

ASIC v Brite Advisors Pty Ltd

WAD 262 of 2023

Receivers and Managers' Report for the Federal Court of Australia

24 January 2024



McGrathNicol

Contents

| | Page |
|--|-----------|
| Glossary..... | 5 |
| 1 Executive Summary..... | 9 |
| 1.1 Introduction..... | 9 |
| 1.2 21 December Orders..... | 9 |
| 1.3 Books and records and limitations of Report..... | 10 |
| 1.4 Structure of Report..... | 11 |
| 1.5 Key findings..... | 12 |
| 1.6 Other obligations in accordance with Court Orders..... | 14 |
| 1.7 Disclaimer..... | 14 |
| 2 Response – Sub-paragraph 1(a) of the 13 December Orders – Identification, collection and securing the Property of Brite Advisors..... | 15 |
| 2.1 Scope and approach | 15 |
| 2.2 Return of Client AuM in IBHK accounts | 15 |
| 2.3 Further investigations into Property..... | 16 |
| 2.4 Investigations into acquisitions..... | 19 |
| 2.5 Investigations into related entities and broader group structure..... | 20 |
| 3 Response – Sub-paragraph 1(b) of the 13 December Orders – Identification of the assets and liabilities of Brite Advisors | 21 |
| 3.1 Scope and approach | 21 |
| 3.2 Findings – Summary financial position | 21 |
| 3.3 Findings – Material changes in balances from December Report | 22 |
| 3.4 Findings – Assets..... | 22 |
| 3.5 Findings – Liabilities | 27 |
| 3.6 Finding – Contingent liability – IB Credit Facility..... | 28 |
| 3.7 Finding – Contingent liability – Income Tax..... | 29 |
| 3.8 Finding – Margin loans owed by Brite Advisors | 30 |
| 4 Response – Sub-paragraph 1(c) of the 13 December Orders – Identification of amount and whereabouts of Client AuM | 31 |
| 4.1 Scope and approach | 31 |
| 4.2 Findings – Update on Client AuM as at 13 December 2023..... | 31 |
| 4.3 Findings – Summary of Client AuM as at 12 January 2024 | 32 |
| 4.4 Findings – Growth in portfolio since 9 November 2023 | 33 |
| 4.5 Findings – Client AuM Stock variance analysis..... | 34 |
| 4.6 Findings – Identified Anomalies with Client AuM | 34 |
| 4.7 Beneficiary reconciliation..... | 35 |
| 4.8 Client AuM Systems update | 35 |
| 4.9 Platform Agreements and documentation with Trustees..... | 36 |
| 4.10 Brite Advisors USA..... | 37 |

| | | |
|----------|--|-----------|
| 5 | Response – Sub-paragraph 1(d) of the 13 December Orders – Solvency of Brite Advisors..... | 39 |
| 5.1 | Scope and approach | 39 |
| 5.2 | Findings..... | 39 |
| 6 | Response – Sub-paragraph 1(e) of the 13 December Orders – Return to creditors/investors in the event Brite Advisors was wound up..... | 41 |
| 6.1 | Scope and approach | 41 |
| 6.2 | Findings..... | 41 |
| 7 | Response – Sub-paragraphs 1(f) and 1(g) of the 13 December Orders – Books and records | 42 |
| 7.1 | Scope and approach | 42 |
| 7.2 | Findings - Sub-paragraph 1(f) of the 13 December Orders | 42 |
| 7.3 | Findings – Sub-paragraph 1(g) of the 13 December Orders..... | 43 |
| 8 | Response – Sub-paragraphs 1(h) and 1(i) of the 13 December Orders – Suspected contraventions of the Act.44 | |
| 8.1 | Scope and approach | 44 |
| 8.2 | Key Facts | 45 |
| 8.3 | Suspected Contraventions..... | 65 |

Appendices

| | | |
|----------|--|-----------|
| A | Documents relied upon..... | 68 |
| B | Receivers' CVs | 72 |
| C | Key staff and qualifications..... | 75 |
| D | Books and records | 76 |
| D.1 | Books and records used for the Report..... | 76 |
| D.2 | Steps taken by Receivers to obtain records..... | 79 |
| D.3 | Access to Brite Advisors' books and records..... | 80 |
| D.4 | Listing of Brite Advisors' Bank Accounts and Statements..... | 82 |
| D.5 | Listing of Interactive Brokers Accounts and Statements..... | 84 |
| E | Receivership update on key matters | 87 |
| E.1 | Cost update..... | 87 |
| E.2 | Beneficiaries' pension withdrawal request – update..... | 88 |

Glossary

| Term | Meaning |
|---------------------------|--|
| 9 November Orders | Court orders dated 9 November 2023 in Federal Court Proceedings WAD262 of 2023 as varied by subsequent orders |
| 13 December Orders | Court orders dated 13 December 2023 in Federal Court Proceedings WAD262 of 2023 |
| 21 December Orders | Court orders dated 21 December 2023 in Federal Court Proceedings WAD262 of 2023 |
| AUD / AU\$ / \$ | Australian Dollar |
| \$'000 | Thousands of Australian Dollars |
| AASB | Australian Accounting Standard Board |
| AASB124 | AASB Australian Accounting Standard 124 - Related Party Disclosures |
| ACN | Australian Company Number |
| Act | Corporations Act 2001 (Cth) |
| Administrators | Pension scheme administrators, as defined by the Finance Act 2004 (UK), acting on behalf of the Beneficiaries |
| AFSL | Australian Financial Services Licence |
| Asset Preservation Orders | Asset Preservation Orders made by the Federal Court of Australia on 27 October 2023 |
| ASIC | Australian Securities and Investment Commission |
| ATO | Australian Taxation Office |
| Auditor | DM Advisory Services Pty Ltd |
| AutoRek | AutoRek Process Integration Limited |
| Beneficiaries | Individual clients of the Brite Group, whose funds are managed by Brite Advisors |
| BAG | Brite Advisory Group Limited (HK) (Company number 2202650) |
| BAH | Brite Advisory Holdings Limited (BVI) (Company number 492166) |
| BAG Outsourcing Agreement | Outsourcing and Servicing Agreement between Brite Advisors and BAG dated 14 April 2017 |
| BML | BML Funds Management Pty Ltd (ACN 664 470 991) |
| Brite Advisors | Brite Advisors Pty Ltd (ACN 135 024 412) |
| Brite Group | Brite HK and its subsidiaries and related/associated entities including Brite Advisors |
| Brite HK | Brite Hong Kong Limited (formerly Genesis Investment Management Limited) (Hong Kong Incorporation Number 16332233) |
| Brite Insurance | Brite Advisors (Insurance) Limited |
| Brite Platform | The books, records, systems and financial data that support the calculation and reporting of the Client AuM |
| Brite SA | The Brite Advisors (SA) (Pty) Ltd (Company Registration Number 2020/527332/07) |
| Brite Technologies | Brite Technologies Limited (Company Number 13370493) |
| Brite US | Brite Advisors USA, Inc. (Company Registration Number 98-0474981) |
| CEO | Chief Executive Officer |
| CFO | Chief Financial Officer |
| CHF | Swiss Franc |
| Client AuM | Client Assets under management |

| Term | Meaning |
|----------------------------|---|
| Client AuM Data Pack | Microsoft Excel Workbook – <i>McGrathNicol Audit_20231109.xlsx</i> – Provided by Mr Lymer on 24 November 2023 in response to the Receivers' request for Client AuM information |
| Court | Federal Court of Australia |
| Court Orders | 9 November Orders, 13 December Orders, and 21 December Orders |
| CRM | Customer Relationship Management |
| Crowe Horwath Report | Report on Financial Reporting and Income Tax Compliance by Brite Advisors Pty Ltd (Receivers and Managers Appointed) by Crowe Australasia dated 23 January 2024. |
| CTO | Chief Technology Officer |
| Data Systems | Data systems utilised by the Brite Group in the conduct of its business associated with the Client AuM including (without limitation) Salesforce, AutoRek, Xero, and the G-Suite system |
| December Report | The Investigative Accountants' Report to the Federal Court dated 8 December 2023 |
| Directors | The directors of Brite Advisors, being Keith Sedergreen, Dean Clarke and John Lymer |
| EUR | Euro |
| FCA | Financial Conduct Authority |
| FYXX | Financial year ended 30 June 20XX |
| G-Suite data | All data contained on the Google Workspace cloud-based storage account held with respect to entities in the Brite Group |
| G-Suite system | The Google Workspace cloud-based storage account held and utilised by the Brite Group |
| GBP | Great British Pound |
| Gibraltar Asset Management | Gibraltar Asset Management Limited |
| GIML Outsourcing Agreement | Outsourcing and Servicing Agreement between Brite Advisors and Brite HK dated 22 June 2023 |
| GPFS | General purpose financial statements |
| HK | Hong Kong |
| HK Client AuM | Client AuM which was transferred to the custody of Brite HK during the period from June 2023 to October 2023 |
| HSBC | The Hongkong and Shanghai Banking Corporation Limited |
| HSBC Client Account(s) | Brite HK multi-currency HSBC bank accounts for managing client funds |
| HSBC Operating Account(s) | Brite HK multi-currency HSBC bank accounts for managing operating funds |
| HWLE | Receivers' lawyers, HWL Ebsworth |
| IB Credit Facility | Loan agreement between IB Global Investments LLC and BAG dated 15 March 2019 |
| IBA | Interactive Brokers Australia Pty Ltd |
| IBHK | Interactive Brokers Hong Kong Limited |
| i-Convergence | i-Convergence Ltd |
| IDS | International Dealing Schedule |
| Interactive Brokers / IB | IBA, IBHK and affiliates |
| IOSCO | International Organization of Securities Commissions |
| IT | Information Technology |
| MDA | Managed Discretionary Account |
| Minerva | Minerva Lending Plc |
| MIS | Managed Investment Scheme |

