivers cease to contact them in relation to their entitlement.
77. Exhibited hereto behind "**Tab-9**" is a true and correct copy of a bundle of correspondence sent by Beneficiaries to the Receivers which reflects this feedback.

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78. The Receivers have also received correspondence from the Administrators of the Relay Group in which they have expressed the view that, in the event that a Beneficiary has indicated to the Receivers that they do not wish to participate in the Identity or Entitlement Verification Process and have requested that the Receivers cease to contact them in relation to their entitlement, then the Receivers should release the Beneficiary's valuation data to that Trustee.
79. Exhibited hereto behind "**Tab-10**" is a true and correct copy of that letter from the Administrators to the Receivers dated 9 December 2024.
80. On balance, and noting that the Corporate Trustees are Brite Advisors' client, the Receivers' view is that the relevant Corporate Trustees should be provided with access to the valuation data of the Opt-out Beneficiaries (subject to the Receivers being able to map the Opt-out Beneficiary to the Corporate Trustee by the reconciliation exercise I have referred to at paragraph 73(b) above).

Bespoke Trading Application

Treatment of bespoke assets to date

81. I refer to the orders made by this Honourable Court:
 - (a) on 6 March 2024 which permitted the Receivers to appoint an interim fund manager, which resulted in the appointment of BML Funds to this position; and
 - (b) on 27 March 2024 which gave directions that the Receivers would be acting properly and would be justified in refusing to action dealing instructions received from any third party, including a Beneficiary, Corporate Trustee or any financial advisor to those persons.
82. Pursuant to these orders, the Receivers appointed BML Funds to rebalance the model portfolio assets only and to regularly monitor the Client AuM.
83. As set out by the Receivers in their Update to Beneficiaries and Corporate Trustees dated 13 March 2024, the Receivers have previously acknowledged that the circumstances relating to the bespoke assets is complicated and that whilst the Receivers were not proposing to take any action with respect to any bespoke assets at that stage, the Receivers would continue to hold the bespoke assets in their custody and control and BML Funds would monitor the bespoke assets.




84. Since the making of the orders on 6 March 2024, BML Funds has continued to monitor the bespoke assets.
85. I refer to the hearing on 2 September 2024 at which his Honour raised queries in relation to how the risk posed by the bespoke investments was being managed and Beneficiaries' ongoing requests that I have received for the Receivers to take certain actions with respect to the bespoke assets.
86. At paragraphs 69 to 71 of the Twelfth Smith Affidavit, I foreshadowed that, after completion of the entitlement verification process, the Receivers intended to seek further orders from this Honourable Court to enable them to offer Beneficiaries who hold Eligible Bespoke Assets the option to instruct the Receivers to sell these assets and for the Receivers to act on those instructions (being the Bespoke Trading Application).
87. I also refer to the hearing on 29 October 2024 at which the Receivers indicated that:
 - (a) the Receivers had carried out further investigations and had concluded, as set out in their Fourth Report, that the risk profile of the bespoke investments is not a great risk;
 - (b) the Receivers are continuing their investigations into the bespoke assets; and
 - (c) the Receivers intended to seek orders allowing them to deal with the bespoke assets upon instructions from Beneficiaries who held Eligible Bespoke Assets.

Status of bespoke assets

88. I refer to paragraph 63 of the Twelfth Smith Affidavit, at which I deposed that I caused BML to conduct a review of the bespoke assets' risk level for the purposes of:
 - (a) providing an update to the Court as to how the risk posed by bespoke investments was being managed; and
 - (b) responding to Beneficiaries' requests that certain actions be taken with respect to bespoke assets.
89. The Receivers have since received further requests from Beneficiaries that certain bespoke assets be dealt with in a similar fashion to the hVIVO Shares.



90. Exhibited hereto behind "Tab-11" is a bundle of correspondence received from Beneficiaries in which they have requested that certain action be taken in relation to bespoke asset holdings.
91. I am informed by Ted Alexander of BML Funds and verily believe that:
 - (a) since conducting the Bespoke Asset Review (as set out at paragraph 64 of the Twelfth Smith Affidavit), there has been little to no movement in the risk profile of the bespoke asset portfolio; and
 - (b) the bespoke assets continue to not impose excessive risks on the overall portfolio of assets.