| Term | Meaning |
|--------------------------------|--|
| Moventum | Moventum S.C.A. |
| Mr Chun | Mr Chun Wing Man, Trading officer of the Brite Group |
| Mr Clarke | Mr Dean Clarke, Director of Brite Advisors |
| Mr Donnelly | Mr Mark Donnelly, CEO and Founder of the Brite Group |
| Mr Falzon | Mr Ramon Falzon, CFO of Brite Advisors |
| Mr Johnsson | Mr Christer Birger Richard (Richard) Johnsson, former director of Brite Advisors and Country Manager |
| Mr Lightfoot | Mr Michael Lightfoot, former Chief Technology Officer of Brite Technologies |
| Mr Lissenden | Mr Richard Lissenden, Head of Advisory of the Brite Group and a Director of Brite Advisory Group |
| Mr Lymer | Mr John Lymer, Director of Brite Advisors and operations manager and Director of BAG until his resignation on 21 December 2023 |
| Mr Sedergreen | Mr Keith Sedergreen, Director of Brite Advisors |
| Mr Vauville | Mr Francois Vauville, Business Development officer of the Brite Group |
| Mr Vorster | Mr Andre Vorster, CEO of Brite SA |
| Mrs Donnelly | Mrs Carole Donnelly, former director of Brite Advisors, Accounts officer of the Brite Group, and spouse of Mr Donnelly |
| Ms Nicholson | Ms Erika Nicholson, Head of Accounts of the Brite Group |
| Non-IB Assets | Client AuM held on investment platforms other than IB |
| Notes | Debt security instrument |
| Novia | Novia Global Ltd |
| NZD | New Zealand Dollar |
| OTC | Over the Counter |
| Partial G-Suite Image | Partial image of the G-Suite data provided to the Receivers on 9 January 2024 |
| Proceedings | ASIC v Brite Advisors Pty Ltd WAD 262 of 2023 |
| Property | The Property of Brite Advisors as defined in the 13 December Orders |
| Receivers | The Receivers and Managers of Brite Advisors, being Linda Smith and Rob Kirman of McGrathNicol |
| Report | This report dated 24 January 2024 |
| ROCAP | Report on the Company's Assets and Property |
| ROW | Rest of World (Brite Advisors' Beneficiaries excluding those located in the UK or the US) |
| Salesforce | Salesforce, Inc. |
| SFC | Securities & Futures Commission of HK |
| SIPP | Self-invested personal pensions |
| SPFS | Special purpose financial statements |
| Subsidiary Guarantee Agreement | Subsidiary Guarantee Agreement in favour of IB Global Investments LLC dated 21 March 2019 |
| Tax Acts | Income tax and GST legislation including <i>Income Tax Assessment Act 1936</i> and <i>Taxation Administration Act 1953</i> |
| TB | Terabytes |
| Trustees | Pension scheme trustees and pension scheme administrators purportedly acting on behalf of the Beneficiaries |
| UK | United Kingdom |

| Term | Meaning |
|---|--|
| US / USA | United States / United States of America |
| USD / US\$ | United States Dollar |
| US\$'000 | Thousands of United States Dollars |
| Utmost | Utmost Worldwide Limited |
| Westpac | Westpac Banking Corporation |
| Westpac Client Account(s) / Client Account(s) | Brite Advisors multi-currency bank accounts for managing client funds |
| Westpac Operating Account(s) / Operating Account(s) | Brite Advisors multi-currency bank accounts for managing operating funds |
| Xero | Xero Limited |
| ZAR | South African Rand |

1 Executive Summary

1.1 Introduction

1.1.1 Linda Smith and Rob Kirman, partners of McGrathNicol, were appointed to act as Receivers pursuant to orders of the Federal Court of Australia made on 13 December 2023 in the Proceedings. A copy of the 13 December Orders is enclosed at **Document 001**.

1.1.2 The Receivers are required by the 13 December Orders to conduct investigations in relation to certain matters relating to Brite Advisors and issue a further report to the Court and to ASIC pursuant to subparagraph 1(j) and paragraph 3 of the 13 December Orders.

1.1.3 This Report contains the Receivers' findings and opinions in relation to the matters referred to in subparagraphs 1(a) to 1(i) of the 13 December Orders, to extent they have been able to ascertain or form opinions in respect of those matters.

1.1.4 This Report is to be read in conjunction with the December Report. This Report does not repeat matters covered in the December Report. Except to the extent stated otherwise in this Report, the findings and opinions expressed in the December Report stand.

1.2 21 December Orders

1.2.1 On 19 December 2023, at the Receivers' instruction, HWLE issued a letter to each of Mr Lightfoot, Mr Donnelly, and Mr Lissenden demanding that they deliver up to the Receivers all data contained in, and access to, the Data Systems.

1.2.2 In response to that demand, the Receivers were provided with access to the G-Suite system. This access was subsequently revoked by someone in the Brite Group less than two hours later.

1.2.3 During the short time that the Receivers had access to the G-Suite system, we identified that it contained 3TB of data which included mailbox data and other documents.

1.2.4 The Receivers obtained a partial back up copy of the Brite Group's G-Suite data (approximately 2TB of 3TB total data) (**Partial G-Suite Image**) on 9 January 2024. The Partial G-Suite Image has enabled the Receivers to significantly progress their investigations, however, given that the data is incomplete and the limited time available, the Receivers' conclusions may not be complete.

1.2.5 Orders were made by the Federal Court of Australia obtained on 21 December 2023 that:

- (a) the Directors of Brite Advisors were to immediately deliver up, or cause to be delivered up, all G-Suite data. The Directors were also required to immediately direct (i) third party service providers, (ii) all Brite Group Entities, and (iii) Mr Donnelly, Mr Vauville and Mr Lissenden, to immediately provide access to Brite Advisors' books and records and systems as set out in orders 2 to 3 of the 21 December Orders;
- (b) the Receivers are justified in assessing and processing pension withdrawals requested in line with the protocol set out at orders 4(a) to 4(f) of the 21 December Orders.
- (c) the Receivers are justified in paying properly incurred trading expenses from Property (as defined in the orders) as set out at order 5 of the 21 December Orders;
- (d) the Receivers are justified in paying their remuneration and costs relating to the Receivership and Investigative Accountants periods, subject to approval from the Court, from Property (as defined in the orders) as set out at orders 6 to 17 of the 21 December Orders; and
- (e) the Receivers are required to serve notice of the 21 December Orders on (i) Trustees, (ii) each of the Directors of Brite Advisors, and (iii) Mr Donnelly, Mr Vauville, and Mr Lissenden.

A copy of the 21 December Orders is enclosed at **Document 002**.

1.2.6 In accordance with the 21 December Orders:

- (a) The Receivers requested that the Directors provide evidence that they complied with the directions set out in orders 2 to 3 of the 21 December Orders. In response, the Receivers were provided with three letters without evidence of postage or electronic delivery (please refer to Appendix D for further details).
- (b) At the instruction of the Receivers, HWLE issued correspondence to Mr Donnelly, Mr Vauville and Mr Lissenden, serving notice of the 21 December Orders and drawing their attention to the requirements under Order 2 of the 21 December Orders. Mr Donnelly, Mr Vauville and Mr Lissenden have not complied with the 21 December Orders.

1.2.7 On 17 January 2024, the Receivers wrote to the Directors advising that they did not consider that the Directors had adequately complied with the 21 December Orders. A copy of the letter to the Directors is enclosed at **Document 003**.

1.2.8 Following receipt of the 21 December Orders, the Receivers have been liaising directly with third party service providers to gain access to Brite Advisors' Data Systems (please refer to Appendix D for further details).

1.3 Books and records and limitations of Report

1.3.1 The books and records that the Receivers have had regard to in preparing this Report are set out at Appendix A. The steps taken since issuing the December Report to obtain access to the books and records and the outstanding information required by the Receivers, but which is yet to be obtained, to investigate the affairs of Brite Advisors is set out at Appendix D.

1.3.2 In this Report, where we refer to our knowledge, information or belief as being based on having reviewed the books and records of Brite Advisors, we are referring to the books and records set out at Appendix A.

1.3.3 Limitations in respect of the books and records are addressed below and at Appendix D to the Report. The Receivers have not been provided with unfettered access to the books and records of Brite Advisors. Mr Donnelly, Mr Vauville and Mr Lissenden have failed to comply with 21 December Orders. The Directors have not adequately complied with the 21 December Orders as noted above.

1.3.4 Brite Advisors has not produced books and records to the Receivers that adequately explain the transactions entered into with related parties and the management of Client AuM.

1.3.5 Paragraph 8 of the 13 December Orders required Brite Advisors to immediately deliver up all books, records and other papers (including all files, computer records and other data) in its possession, custody or control which relate to the property of Brite Advisors. "Property" for that purpose was defined in the 13 December Orders in a broad manner and extends to property held by Brite Advisors other than in a solely beneficial capacity, including the Client AuM. The definition of Property extends to such property held on behalf of or on account of Brite Advisors directly or indirectly by:

- (a) Brite Advisory Group Limited; and/or
- (b) Brite Hong Kong Limited.

1.3.6 We are of the opinion that Brite Advisors has not provided us with all of the books and records that were required to be delivered up to the Receivers under the 13 December Orders. Further, access to and provision of those books and records that have been delivered up by Brite Advisors was delayed.

1.3.7 The limited books and records provided and delays in accessing information have limited the Receivers' ability to investigate the affairs of Brite Advisors as contemplated by the 13 December Orders. The Receivers have had insufficient time to conduct an exhaustive review of all books and records that have been provided. In particular, with respect to the Partial G-Suite data noting:

- (a) the length of time it took for the partial back up copy of the Partial G-Suite data to be provided to the Receivers via cloud-based transfer, completing on 9 January 2024; and
- (b) the volume of data meaning that the Receivers have been required to prioritise the upload of data to the accounts (i.e. mailboxes and document folders) of key persons identified onto their forensic review platform. The Partial G-Suite data has not been reviewed in detail; key word searches have been conducted in relation to key investigation areas.