Bespoke assets capable of identification

92. I refer to paragraphs 67 and 68 of the Twelfth Smith Affidavit in which I deposed to the steps that had been taken to identify bespoke assets:
 - (a) without variance (where there are both single and multiple Beneficiary investors recorded in the 13 December 2023 Data as having an interest in the relevant bespoke assets); and
 - (b) with variance, but with only single beneficiary investors recorded in the 13 December 2023 Data as having an interest in the relevant bespoke assets, on the basis that these bespoke assets could be sold down by acting on sell down instructions from a Beneficiary without potentially having any material negative impact on any other Beneficiary's rights.
93. Since affirming the Twelfth Smith Affidavit, I have caused further investigations to be undertaken for the purposes of assessing the current status of the bespoke assets held by Beneficiaries. Following those investigations, and on the basis of the 13 December 2023 Data, I have concluded that as at the date of affirming this affidavit:
 - (a) there is approximately \$51.6 million USD (valued as at 13 December 2023) in bespoke only assets (bespoke assets that are not mixed with the model portfolio) held on the Interactive Brokers platform without variance which are recorded in the 13 December 2023 Data as being held by single and multiple Beneficiaries; and



- (b) there is approximately \$0.2 million USD (valued as at 13 December 2023) in bespoke only assets (bespoke assets that are not mixed with model portfolio) held on the Interactive Brokers platform with variance but which are recorded in the 13 December 2023 Data as being held by single Beneficiaries.

(Eligible Bespoke Assets).

Steps taken to sell down bespoke assets

94. I refer to paragraph 69 of my Twelfth Smith Affidavit in which I foreshadowed that the Receivers intended to seek further orders to enable them to offer Beneficiaries who have interests in Eligible Bespoke Assets the option to instruct the Receivers, via their Corporate Trustee where applicable, to sell their assets (being the Bespoke Trading Application) and for the Receivers to act on those instructions.
95. I refer to paragraph 70 of the Twelfth Smith Affidavit at which I deposed to a number of considerations which would be relevant to the Bespoke Trading Application including but not limited to:
- (a) the commerciality in taking steps to sell down bespoke assets in circumstances where the bespoke assets, in aggregate, are not high risk and there will be costs associated with taking steps to sell down those assets by selling them down (such as transaction costs and professional fees);
 - (b) the tradability of bespoke assets will require a framework to address any scenario where steps to sell down bespoke assets may result in detriment to other Beneficiaries;
 - (c) the entitlement verification process being completed prior to considering any orders the subject of the Bespoke Trading Application to ensure that no other Beneficiaries assert an interest in the Eligible Bespoke Assets, which interests are presently unknown; and
 - (d) the ability to appropriate segregate the proceeds of any bespoke assets in a separate IBAU account until the Court makes distribution orders and any tracing claims that the Beneficiaries may assert have been determined.



96. The Receivers have now taken steps to address the considerations listed above at paragraph 95, in particular:
- (a) quantified the number and value of Eligible Bespoke Assets to be the subject of any permitted trading instructions, which are material and not uncommercial with regard to time and cost to sell down should that be the instruction received from relevant beneficiaries;
 - (b) determined to limit trading instructions to Eligible Bespoke Assets;
 - (c) liaised with BML Funds in relation to the most practical and cost-effective framework to act on Eligible Bespoke Asset trading instructions;
 - (d) substantially completed the entitlement verification process without any Beneficiary asserting an interest in Eligible Bespoke Assets which was not recorded in the 13 December 2023 Data; and
 - (e) considered appropriate processes to segregate the proceeds of any Eligible Bespoke Asset sell down to a deposit-taking institution until such time as the Beneficiary's rights to the proceeds of any sale can be finally determined and a distribution can be made.

97. Based on the investigations undertaken by the Receivers as set out above, and following consultation with BML, I consider that Eligible Bespoke Assets could be sold down without having any material negative impact on any other Beneficiaries' rights.