1.3.8 The Directors have not provided substantive responses to several queries and requests for information in relation to critical matters, including:

- (a) Platform Agreements for 11 out of 17 Trustees.
- (b) Supporting documents including invoices for relating party transactions including journal entities for significant transactions characterised as related party loans in Xero totalling circa \$91.4m.
- (c) A satisfactory explanation and response following Mr Lymer's 8 December 2023 (refer **Document 004**) which advised that the amounts paid to various Brite Group entities through the related party loan accounts were as a result of a purported entitlement to fees including trustee fees, legal fees, upfront 5% and 1% NAV fees, interest etc. The Receivers have not been provided with documents to support these claims and note revenue of this quantum is not recorded in the financial statements of Brite Advisors.
- (d) Source documents such as revenue calculations, fee/advisory invoices in support of claims to revenue entitlement for BAG (or other related entities) under the BAG Outsourcing Agreement or arrangements entered into with Trustees.
- (e) Full account of funds transferred to Brite HK, including all documentation to support where funds were directed from Brite HK's HSBC accounts, including:
 - (i) A reconciliation showing the use and allocation of the Client AuM from June 2023 until the funds were returned to Australia, including all cashiering transactions supporting (i) transactions from HSBC accounts to IBHK, (ii) any withdrawals from HSBC or IBHK to meet expenses/client withdrawals/platform fees etc, and (iii) the relevant statements from IBHK showing the funds being closed out and subsequent return to the Australian receiving accounts;
 - (ii) Access to relevant Xero files (or other accounting software) and/or detailed accounting ledgers showing the full accounting treatment of the funds while in the custody of Brite HK;
 - (iii) Details of all expenses paid from the Client AuM while in custody of Brite HK, including supporting documents; and
 - (iv) All documentation relating to any margin loans or other loans secured against the IBHK accounts.
- (f) Lack of information disclosed in Mr Lymer's letter of 11 January 2024, making references to several assets held outside of IB accounts (**Non-IB assets**).

1.3.9 Limitations and deficiencies in the books and records provided to the Receivers are set out at Appendix D.

1.3.10 In light of these issues, the Receivers have been unable to reach a concluded opinion in relation to several scope items as required by the 13 December Orders. The views expressed in this report are based on the available records and set out as far as they are able to be accurately drawn, notwithstanding the identified information gaps, to the extent the Receivers have been able to ascertain or form opinions in respect of those matters.

1.4 Structure of Report

1.4.1 The remainder of this Report is structured as follows:

- (a) Section 2 – response to sub-paragraph 1(a) of the 13 December Orders, identification, collection and securing the Property of Brite Advisors.
- (b) Section 3 – response to sub-paragraph 1(b) of the 13 December Orders, identification of the assets and liabilities of Brite Advisors.
- (c) Section 4 – response to sub-paragraph 1(c) of the 13 December Orders, identification of the amount and whereabouts of Client AuM.
- (d) Section 5 – response to sub-paragraph 1(d) of the 13 December Orders, opinion as to the solvency of Brite Advisors.

- (e) Section 6 – response to sub-paragraph 1(e) of the 13 December Orders, opinion as to the likely return to creditors/investors in the event Brite Advisors was wound up.
- (f) Section 7 – response to sub-paragraphs 1(f) and (g) of the 13 December Orders, providing an opinion in relation to the books and records and the other information necessary to enable the financial position of Brite Advisors to be assessed.
- (g) Section 8 – response to sub-paragraphs 1(h) and (i) of the 13 December Orders in relation to suspected contraventions of the Act.

1.5 Key findings

- 1.5.1 **Return of Client AuM in IBHK accounts** (Section 2.2) - To date, funds totalling circa AU\$115.8 million have been returned to Brite Advisors' Westpac Client accounts and IBA accounts from HK. Despite numerous requests to Directors, the Receivers have not received a full account of the Client AuM whilst in the custody of Brite HK.
- 1.5.2 **Further investigations into Property** (Section 2.3) - The Receivers have located an additional 59 over the counter (OTC) assets listed in AutoRek, not held in IBA accounts, including Minerva notes and funds held by Moventum.
- 1.5.3 **Acquisition investigations** (Section 2.4) - The Receivers have identified several acquisitions made by members of the Brite Group since 2018. Based on the Receivers' investigations, we suspect that payments were made or partly made from Client AuM, or funds borrowed using Client AuM as security, in relation to at least 10 acquisitions.
- 1.5.4 **Contingent liability (Income Tax)** (Section 3.7) - The Crowe Horwath Report sets out a number of issues and suspected misrepresentation made in respect of the Income Tax Returns filed for FY19 to FY22, which may result in tax liability (refer **Document 036**).
- 1.5.5 **Documentation with Trustees** (Section 4.9) - 10 of the 17 Trustees have not been provided any platform agreement or other documents entered into with Brite Advisors. Nor have the Receivers been able to identify any such documents from our review of the available books and records. Of the six Trustees that have supplied platform agreements between them and Brite Advisors, we believe at least three of them are related entities of Brite Advisors.

This has implications in respect of a number of matters, including whether Brite Advisors had a valid and enforceable entitlement to fee revenue, noting the contractual arrangements between Brite Advisors and the Trustees are documented in the platform agreements.
- 1.5.6 **Solvency of Brite Advisors** (Section 5) - From the information currently available, the Receivers consider it likely that Brite Advisors was insolvent from at least the 27 October 2023 and likely earlier.
- 1.5.7 **Return to Brite Advisors' creditors/investors** (Section 6) - The Receivers are currently unable to provide an estimated return to creditors in the event that Brite Advisors was wound up, however, the Receivers note there is variance in the Client AuM.
- 1.5.8 **Books and records** (Section 7) - The Receivers do not consider that Brite Advisors has maintained proper books and records.
- 1.5.9 **Brite Group structure** (Section 8) – The Receivers consider there is substantial evidence indicating that Mr Donnelly is the controlling mind of Brite Advisors.
- 1.5.10 **Suspected contraventions** (Section 8) - The Receivers' suspect that there are or have been a number of contraventions of the Act by Brite Advisors and its directors and officers including:
 - (a) Suspected systemic mishandling of client funds and client assets, including the use of client money, or funds borrowed using client assets as security, to pay Brite Group expenses and fund acquisitions of other businesses.

- (b) Suspected breaches of Brite Advisors' general obligations as an AFSL holder, including the obligations to: do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; comply with the conditions of the licence; comply with the financial services laws; take reasonable steps to ensure that its representatives comply with the financial services laws; have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence; have adequate risk management systems. This also includes suspected non-compliance with the requirements associated with the provision of Managed Discretionary Accounts and suspected improper provision of financial services by representatives of Brite Advisors.
- (c) A suspected failure to implement appropriate policies, processes, systems and controls to manage client money and assets, including a failure to maintain adequate records.
- (d) A suspected failure to maintain adequate books and records and a failure to prepare and lodge with ASIC financial reports, annual profit and loss statements and balance sheets.
- (e) A suspected failure to report suspected breaches of obligations to ASIC when there were reasonable grounds to believe a reportable situation had arisen.
- (f) Suspected engagement in (i) dishonest conduct, and/or (ii) misleading or deceptive conduct, in relation to representations made regarding Brite Advisors' business and, in particular, how the business was operated.
- (g) Suspected breaches of the directors' duties to act in the best interests of the company and to not improperly use their position, as well as a breach of the duty to prevent insolvent trading in relation to conduct taking place as Brite Advisors' financial position approached insolvency.
- (h) Suspected breaches of the directors' duty to exercise reasonable care and diligence, particularly as it relates to the core requirements to facilitate appropriate oversight of the company as well as compliance with financial services laws and authorisation of problematic transactions.
- (i) Suspected breaches of the duty to provide assistance to the court appointed Receivers in undertaking their role in accordance with the orders of the Court.

1.5.11 **Possible further suspected contraventions** (Section 8) - In addition to the above suspected contraventions, further investigations are required to establish whether there are any suspected breaches of the disclosure requirements relating to the offering of securities as a result of fundraising activities by Brite Advisors targeted at clients.

In addition to the above suspected contraventions, the Receivers also suspect that there are, or have been various other contraventions of the law, including breach of equitable duties, breach of taxation legislation, and potentially the commission of fraud related offences under state laws.

1.5.12 **Parties suspected to be involved in suspected contraventions** (Section 8) - The Receivers suspect a number of parties were involved in the suspected contraventions, including:

- (a) Mr Donnelly (including as a de facto or shadow director)
- (b) Mr Lymer (including as director and shadow director when not a formal director)
- (c) Mr Clarke (including as a director)
- (d) Mr Johnsson (including during the time he was director)
- (e) Mr Sedergreen (including as a director)
- (f) BAG (including as a shadow director or for assisting Mr Donnelly and Mr Lymer's suspected breaches)
- (g) Ms Nicholson (including for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (h) Mrs Donnelly (including for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (i) Mr Falzon (including for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (j) Mr Chun (including for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (k) Mr Lissenden (including for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)

1.5.13 **Suspected unregistered MIS** (Section 8) - The Receivers also suspect that the arrangements with respect to the Client AuM may constitute the definition of a MIS under the Act. In that case, further investigation is required to ascertain whether the arrangement is an unregistered MIS that is in contravention of the Act. If Brite Advisors has failed to comply with the requirements associated with the provision of managed discretionary accounts, in particular the conditions of relief from obligations imposed in relation to managed investment schemes, the Receivers suspect that Brite Advisors may have been unlawfully operating an unregistered managed investment scheme.

1.6 Other obligations in accordance with 13 December Orders

1.6.1 Under the 13 December Orders, the Receivers were granted powers to trade on the business of Brite Advisors. On appointment, the Receivers undertook a detailed review of Brite Advisors' operations and attended to the following:

- (a) Reviewing and where appropriate, disclaiming supply agreements between ordinary suppliers and related parties;
- (b) Implementing a redundancy strategy and communicating with employees in relation to the same;
- (c) Negotiating and entering into agreements with critical suppliers, including Salesforce, AutoRek, and i-Convergence;
- (d) Communicating with Trustees and/or beneficiaries in respect of the Receivers appointment and Orders of the Court pertaining to Client AuM and attending to a material number of continuing and ongoing enquiries and requests;
- (e) Engaging an independent and qualified fund manager to undertake an initial risk review of Brite Advisors' investments; and
- (f) Monitoring the costs of the Receivership in accordance with the budget provided to the Court in Ms Smith's affidavit dated 20 December 2023.

Further details in relation to the trading of Brite Advisors' business is included at Appendix E.

1.6.2 In addition to trading on the business of Brite Advisors, the Receivers were ordered to deal with pension withdrawal requests. To date, the Receivers have dealt with approximately 243 pension withdrawal requests (including 59 full surrender requests, which are not permitted pursuant to current Court Orders). To date, 35 pension withdrawal requests totalling US\$384,525 meeting the parameters set by the Court have been distributed to beneficiaries or Trustees alike.

1.6.3 Subject to confirmation of details and documentation, a further 65 pension withdrawal distributions are in progress.

1.7 Disclaimer

1.7.1 This Report has been prepared pursuant to the 13 December Orders.

1.7.2 The information contained in this Report has been prepared on the basis of the documents listed in Appendix A. The documents used in support of our findings are identified throughout the Report.

1.7.3 We have not carried out an audit, nor have we verified any of the information provided to us, except where expressly stated. We have disclosed the source materials and/or assurances relied upon throughout this report.

1.7.4 The information in this Report does not include all possible or relevant information in relation to the matter we have been instructed to investigate. In issuing this Report, we are not certifying that we have identified all relevant events and information. We have sought to identify all significant events from the information provided but provide no assurance that all such significant events and information have been identified.

1.7.5 The financial information is presented in Australian dollars unless otherwise specified.

2 Response – Sub-paragraph 1(a) of the 13 December Orders – Identification, collection and securing the Property of Brite Advisors

2.1 Scope and approach

2.1.1 Sub-paragraph 1(a) of the 13 December Orders requires the Receivers to identify, collect and secure the Property of Brite Advisors.

2.1.2 An update regarding the Receivers' actions to date in respect of the identification, collection and securing the Property of Brite Advisors is set out at sections 2.2 to 2.3 below. In summary, in order to identify, collect and secure the Property of Brite Advisors, the Receivers have undertaken the following:

- (a) conducted investigations in respect of the HK Client AuM;
- (b) conducted investigations in order to identify possible Property held by third parties other than IBA and Westpac;
- (c) corresponded with the Directors regarding the return of the HK Client AuM;
- (d) corresponded with third parties regarding Property identified; and
- (e) sought legal advice in respect of Property identified.

2.1.3 As detailed in the section 2.1.4 below, the Receivers have not received all information from the Directors which they consider is necessary to identify, collect and secure all of the Property of Brite Advisors.

2.1.4 The outstanding information that we are yet to receive from the Directors was summarised in our letter dated 17 January 2024 (refer **Document 003**), which requested further information in relation a number of statements in Mr Lymer's letter of 11 January 2024 (refer **Document 005**), including references to:

- (a) USD \$4.4m of non-IB assets held in "Life Bonds".
- (b) USD \$3m of Gibraltar Asset Management, managed on a third-party platform.
- (c) USD \$200m non-IB assets in transit.
- (d) USD \$3.5m loans to beneficiaries.
- (e) USD \$12.9m Minerva Notes.
- (f) USD \$13.7m margin Loan attributable to "Assets in Transit".
- (g) Circa \$3m settlement from GFS Superannuation.

2.2 Return of Client AuM in IBHK accounts

2.2.1 During the period June 2023 to November 2023, Client AuM totalling circa AU\$129.4 million was divested from an account held by Brite Advisors in IBA into cash and paid into Brite Advisors Westpac Client Accounts. These funds were then transferred overseas in tranches into an HSBC Client Account in Hong Kong, held in the name of Brite HK, following which we understand that the majority of Client AuM was then reinvested in IBHK accounts, held in the name of Brite HK.

2.2.2 On 22 June 2023, Brite Advisors signed the GIML Outsourcing Agreement (refer **Document 006**) which stipulated that Brite HK would manage the Client AuM in the IBHK accounts for certain clients.

2.2.3 The GIML Outsourcing Agreement states that Brite HK was entitled to fees of \$30,000 monthly for the services provided.

2.2.4 The Directors have advised this arrangement was entered into in order to segregate the UK and USA Client AuM from ROW Client AuM to satisfy FCA's concerns about UK Client AuM being used as collateral to secure margin loans drawn by Brite Advisors.

2.2.5 Despite numerous requests to the Directors, the Receivers have not received a list of the beneficiaries who are considered 'ROW clients', or a list of beneficiaries whose funds were moved to Brite HK.

2.2.6 Despite numerous requests to Directors, the Receivers have not received a full account of the Client AuM whilst in the custody of Brite HK. In particular, the Receivers have not been provided with (i) all cashiering transactions supporting all transfers from HSBC to IBHK, support for withdrawals taken from HSBC or IBHK to meet expenses or client withdrawals, (ii) documentation relating to any margin loans or other loans secured against the IBHK accounts, or (iii) access to detailed accounting ledgers showing the full accounting treatment of the funds while in the custody of Brite HK. This information remains outstanding since being requested in our correspondence issued to the Directors on 5 December 2023.

2.2.7 The Directors have not produced correspondence or documents, to demonstrate that the relevant clients:

- (a) were aware of the transfer of funds from Brite Advisors to Brite HK;
- (b) consented to the divestment of funds from IBA; or
- (c) consented to Brite HK taking custody of the funds.

2.2.8 From review of the HSBC statements, the Receivers have identified a number of withdrawals and deposits from the HSBC accounts which require further investigation, including payments totalling circa US\$1.9 million recorded as being paid with the narratives 'BIB-FEES', 'BIB-US ADVISORY' and 'BIB-OPS'.

2.2.9 In addition, the Receivers have located correspondence dated 6 October 2023 from Mr Tommy Li (understood to be a responsible officer of Brite HK) to Mr Donnelly and Mr Lymer, discussing their response to an email received from the SFC requesting information regarding payments made from the HSBC Client Account (which held the Client AuM transferred from Brite Advisors' accounts to Brite HK) to the 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name (refer **Document 007** and **Document 008**). Mr Li's email states:

'There is no legitimate reason for BHKL to move the money from the client segregated account to house account, as the only agreement between BHKL and PTY is the service agreement.'

[...]

'I am proactive collaborating with other colleagues (e.g. Leslie, Paul...etc) on preparing reply to SFC and may seek advice from ComplianceDirect if necessary, I will try to see if we can make up some documents and present them in a way that SFC may think our acts are controversial, instead of intentional violations.'

2.2.10 From the Receivers' review of the transactions set out in the SFC's email, once the funds are moved from Brite HK's client account to the 'house' account, they are generally paid the same day to an unknown payee (refer **Document 009**). The Receivers are unaware of the basis for these payments and further investigations are required.

2.2.11 Brite HK was directed to return the Client AuM held in the HSBC accounts and IBHK accounts to Brite Advisors in accordance with the Orders made on 24 November 2023 in the Court Proceedings (refer **Document 010**).

2.2.12 To date, funds totalling circa AU\$115.8 million have been returned to Brite Advisors' Westpac Client Accounts and IBA accounts, comprised of:

- (a) funds returned from Brite HK's IBHK to Brite Advisors' IBA accounts on 11 December 2023 and 12 January 2024 totalling AU\$113.0 million; and
- (b) funds returned from Brite HK's HSBC Client Accounts to Brite Advisors' Westpac Client Accounts between 21 December 2023 and 29 December 2023 totalling AU\$2.7 million.

2.3 Further investigations into Property

2.3.1 In addition to the Property identified in the December Report, the Receivers have reviewed historic bank transactions in conjunction with the variances at stock level between investment held in IBA against AutoRek data to locate Property held outside of IBA.

2.3.2 Upon review of the AutoRek data, the Receivers identified 59 OTC assets listed in AutoRek, which were not listed in the IBA accounts. These include fixed income instruments from BBVA, Investec, UBS, Goldman Sachs, Natixis and Minerva.

2.3.3 The Directors did not disclose information to the Investigating Accountants or Receivers at the outset of their respective appointments in relation to several of the OTC assets (including the fact of their existence). The OTC assets are not disclosed in Brite Advisor's Xero records or Financial Statement. The Directors did not provide details of the OTC assets in their ROCAPs.

2.3.4 Mr Lymer has subsequently made reference to several OTC assets in his correspondence of 11 January 2024, however, has not provided any further details at this stage.

2.3.5 The Receivers are in the process of communicating with a number of third parties to determine what investments fall under the definition of Property. The Receivers understand that the OTC assets have a higher risk profile and may be bespoke investments purportedly made on behalf of certain investors, and in many instances are yet to determine Brite Advisors' interests in the OTC assets. A summary of the position with each of the parties is set out below.

Minerva Lending Plc (Minerva)

2.3.6 The Receivers identified that Brite Advisors acquired Minerva notes due to expire in June 2024 (**Minerva Notes**) with a face value of GBP8,850,000 (refer **Document 011**). It is understood the Minerva Notes are listed on the Dublin Stock Exchange. The Directors had provided statements of the Minerva Notes in the documents produced on 3 December 2023.

2.3.7 According to the historic Xero records, (i) during the period November 2017 to October 2018, Brite Advisors paid funds to Minerva totalling \$14,169,994 from the GBP Client Account in payment for the Minerva Notes, and (ii) during the period March 2018 to August 2021, Brite Advisors received receipts from Minerva totalling \$2,607,775, the majority of which are described as coupon payments in Xero (refer **Document 012**).

2.3.8 The Receivers wrote to Minerva on 20 December 2023, requesting information including (i) confirmation of the number of Minerva Notes currently held by Brite Advisors, (ii) information in relation to any Minerva Notes disposed of by Brite Advisors, including the parties who acquired the Minerva Notes and the date of disposal, (iii) an update in relation to outstanding coupon payments and the anticipated maturity date in June 2024, (iv) confirmation of which account coupon payments have been made in relation to the Minerva Notes held by Brite Advisors, and (v) request for the provision of a schedule of all coupon payments made (refer **Document 013**).

2.3.9 As the Receivers did not receive a response from Minerva, they issued a further letter to Minerva on 15 January 2024 (refer **Document 014**). The Receivers' letter dated 15 January 2024 also remains unanswered.

2.3.10 The Receivers' high-level investigation of Brite Advisors' books and records, including the partial G-Suite image, has identified issues with the Minerva Notes investment and historical receipt of coupon entitlements. The available material also suggests that Brite Advisors had engaged lawyers and considered litigation in relation to the Minerva Notes.

2.3.11 The realisation and/or recoverability of the Notes at maturity, and any coupon entitlements, requires further investigation. The Minerva Notes have not been referenced on Brite Advisors Financial Statements since 2020.

2.3.12 The recommendation letter received from Mr Lymer on 11 January 2024, states that "*The Minerva Note stopped paying out coupons, so Beneficiaries invested in Minerva were "sold out" via margin loan. The Minerva Note is due to mature in 2024 and the funds will be returned to repay.*"

2.3.13 The Receivers are continuing to investigate (i) the transactions relating to the Minerva notes, (ii) the recoverability on maturity and (iii) the use of the margin loan to facilitate the repayment to investors.

Moventum S.C.A. (Moventum)

2.3.1 The Receivers identified that Brite Advisors acquired and currently holds equity funds and various Moventum notes (**Moventum Notes**) with Moventum. The Receivers located an account ledger [REDACTED] 085 which evidence holdings of Moventum Notes valued at circa EUR1.2 million as at 23 November 2023 (refer **Document 015**).