Amendment of Pension Withdrawal Orders

98. Orders 11 and 12 of the Framework Distribution Orders enable the Receivers to impose a 50% cap on superannuation and pension withdrawals that can be made to any one Beneficiary, by reference to a Beneficiary's cash holdings and model portfolio assets recorded in the 13 December 2023 Data, excluding the value of Beneficiaries' bespoke assets.
99. The basis for the Receivers seeking those orders is set out at paragraph 29 of my affidavit affirmed on 30 August 2024 (**Eleventh Smith Affidavit**).
100. Since the making of the Framework Distribution Orders, the Receivers have received correspondence from Beneficiaries in relation to the withdrawal cap, particularly with



respect to bespoke assets. Exhibited hereto behind "**Tab-12**" is a bundle of correspondence from Beneficiaries to the Receivers containing queries in relation to bespoke assets within the context of the current withdrawal process.

101. The reason for excluding the value of Beneficiaries' bespoke assets as recorded in the 13 December 2023 Data from the calculation of the cap on withdrawals is set out at paragraph 29 of my Eleventh Affidavit.
 102. The Receivers have undertaken further investigations in relation to these issues (as set out at paragraph 29 of the Eleventh Smith Affidavit).
 103. These investigations and further consideration of the issues have led me to form the view that it is appropriate to vary the reference point for the withdrawal cap such that the Receivers would be justified in declining to assess or process any request for a superannuation or pension withdrawal to the extent that processing the request would exceed the aggregate of:
 - (a) 50% of the value of the Beneficiary's cash holdings and model portfolio assets; and
 - (b) 30% of the value of the Beneficiary's Pension Entitlement Bespoke 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,
- where "Pension Entitlement Bespoke Assets" means either:
- (c) Bespoke assets held on the IB Platform where there is no variance between the 13 December 2023 Data and the actual holdings of Brite Advisors;
 - (d) Bespoke assets held on the IB Platform where there is a variance between the 13 December 2023 Data and the actual holdings of Brite Advisors, but: (i) those assets are designated as being held by a single Beneficiary; and (ii) the actual holding of Brite Advisors is no less than 60% of the holding, as recorded in the 13 December 2023 Data.



Bishop Clients

104. As set out at paragraph 4.4.9 of the Fifth Report, the Receivers have been taking steps to reconcile certain transactions included in Brite Advisor's system. These transactions include investigating a USD\$4.1m portfolio of assets held on the IB Platform which is recorded in the 13 December 2023 Data in the name of "Corinthian Pension Trustees Limited re Bishops Clients" (**Bishop Client Funds**).
105. Corinthian Pension Trustees Limited (In Administration) (**Corinthian**) and Pantheon Pension Trustees Limited (In Administration) (**Pantheon**) were pension trustees based in Gibraltar. The parent entity of both Corinthian and Pantheon is Centurion Administration Limited (**Centurion**) which changed its name to Relay Administration Limited (**Relay**) in October 2021. Brite Advisory Group Limited (**Brite Advisory Group**) was the ultimate parent company of Corinthian, Pantheon and Relay.
106. Independent Administrators have been appointed to Corinthian, Pantheon and Centurion, following orders made by the Supreme Court of Gibraltar, being Joanne Wild and Adrian Hyde from Begbies Traynor (**Begbies**).
107. Following the publication of the Fifth Report, I received a letter from Begbies on 9 December 2024 relating to various matters including information relating to the Bishop Client Funds. A true and correct copy of that letter is exhibited at Tab-10 at paragraph 79 above.
108. I have caused the staff of the Receivers to carry out further investigations and from the records available it appears to me that the Bishop Client Funds have arisen from the following circumstances:
 - (a) At some point in 2018, Centurion agreed to invest certain clients' funds to be managed by an advisor called Bishops & Associates (**Bishops**). Under this arrangement, Oppenheimer & Co. Inc. (**Oppenheimer**), was to act as custodian.
 - (b) The arrangement was brokered by an individual named Neil Masters, who was the principal of a firm called SN Advisory.
 - (c) In or around 2018, approximately USD\$16m of funds was invested with Bishops by Centurion (**Bishops Investment**).