2.3.2 According to the Xero records, during the period July 2021 to July 2023, Brite Advisors paid funds to Moventum totalling AU\$3,826,080 from Brite Advisors' EUR Client Account, GBP Client Account and USD Client Account in payment for the Moventum Notes. During the period December 2019 to November 2023, Brite Advisors received three receipts from Moventum totalling \$4,493,275. One receipt of \$451,826 appears

to relate to the deposit of beneficiary funds. The balance of deposits totalling \$4,041,489 have no description in Xero (refer **Document 016**).

2.3.3 The Receivers wrote to Moventum on 10 January 2024, requesting certain information from Moventum, including (i) confirmation of the number of Moventum Notes currently held by Brite Advisors, (ii) information in relation to any Moventum Notes acquired and disposed of by Brite Advisors, (iii) an update in relation to outstanding coupon payments and the anticipated maturity date(s), (iv) confirmation of which account coupon payments have been made in relation to the Moventum Notes held by Brite Advisors, and (v) request for the provision of a schedule of all coupon payments made (refer **Document 017**).

In addition, the Receivers confirmed that no action should be taken in relation to the sale and/or transfer of the Moventum Notes held by Brite Advisors without the consent of the Receivers.

2.3.4 The Receivers received a response from Moventum on 12 January 2024 (refer **Document 018**). In response to the Receivers' information requests, Moventum has confirmed that Brite Advisors holds investments on the Moventum Platform (**Moventum Platform**) with net investments totalling EUR845,457 and provided several supporting documents, including a transaction report and assets report (refer **Document 016** and **Document 019**).

2.3.5 In summary, based on the materials provided:

- (a) the transaction report discloses outgoing transfers of GBP674,371 and US\$1,797,933 on 13 November 2023. Moventum has confirmed that these funds were paid into Brite Advisors' GBP and USD Client accounts and the Receivers have verified this to the relevant bank statements (refer **Document 020**, **Document 021** and **Document 022**).
- (b) the Receivers consider it likely that the funds held on the Moventum Platform are Property of Brite Advisors (subject to receipt of further documentation and information from Moventum); and
- (c) there are various compliance and documentation requirements to be attended to by the Receivers to obtain access to the Moventum Platform and obtain control over these assets, which is in progress.

Novia Global Ltd (Novia)

2.3.6 The Receivers wrote to Novia on 22 December 2023, requesting certain information from Novia to understand any relationship between Brite Advisors and Novia and to confirm any assets that meet the definition of Property are held by Novia (refer **Document 023**).

2.3.7 The Receivers received a response from Novia on 29 December 2023 (refer **Document 024**). In response to the Receivers' information requests, Novia has confirmed that Brite Advisors holds investments on the Novia Global Platform (**Novia Platform**) in an intermediary capacity, on behalf of eight investors with investments totalling circa GBP500k and provided several supporting documents.

2.3.8 In summary, based on initial correspondence with Novia and the materials provided the funds held on the Novia Platform are likely not Property of Brite Advisors (subject to receipt of further documentation and information from Novia), but assets subject of direct bespoke investments by certain beneficiaries.

Utmost Worldwide Limited (Utmost)

2.3.9 The Receivers wrote to Utmost on 2 January 2024, requesting certain information from Utmost, including (i) details of any accounts managed on behalf of, controlled by and/or held in the name of Brite Advisors, (ii) copies of any agreements that document the arrangement between Brite Advisors and Utmost Worldwide, and (iii) a schedule of all cash transactions between Brite Advisors and Utmost since 1 July 2023 (refer **Document 025**).

2.3.10 The Receivers received a response from Utmost on 8 January 2024 (refer **Document 026**). The Receivers have subsequently responded to Utmost and requested further information.

2.3.11 Utmost has recognised receipt of the Receivers' subsequent correspondence, however, are yet to respond.

Other Parties

2.3.12 The Receivers' have identified a number of other third parties, which may hold other potential assets that meet the definition of Property as defined in the 13 December Orders. These parties include:

- () RL360;
- (a) Platform 1 Limited;
- (b) Gibraltar Asset Management Limited;
- (c) GFS Superannuation; and
- (d) Prestige Asset Management Limited.

Refer **Document 027** for copies of the Receivers' relevant correspondence.

2.3.13 Responses received to date include from Gibraltar Asset Management who state that funds are held on behalf of Corinthian Pensions Trustee Limited and no instructions can be taken from Brite Advisors. Material responses are yet to be received from other above-mentioned parties.

Related party loan accounts

2.3.14 According to the Xero records, related party loan accounts owing to Brite Advisors reported on the balance sheet total circa \$1.1 million. Loan accounts exist in the name of BAG and BAH (refer **Document 028**).

2.3.15 The Receivers' analysis of Brite Advisors' bank statements is set out in section 3.4 which record that \$91 million has been advanced to multiple related parties during the period from May 2016 to October 2023.

2.3.16 The Directors have not provided supporting documents including invoices for related party transactions, journal entities for significant transactions characterised as related party loans in Xero or satisfactory explanation. Mr Lymer's correspondence on 8 December 2023 (refer **Document 004**) advises that the amounts paid to various Brite Group entities through the related party loan accounts were as a result of a purported entitlement to fees including trustee fees, legal fees, upfront 5% and 1% NAV fees, interest etc. The Receivers have not been provided with documents to support these claims and note the purported revenue is not recorded in the financial statements of Brite Advisors.

2.3.17 Further investigations are required to determine the position of the related party loan accounts.

Other loans/non-IB assets

2.3.18 The Receivers are also investigating a number of transactions to determine if they are amounts owing to Brite Advisors, including potential loans advanced to beneficiaries to support their investment activity, which is further discussed at section 3.4.24.

2.4 Investigations into acquisitions

2.4.1 The Receivers have identified several acquisitions made by members of the Brite Group since 2018.

2.4.2 The Receivers have identified circa \$8.9 million of payments from Brite Advisors' accounts relating to 10 business acquisitions made by the Brite Group as set out in the table below:

| Summary of payments from Brite Advisors relating to Brite Group acquisitions | | | |
|--|--|------------------|------------------|
| Acquisition | Purchaser | Date | \$(AUD) |
| IVCM Services FZ LLC and QROPS Services OPC | Brite Advisory Holdings Limited (BVI incorporation no. 492166) | Nov-21 | 2,040,467 |
| Goodwill Insurance Brokers LLC | Brite Holdings Limited (Dubai entity no. 226673) | Jan-21 | 2,001,815 |
| DeVere Investments South Africa Proprietary Limited | Brite Advisory Holdings Limited (UK entity no. 06093923) | Nov-19 | 1,899,714 |
| Michalska Holding SRO | Planet Pensions Limited | Jan-19 | 924,457 |
| Basi & Basi Financial Planning Limited | Brite Advisory Group Limited (HK) | Dec-18 | 538,945 |
| Corinthian Administration Limited (now Relay Administration Limited) | Brite Advisory Group | Jul-19 | 496,286 |
| MC Holdings (Malta) Ltd | Basi & Basi Financial Planning Limited | Jun-19 | 434,602 |
| Capital Growth Solutions | Brite Advisory Group Limited (Hong Kong) | Oct-19 to Sep-20 | 304,575 |
| I.W.G. International Wealth Group Ltd | Mark Donnelly | Jan-21 to May-22 | 182,431 |
| Sphere Capital Pty Limited | Genesis Limited (BVI co no 2054701) | Apr-21 | 40,000 |
| Total | | | 8,863,292 |

2.4.3 The Receivers investigated each of these transactions and suspect the payments were made or partly made from Client AuM or funds borrowed using Client AuM as security. The Receivers are currently seeking legal

advice to establish whether Brite Advisors and/or the underlying Beneficiaries have any claims in respect of the acquisitions.

2.4.4 In addition to the acquisitions set out at section 2.4.2 above, the table in **Document 030** sets out further acquisitions identified which require further investigation in conjunction with the related party transactions as set out at section 3.4.8 to identify use of Client AuM either directly from Brite Advisors or indirectly via transactions to related entities.

2.5 Investigations into related entities and broader group structure

2.5.1 The Receivers obtained the group structure diagram (refer **Document 031**) as set out in the December Report from the ASIC's affidavit material filed in the Proceedings. We understand that group structure diagram was produced to ASIC by Brite Advisors.

2.5.2 The Receivers' investigations to date have identified a large number of additional entities and consider the group structure is more complex than represented in the diagram produced to ASIC by Brite Advisors.

2.5.3 Investigations into related party transactions, acquisitions and the group structure are complicated by frequent company name changes and the repeated use of similar company names in different jurisdictions. As an example, the UK entity of which Mark Donnelly is the sole Director and shareholder, presently known as BAH 2021 LTD has undergone six names changes during the period January 2019 to present (refer **Document 032**). Prior names include:

- (a) DEVERE RECRUITMENT LIMITED (until c. January 2019);
- (b) HORIZON RETIREMENT LTD (until c. February 2019);
- (c) BRITE ADVISORS LTD (until c. October 2019);
- (d) BRITE ADVISORY HOLDINGS LTD (until c. July 2021);
- (e) BAH 2021 LTD (until c. March 2022);
- (f) BRITE ADVISORY GROUP LTD (until c. April 2022); and
- (g) BAH 2021 LTD (April 2022 – present).

2.5.4 Several iterations of the Brite Group structure have been located which indicate the structure has been dynamic and are demonstrative of the frequent acquisitions and name changes.

2.5.5 Despite the large quantum of transactions with related parties (section 3.4.8), no appropriate disclosures have been made in Brite Advisors' financial statements in relation to the identification of related parties, transactions with related parties and controlling interests. This matter is addressed in the suspected contraventions section (refer section 8.2.59 to 8.2.62).

2.5.6 **Document 033** sets out a list of 115 entities in multiple jurisdictions that the Receivers understand to be associated with the Brite Group and/or Mr Donnelly.

2.5.7 In addition to Brite Advisors, the Receivers have identified seven other Australia entities which require further investigation. **Document 035** sets out the eight Australian related entities, including Brite Advisors.

2.5.8 As set out at section 8.2.60 noted in the Crowe Horwath Report (refer **Document 036**), we believe that Brite Advisors is a Tier 1 reporting entity as it meets the definition of holding 'public accountability' (i.e., it holds assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses).

2.5.9 A Tier 1 reporting entity is obliged to disclose its transactions with related parties and, outstanding balances, including commitments and relationships with related parties which may affect assessments of its operations of the financial statements. This matter is discussed in the suspected contraventions section at (section 8).

3 Response – Sub-paragraph 1(b) of the 13 December Orders – Identification of the assets and liabilities of Brite Advisors

3.1 Scope and approach

3.1.1 Sub-paragraph 1(b) of the 13 December Orders requires the Receivers to identify the assets and liabilities of Brite Advisors, including Client AuM.

3.1.2 This section represents an update on the Receivers' progress since the December Report was issued and should be read in conjunction with Section 2 of the December Report.

3.1.3 To identify Brite Advisors' assets and liabilities we have relied on the following information:

- (a) reports generated from the Brite Advisors' Xero file;
- (b) bank statements provided by Westpac as at 13 December 2023 (refer **Document 067**); and
- (c) other limited company books and records obtained by the Receivers, including the partial G-Suite image.

3.1.4 As detailed in the relevant sections below, the Receivers have not received all information which they consider is necessary to identify all assets and liabilities of Brite Advisors, including:

- (a) information to understand the accounting treatment of revenue, expenses and related party loan accounts and how this aligns with agreements that Brite Advisors has entered into with third parties;
- (b) documentation and details regarding Client AuM held outside of IB platforms, including OTC assets;
- (c) the information to understand the transactions recorded with related parties, including:
 - (i) any loan agreements between Brite Advisors and related parties;
 - (ii) supporting documents for related entity transactions recorded in the Xero loan account; and
 - (iii) invoices.
- (d) information relating to the income tax position of Brite Advisors noting there may be inaccuracies in the preparation of the tax returns for FY19 and FY22 as noted in the Crowe Horwath Report (refer **Document 036**);
- (e) liabilities outstanding pursuant to outsourcing agreements and Trustee arrangements, including administration costs, wages, fees and other costs; and
- (f) the transactions recorded in the Xero do not distinguish between transactions which are entered into by Brite Advisors in its own capacity, or in a non-beneficial capacity. As such, it is difficult to also distinguish between which assets and liabilities are those of Brite Advisors in its own capacity, or in a trust capacity. This distinction impacts upon the analysis of Brite Advisors' solvency position (discussed further at Section 5).

3.1.5 An update on the Receivers' analysis in relation to Client AuM is provided at section 4.

3.2 Findings – Summary financial position

3.2.1 Provided below is (i) a summary of Brite Advisors' balance sheet as at 13 December 2023, extracted from the Xero file on 15 January 2024, and (ii) the Receivers' assessment of Brite Advisors' financial position as at 13 December 2023. A copy of the report from Xero is provided at **Document 028**.

Brite Advisors - Balance sheet as at 13 December 2023

| \$'000 | Report reference | |
|--|------------------|--------------------|
| Westpac Operating Accounts | 3.4.2 | 107 |
| Westpac Client Accounts | 3.4.2 | 8,250 |
| Client AuM | n/a | 1,960,410 |
| Loan - Brite Advisory Group Limited | n/a | 0 |
| Loan - Brite Advisory Holdings Limited | n/a | 1,129 |
| Other assets | n/a | 57 |
| Total assets | | 1,969,953 |
| Accounts payable | 3.3.5 | (512) |
| Employee entitlements | 3.5.4 | (33) |
| Advisor compensation accrual | n/a | (316) |
| Client funds held on trust | n/a | (1,960,410) |
| Transit account | n/a | (8,442) |
| Other liabilities | 3.3.5 | (35) |
| Total liabilities | | (1,969,748) |
| Net assets | | 205 |

Commentary in relation to the financial position of Brite Advisors is provided below.

3.3 Findings – Material changes in balances from December Report

- 3.3.1 The Receivers obtained a copy of the balance sheet as at 13 December 2023 extracted from Brite Advisors' Xero file (refer **Document 028**). The Receivers reviewed the Xero file and note that the last bank account reconciliation was performed on 1 December 2023.
- 3.3.2 Since 9 November 2023, other than movements in the cash balances and the corresponding liability "transit account" balances there has been limited change to Brite Advisors' balance sheet.
- 3.3.3 Per the Xero management accounts, client cash balances have increased by circa \$4 million and the corresponding transit account balance has also increased by circa \$4 million (refer to section 3.4.3 below). The transit account has been reconciled to 15 November 2023 and includes the Moventum receipts, discussed at section 2.3.2.
- 3.3.4 Since 9 November 2023, operating cash has decreased by circa \$20k as result of payment of permitted trading expenses.
- 3.3.5 There have also been immaterial movements in other balances including:
 - (a) circa \$43k increase in accounts payable; and
 - (b) circa \$15k increase in other liabilities.
- 3.3.6 Since the December Report, the Receivers have also identified further liabilities not carried on the Xero balance sheet which are discussed at section 3.5.

3.4 Findings – Assets

- 3.4.1 Westpac has provided bank statements for 13 bank accounts, which are classified in the books and records of Brite Advisors and by reference to account names as follows:
 - (a) Seven client accounts (referred to as the Westpac Client Accounts) – used primarily for the transfer of client funds between Trustees and Interactive Brokers.

Accounts are held in USD, GBP, AUD, EUR, ZAR, CHF and NZD currencies.

(b) Six operational accounts (referred to as the Westpac Operational Accounts) – funds held by Brite Advisors for operational purposes, including the receipt of fee revenue from Interactive Brokers Accounts and disbursements to entities within the Brite Group, including for staff wages.

Accounts are held in USD, GBP, AUD, EUR, ZAR and CHF currencies.

3.4.2 As at 13 December 2023, the Westpac bank accounts held a total balance of circa \$8.2 million as set out in the table below. Copies of relevant bank statements are provided at **Document 067**.

Westpac bank accounts

| Account number | Currency | Balance in foreign currency | Exchange rate (AUD) | Balance at 13 Dec-23 \$ |
|-----------------------------------|----------|-----------------------------|---------------------|-------------------------|
| Client accounts | | | | |
| ████████549 | AUD | n/a | n/a | 36,785 |
| ████████769 | CHF | 26 | 1.72 | 45 |
| ████████019 | ZAR | 500 | 0.08 | 40 |
| ████████500 | EUR | 1,181 | 1.63 | 1,925 |
| ████████274 | USD | 4,010,699 | 1.50 | 6,016,048 |
| ████████086 | GBP | 1,118,262 | 1.89 | 2,113,516 |
| ████████163 | NZD | 499 | 0.93 | 464 |
| Total Client Accounts | | 5,131,167 | | 8,168,822 |
| Operational accounts | | | | |
| ████████905 | AUD | n/a | n/a | 12,939 |
| ████████857 | CHF | 138 | 1.72 | 237 |
| ████████649 | ZAR | 3,981 | 0.08 | 319 |
| ████████737 | EUR | 31 | 1.63 | 50 |
| ████████939 | USD | 3,977 | 1.50 | 5,965 |
| ████████840 | GBP | 4,430 | 1.89 | 8,372 |
| Total Operational Accounts | | 12,557 | | 27,883 |
| Total | | 5,143,724 | | 8,196,705 |

Source: Westpac

3.4.3 Since our December Report, the overall cash balance has increased by \$4 million. As discussed in section 3.3.3 of this Report, per the Xero management accounts, whilst client cash balances have increased by circa \$4 million, the corresponding transit account balance has also increased by circa \$4 million. The transit account has been reconciled to 15 November 2023 and includes the Moventum receipts, discussed at section 2.3.2.

3.4.4 In addition, pursuant to Court Orders made on 24 November 2023, the Directors were ordered to transfer all property held by Brite HK including assets held in HSBC bank accounts and IBHK accounts to Brite Advisors.

3.4.5 In accordance with the Court Order, a total cash balance of circa \$1.7 million in various currencies has been transferred from HSBC to the Westpac accounts in late December 2023, and are additional cash funds to that set out in the table above.

3.4.6 A further circa USD\$76 million in cash held by IBHK being Client AuM, was also in the process of being transferred to IBA (refer **Document 038**). This is further discussed at section 4.

3.4.7 We note the balance in the following accounts set out in the above table have changed since our December Report:

(a) ██████████ 274 (USD Westpac Client Account) – The net balance increased by circa \$2.5 million by way of transfer of funds from Moventum, refer section 2.3.2.

(b) ██████████ 083 (GBP Westpac Client Account) – The net balance has increased by circa \$1.3 million also by way of transfer of funds from Moventum, refer section 2.3.2.

(c) [REDACTED] 905 (AUD Westpac Operational Account) – The balance decreased by circa \$53k, due to the payment of operating expenses by Brite Advisors during the period from 9 November 2023 to the appointment of the Receivers on 13 December 2023.

(d) [REDACTED] 939 (USD Westpac Operational Account) – The balance increased by circa \$6k mainly due to deposits received from Utmost Worldwide. The Receivers are in correspondence with Utmost Worldwide in relation to the recent deposits and their nature.