- (d) As explained in section 3.6 of the Receivers' Report dated 24 January 2024, on 15 March 2019, Brite Advisory Group entered into a loan agreement with IB Global Investments LLC, under which a credit facility up to USD\$10m was made available to Brite Advisory Group (**BAG Loan**).
- (e) In early 2020, Centurion appears to have become concerned with Bishops' inability to produce valuation statements. Centurion ultimately reached the view that a substantial portion of the funds had been diverted to an unauthorised investment or otherwise misappropriated.
- (f) In April 2020, Brite Advisory Group acquired Centurion from Corinthian Trust Company Limited, through a Brite Advisory Group subsidiary, Basi & Basi. At the time of acquisition, it is not clear whether Brite Advisory Group was aware of the alleged misappropriation of the Bishops Investment.
- (g) In October 2020, approximately USD\$3.5m of the Bishops Investment was recovered (**Recovered Funds**) and paid to Corinthian, into an account named "Corinthian Pension Trustees Ltd – Apollo QROPS Client account". Centurion appears to have made representations to the Gibraltar Financial Services Commission (**GFSC**) that the funds were irreconcilable at the time as they were unable to attribute those funds to individual investors. The Recovered Funds were transferred to Brite Advisors' bank account on or around 6 November 2020 and then onto the IB Platform. The Recovered Funds were and held in cash on the IB Platform for a short period of time, prior to being withdrawn and paid to IB Global Investments LLC to repay the BAG Loan on 14 December 2020.
- (h) The Receivers have sighted a loan agreement dated November 2020 between (a) Corinthian and Pantheon as lenders; and (b) Brite Advisory Group as borrower (**Corinthian Pantheon Loan**). Under the agreement Corinthian and Pantheon agreed to lend USD\$5m to Brite Advisory Group at 6% per annum. The loan was repayable on 15 December 2021. The full USD\$5m was advanced to BAG in four tranches (**Loan Funds**). One tranche predated entry into the Corinthian Pantheon Loan. The Loan Funds included the Recovered Funds.
- (i) On 14 December 2020, the Loan Funds (which includes the Recovered Funds) were used to repay USD\$5 million of the USD\$10 million BAG Loan.



- (j) Interest payments appear to have been paid under the Corinthian Pantheon Loan (less amounts which were allegedly deployed by Brite Advisory Group in efforts to recover the remainder of the Bishops Investment). Interest payments appear to have been met using misappropriated Client AuM held by Brite Advisors.
- (k) During the period 2021 – 2022 the Corinthian Pantheon Loan was subject to regulatory scrutiny by the Gibraltar Financial Services Commission (GFSC) and the Australian Securities and Investments Commission.

On 24 August 2022, the Loan Funds (including the Recovered Funds) were repaid back to Corinthian and Pantheon respectively, using USD\$5 million in funds obtained via two agreements with Nigel James Green (**Mr Green**):

- i. A loan agreement between Mr Green (as Lender) and Aurom Group Limited (a Mark Donnelly related entity) in the amount of USD\$2,500,000; and
 - ii. A share purchase agreement between Mr Green (as Buyer) and Genesis Limited to acquire Sphere Capital Limited in the amount of USD\$2,500,000.
- (l) Law firm Isolas LLP acted as intermediary to transfer the funds from Mr Green to Corinthian and Pantheon. The funds were received by Corinthian and Pantheon on 30 August 2022 as repayment of the Loan Funds.
 - (m) On 21 October 2022, Centurion received approval via email from the GFSC to transfer the Bishops Client Funds to Brite Advisors for investment. Centurion requested this approval from GFSC on the basis that the Bishops Client Funds were not yet reconciled to specific members, and it was in the best interest of those members to invest the funds while completing this reconciliation.
 - (n) On 24 October 2022, Corinthian transferred USD\$3,568,944.07 to Brite Advisors and placed onto Interactive Brokers with the account reference “411040-re Bishop Clients”. These funds were then invested on the IB Platform in a model portfolio.
109. On 12 December 2024, I sent an email to Joanne Wild of Begbies in which I provided a summary of the Receivers investigations as to the Bishop Client Funds as set out above.



110. In the letter dated 9 December 2024, Begbies advised that they were unable to reconcile the Bishop Client Funds to specific members.
111. In light of the above, the Receivers are of the view that it is appropriate to treat the Administrators of Corinthian as representative of the group of unknown Beneficiaries whose entitlements arise from the Bishops Client Funds in the receivership and to authorise the Administrators to make decisions and communicate with the Receivers regarding those entitlements.

Affirmed by the deponent
at Perth
in Western Australia
on 11 February 2025
Before me: *Thomas Jarryd Millar*

Linda Smith
Signature of deponent

Millar
Signature of witness

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

Millar

Millar