3.4.8 Since the December Report, the Receivers have undertaken further investigations into the related party transactions which are summarised by entity in the table below and based on all related party transactions identified in Brite Advisors' Xero records since FY16. A Xero ledger detailing the related party transactions is provided at **Document 039**.

| Brite Advisors - Related Party cash transactions (net) | | | | | | | | | | | |
|--|-------------|------------|--------------|--------------|---------------|---------------|---------------|---------------|------------|----------------|-------|
| \$'000 | FY16 | FY17 | FY18 | FY19 | FY20 | FY21 | FY22 | FY23 | FY24 | YTD | Total |
| Related party companies | | | | | | | | | | | |
| Brite Advisors (Insurance) Ltd | - | - | - | 1,082 | 2,045 | 7,515 | 7,764 | 7,367 | 3,779 | 29,551 | |
| Brite USA | - | - | - | 282 | 5,281 | 6,060 | 5,638 | 5,297 | 436 | 22,992 | |
| Brite Advisors Financial Consultant | - | - | - | - | - | 4,378 | 4,726 | 4,266 | 325 | 13,696 | |
| Brite Advisors AG | - | - | - | - | 179 | 307 | 262 | 80 | - | 828 | |
| Brite Advisory Group Ltd | (30) | 388 | 537 | 636 | - | - | - | - | - | 1,531 | |
| Mark Donnelly | - | - | 1,290 | 138 | 244 | 345 | 14 | - | - | 2,030 | |
| Brite Asia Pacific Pty Ltd | - | - | - | 1 | - | - | - | - | - | 1 | |
| Brite Hong Kong Limited | - | - | - | - | - | - | 120 | - | (4,019) | (3,899) | |
| Brite Dubai | - | - | 140 | 113 | 2,303 | - | - | - | - | 2,556 | |
| Basi & Basi | - | - | - | 897 | 583 | 2,194 | (629) | 551 | - | 3,596 | |
| DeVere US | - | - | - | 1,311 | 2,814 | - | - | - | - | 4,125 | |
| Brite Technologies Ltd | - | - | - | - | - | 18 | 929 | 3,273 | - | 4,220 | |
| Brite Developments Limited | - | - | - | - | - | - | 87 | 205 | - | 292 | |
| Brite Advisors Ltd | - | - | - | - | 196 | 91 | - | - | - | 287 | |
| Brite Group Treasury Ltd. | - | - | - | - | - | 447 | - | - | - | 447 | |
| Brite South Africa (PTY) Ltd | - | - | - | - | 150 | 1,958 | 1,929 | 1,477 | 116 | 5,630 | |
| BSF Developments Pty Ltd | - | 180 | (31) | - | - | 50 | - | - | - | 199 | |
| Sphere Capital Pty Limited | - | - | - | - | - | 40 | 28 | - | - | 68 | |
| Touchstone Advisory | - | - | - | - | - | 6 | 120 | 191 | - | 317 | |
| Related party trustees | | | | | | | | | | | |
| Corinthian Pension Trustees Limited | - | - | - | - | 495 | 8 | 100 | 47 | 7 | 657 | |
| PSG SIPP | - | - | - | - | 80 | 209 | 1,260 | 92 | - | 1,641 | |
| MCT Trustees Limited | - | - | - | - | 14 | 4 | 42 | 576 | - | 635 | |
| Total | (30) | 568 | 1,936 | 4,459 | 14,384 | 23,629 | 22,387 | 23,422 | 643 | 91,398 | |

3.4.9 Contrary to the outstanding related party loan balances of circa \$1.1 million disclosed in Brite Advisors management accounts, the Receivers' analysis of Xero records reconciled to bank statements indicates circa \$91.4 million has been advanced to multiple related parties, including circa \$30 million to Brite Advisors (Insurance) Limited, circa \$23 million to Brite US, \$14 million to Brite Advisors Financial Consultant and circa \$5.6 million to Brite SA (refer to section 3.4.15 to 3.4.27 for further details).

3.4.10 These transactions primarily relate to the payment of expenses and transfers of cash that were recorded through the BAG and BAH loan account. Refer to section 2 of the December Report for further details on the BAH and BAG loan. Further investigations are required in respect of the funds transferred to the other related entities.

3.4.11 The Receivers note that related party disclosures explaining these transactions have not been made in Brite Advisors' financial statements. This is further discussed at section 8.

3.4.12 The Crowe Horwath Report states that to the extent that Brite Advisors enters into transactions under an outsourcing agreement, the transactions should be reflected in the Brite Advisors' profit and Loss account, not via a loan account with BAG or BAH.

3.4.13 We have been unable to identify any repayment of the amounts advanced by Brite Advisors to the related entities and the balances shown in table at section 3.4.8 are net of any receipts from each of the parties identified. The nature of the payments made to related entities is the subject of further investigation by the Receivers in respect to any entitlement to the payments or whether they relate to acquisitions made within the Brite Group (refer section 2.4)

3.4.14 The Receivers also note that many of the above-named related entities have had numerous corporate name changes since FY16, which has complicated undertaking investigations. The allocations on the table at section 3.4.8 have been made using the reference given on Xero.

Brite Insurance

3.4.15 Based on the Xero records, during the period January 2019 to October 2023, net funds totalling \$29,550,950 were transferred from Brite Advisors to Brite Insurance and out of this amount, Brite Advisors' Xero records report transfers totalling \$19,960,368 which refer to 'expenses' (refer to **Document 040**). Further investigations are required in respect of the purpose and quantum of funds transferred to Brite Insurance.

3.4.16 The transactions are recorded in Xero via the loan accounts with BAG and BAH (refer to section 2.3.3 of the December Report for further details on these loan accounts).

3.4.17 The Receivers have reviewed several of the payments made to Brite Insurance, where the transaction description for the payments to Brite Insurance in the Xero records references 'expenses', as follows:

- (a) On 19 May 2023 there was a payment of USD250,000 from the USD Operating Account, with the transaction reference 'INTL Brite Advi Expenses'. On 18 May 2023, there was a receipt of USD600,000 into the USD Operating Account (refer Page 31 of **Document 041**).
The amount and date of the receipt on 18 May 2023 reconcile to a drawdown from the IBA account [REDACTED] 939, which is recorded as being initiated by Chun Wing Man (refer Page 65 of **Document 042**).
- (b) On 23 June 2023 there was a payment of USD350,000 from the USD Operating Account, with the transaction reference 'INTL Brite Advi'. On 21 June 2023, there was a receipt of USD700,000 into the USD Operating Account (refer Page 25 of **Document 041**).
The amount and date of the receipt on 21 June 2023 reconcile to a drawdown from the IBA account [REDACTED] 939, which is recorded as being initiated by Chun Wing Man (refer Page 73 of **Document 042**).

Brite SA

3.4.18 On 22 December 2023, the Receivers received correspondence and supporting documents from Mr JA Vorster, CEO of Brite SA, advising that they had been informed by Mr Donnelly that there were no funds available for the payment of salaries and operations and requesting that the Receivers transfer funds totalling ZAR460,041 required by Brite SA to pay the wages due in order to keep the business operating (refer **Document 043**).

3.4.19 On 28 December 2023, the Receivers responded to Brite SA (refer **Document 044**), as follows:

- (a) Advised that from the correspondence and supporting documents provided, it is the Receivers' view that the employee costs are liabilities of Brite SA, not Brite Advisors and the Receivers are not aware of any agreement between the two entities, under which Brite Advisors is obliged to meet the payroll costs of Brite SA.
- (b) Requested that Brite SA advise on what basis Brite Advisors has previously provided funds to Brite SA for payroll (and any other) costs and provide any supporting documents.
- (c) Advised that Brite Advisors holds insufficient beneficially held funds to meet the payroll payment requested and on the basis of the information provided to date, the Receivers do not consider it is appropriate to drawdown on Client AuM and/or provide a loan to Brite SA in order to meet these costs.

(d) Requested confirmation if Brite SA considers it is owed any monies from Brite Advisors, by way of advisor fees, other revenue etc and provide relevant supporting documentation for our consideration.

3.4.20 On 16 January 2024, Brite SA responded to the Receivers (refer **Document 045**), which is summarised below:

- (a) Brite SA explained that the Brite Group's finance department operates as a consolidated and centralised finance department and in order to meet its expenses, Brite SA requests funds from finance on a monthly basis, but they are unable to confirm which Brite Group entity normally processed the monthly payments and they are unaware of any written intercompany agreements relating to this arrangement.
- (b) Soon after 27 October 2023, Mr Donnelly requested the Brite SA management to transfer all available cash to 'Brite Group' in order to settle outstanding Salesforce invoices in respect of the Brite Group 'to avoid the services [being] disconnected' and gave an undertaking that the funds would be repaid within two to three weeks. Brite SA agreed to the request, but the funds are yet to be repaid, leaving Brite SA unable to pay its expenses.

3.4.21 As set out at section 3.4.9, based on the Xero records, Brite Advisors was paying Brite SA's expenses on an ongoing basis, with funds transferred of \$5,630,039 from the ZAR Westpac Operating Account during the period May 2020 to August 2023, with the majority of the transactions recorded with a reference to expenses, salaries or payroll (refer **Document 046**).

3.4.22 The transactions are treated as follows in the Xero records:

- (a) In the period to December 2020, recorded via a loan account with Brite SA. The loan account balance is cleared via a manual journal dated 31 December 2020 with the memo 'Clearing of Inter-company loan' (refer3).
- (b) In the period from January 2021, recorded via loan accounts with BAG and BAH (refer to section 2.3.3 of the December Report for further details on these loan accounts).

3.4.23 The Receivers have reviewed the source of several of the payments made to Brite SA, as follows:

- (a) On 22 February 2023 there was a payment of ZAR1,200,000 from the ZAR Westpac Operating Account, with the transaction reference 'The Brite Payroll' and the source of the funds is a receipt of ZAR1,368,356 on the same day (refer Page 5 of **Document 048**).
The source of the above receipt was a payment made from the AUD Westpac Operating Account on 22 February 2023 totalling \$110,000, with the transaction reference 'ZAR EXPENSES' and the source of funds is a receipt of \$300,000 on 17 February 2023 (refer Page 11 of **Document 049**).
The amount and date of the receipt on 17 February 2023 reconcile to a drawdown from the IBA account [REDACTED] 295, which is recorded as being initiated by Chun Wing Man (refer Page 6 of **Document 050**).
- (b) On 23 March 2023 there was a payment of ZAR1,350,000 from the ZAR Westpac Operating Account, with the transaction reference 'The Brite' and the source of the funds is a receipt of ZAR1,585,519 on the same day (refer Page 1 of **Document 048**).
The source of the above receipt was a payment made from the AUD Westpac Operating Account on 23 March 2023 totalling \$130,000, with the transaction reference 'ZAR PAYROLL' and the source of funds is a receipt of \$400,000 on 20 March 2023 (refer Pages 2 and 3 of **Document 049**).
The amount and date of the receipt on 20 March 2023 reconcile to a drawdown from the IBA account [REDACTED] 295, which is recorded as being initiated by Chun Wing Man (refer Page 23 of **Document 051**).

3.4.24 Brite has provided loans to various parties, who the Receivers understand are likely Beneficiaries, totalling circa US\$3.5 million. The Receivers' preliminary investigations have revealed:

- (a) Brite Advisors and/or its related entities entered into written loan and convertible loan agreements with various Beneficiaries and companies. To date, the Receivers have retrieved 13 loan and convertible loan agreements. An example convertible loan agreement is available at **Document 052**;

- (b) the Receivers reviewed the bank registers within Xero records and note that circa \$3.8 million has been lent to individuals and corporations, of which circa \$1.1 million has been repaid. The balance of circa \$2.7 million may present a recoverable asset. These funds were advanced from both the Westpac Client Accounts and Westpac Operating Accounts; and
- (c) several of the transactions were recorded through the BAG loan account. Accordingly, the funds are recorded as owing from BAG and not the beneficiaries themselves. Brite Advisors did not maintain a separate asset account for loans made to beneficiaries or corporations.

3.4.25 As set out at section 2.3, the Receivers have located Client AuM held in alternate asset platforms to that of Interactive Brokers and these investigations are ongoing.

3.4.26 The Receivers consider that other potential assets may be available to Brite Advisors such as interest, unpaid management fees and advisory fees chargeable to the individual beneficiaries in accordance with Investment Mandates executed by the beneficiaries and Platform Agreements with their relevant Trustees. Revenue has not been drawn down by Brite Advisors since the Asset Preservation Orders were made on 27 October 2023.

3.4.27 Notwithstanding that the Directors requested that the drawdown of interest and management/advisory fees, at this time, the Receivers have not formed a view that it is appropriate for Brite Advisors to drawdown these fees on the basis that:

- (a) as set out section 1.3.8, the Receivers only have to hand 6 out of the 17 Platform Agreements with Trustees as well as 1 other agreement between a Trustee and Brite Advisors;
- (b) the terms on which fees and charges can be raised vary and for 10 Trustees appear to be undocumented; and
- (c) the Receivers suspect there have been various breaches and misuse of Client AuM which may impact the ability to charge fees under each of the Platform Agreements.

3.5 Findings – Liabilities

3.5.1 The comments set out in the section below related to the liabilities of Brite Advisors, not the corresponding amounts owing to the underlying Beneficiaries/Trustees.

3.5.2 Since the December Report, the Receivers have identified further liabilities not carried on the Xero balance sheet in relation to employee entitlements.

3.5.3 Following the appointment of Receivers, asset preservation orders and limited ongoing trading capacity, it was necessary to make two employees of Brite Advisors redundant. The two employees were made redundant on 21 December 2023.

3.5.4 Brite Advisors' Xero records did not include any accrual of employee entitlements or unpaid superannuation contributions. Accordingly, the Receivers undertook a reconciliation of employee entitlements based on correspondence and employment documentation provided by one of the two recorded employees, and estimate a liability of circa \$33k is owing to former employees of Brite Advisors per the table below.

| Brite Advisors - Employee entitlements | | Estimated amounts owing (\$) |
|---|--|------------------------------|
| Claim type | | |
| Wages | | (12,048) |
| Superannuation | | (10,830) |
| Annual leave (incl. leave loading) | | (6,222) |
| Payment in lieu of notice (incl. superannuation) | | (3,731) |
| Total estimated employee entitlements as at 13 December 2023 | | (32,832) |

3.5.5 The Receivers have been unable to engage with the second former employee of Brite Advisors, Mr Alan Leeming. Mr Leeming does not, and did not, appear to have any role in Brite Advisors' operations.

3.5.6 Historical and regular wages paid may have been unrelated to employment with Brite Advisors.

3.5.7 In addition to the advisor compensation accruals set out in the December Report, the Receivers have received an additional pre-appointment invoice from Mr Kerwin totalling circa \$24.4k in relation to advisory fees. The Receivers are considering the invoice and whether it constitutes as operating expenses of Brite Advisors.

3.5.8 The Receivers have been contacted by Brite US and Brite SA, advising that they are each owed unpaid advisory fees and are seeking payment pursuant to pre-appointment arrangements and/or outsourcing agreements. Mr Lymer has also indicated a fee entitlement outstanding to BAG.

3.5.9 The Receivers have not yet verified any outstanding liabilities to Brite US, Brite SA and BAG noting the lack of documentation supporting any legal entitlement. Furthermore, the Receivers have issued correspondence to BAG advising them that any outsourcing agreement has not been adopted by the Receivers and any ongoing liabilities will not continue to accrue.

3.6 Finding – Contingent liability – IB Credit Facility

Partial loan repayment

3.6.1 As mentioned in the December Report, on 14 December 2020, funds totalling US\$5 million was paid from Brite Advisors' accounts in partial repayment of the US\$10 million IB Credit Facility (refer **Document 152**) (of which Mr Donnelly and Brite Advisors are Guarantors – refer **Document 153**). The borrower of the IB Credit Facility is Brite Advisory Group Limited.

3.6.2 The following entities are listed as Guarantors for the IB Credit Facility, pursuant to the Subsidiary Guarantee Agreement (**Document 153**):

- (a) Brite Advisors
- (b) Brite Advisors Limited (Company number 1633223)
- (c) Brite Advisors Limited (Company number 6093923)
- (d) Brite Advisors (Insurance) Limited (Company number 750641)
- (e) 480 Plus HK Limited (Company number 2173744)
- (f) Basi & Basi Financial Planning Limited (Company number 7046189)
- (g) Planet Pensions Limited (Company number 10227688)
- (h) Brite Holdings Limited (Company number 2149000)

3.6.3 The Receivers have reviewed the transaction and comment as follows:

- (a) On 14 December 2020, a payment of US\$5 million was paid from the USD Client Account to the USD Operating Account (refer **Document 041** and **Document 053**). The Xero extract has the reference "IB loan repayment" (refer **Document 054**).

All of the receipts into the USD Client Account during December 2020 (which had an opening balance for December 2020 of US\$166.38), either reference the Trustees, individuals' names (presumably Beneficiaries) or had the description "Overseas Telegraphic Transfer" and "Brite Advisors Pty Ltd".

The Receivers have reviewed the two largest transactions in the period to 14 December 2020 with the description "Overseas Telegraphic Transfer" and "Brite Advisors Pty Ltd", as follows:

- (i) 7 December 2020 – deposit of US\$2,973,916.68. The amount and date of the receipt on 7 December 2020 broadly reconciles (with a US\$14.34 variance) to a drawdown from the IBA account [REDACTED] 295 totalling US\$2,973,931.02, which is recorded as being initiated by Chun Wing Man (refer Page 9 of **Document 055**).
- (ii) 8 December 2020 – deposit of US\$2,046,777.24. The amount and date of the receipt on 8 December 2020 broadly reconciles (with a US\$14.33 variance) to a drawdown from the IBA account [REDACTED] 295 totalling US\$2,046,791.57, which is recorded as being initiated by Chun Wing Man (refer Page 9 of **Document 055**).

(b) On 14 December 2020, a payment of US\$5 million was paid from the USD Operating Account to IB Global Investments LLC with the bank statement reference "Loan Repayment" (refer **Document 053** and **Document 056**). The Xero extract has the reference "IB loan repayment" (refer **Document 057**).

3.6.4 The Receivers have located correspondence between Mr Donnelly and Interactive Brokers during the period from 5 October 2020 to 12 December 2020 which discuss the IB Credit Facility and above loan repayment. Relevantly:

- (a) On 7 December 2020, Mr Donnelly (i) requests that Interactive Brokers confirm bank details, and (ii) queries to Mr Lymer (who is copied to the email) in respect of proposed amendments to the loan documentation, 'Any comments on legals before we transfer 5M to IB later this week?'
- (b) On 8 December 2020, Interactive Brokers provides bank accounts details for IB Global Investments LLC. Mr Lymer is copied to the email.
- (c) On 8 December 2020, Mr Donnelly forwards the email from Interactive Brokers with bank account details to Ms Erika Nicholson.
- (d) On 12 December 2020, Mrs Donnelly sends Mr Donnelly a blank email with the subject 'IB PDF' and attaching a 'Payment details report' for the payment of US\$5 million to IB Global Investments LLC with the value date 14 December 2020.
- (e) On 12 December 2020, Mr Donnelly sends Interactive Brokers a blank email with the subject 'TT 5M to IB' and attaching a 'Payment details report' for the payment of US\$5 million to IB Global Investments LLC with the value date 14 December 2020.

Refer to **Document 058** for the above correspondence.

Facility interest payments

3.6.5 The Receivers have identified that interest payments totalling US\$1,413,864 in respect of the IB Credit Facility were paid from Brite Advisors USD Client and Operating Accounts (refer **Document 059** and **Document 060**).

3.6.6 The joint-approvers of the interest payments as recorded on the Payment summary extracts from Westpac (noting the Receivers have located extracts for 16 out of the 17 payments), as follows:

- (a) Erika Nicholson – approved 15 out of the 17 payments.
- (b) Dean Clarke – approved 15 out of the 17 payments.
- (c) Carole Donnelly – approved 2 out of 17 payments.

3.6.7 On 12 January 2024, the Receivers issued correspondence to Interactive Brokers:

- (a) requesting that any ongoing charges (including interest) in respect of the IB Credit Facility debited against Brite Advisors' IBA accounts and/or bank accounts are stopped effective immediately; and
- (b) confirming that Interactive Brokers does not have the Receivers' authority to debit any charges (including interest) in respect of the IB Credit Facility against any of Brite Advisors IBA accounts and/or bank accounts.

Refer to **Document 061**.

3.6.8 The Receivers are currently seeking legal advice in relation to claims that may be available against the borrower of the IB Credit Facility, BAG, and the various Guarantors listed at section 3.6.2 in respect of both the \$5m payment and the circa \$1.4m interest payments made.

3.7 Finding – Contingent liability – Income Tax

3.7.1 As set out in Key Fact 10 (sections 8.2.63 to 8.2.65), the Crowe Horwath Report sets out a number of issues and suspected misrepresentation made in respect of the Income Tax Returns filed for FY19 to FY22, which may result in tax liability.

3.8 Finding – Margin loans owed by Brite Advisors

- 3.8.1 Interactive Broker statements as at 12 January 2024 indicate the existence of two margin loan facilities with Interactive Brokers, combined totalling circa US\$16.2 million. A combined loan balance that has reduced by circa \$3.6 million from US\$19.8 million as at 9 November 2023 (refer **Document 062**).
- 3.8.2 Further investigations are required to understand the margin loan movements and margin securities. This will form part of the risk review work to be undertaken by BML.
- 3.8.3 The margin loans are not disclosed in Xero records nor in historical financial statements of Brite Advisors.

4 Response – Sub-paragraph 1(c) of the 13 December Orders – Identification of amount and whereabouts of Client AuM

4.1 Scope and approach

4.1.1 Sub-paragraph 1(c) of the 13 December Orders requires the Receivers to identify the amount and whereabouts of Client AuM.

4.1.2 This section represents an update on the Receivers' progress since the December Report was issued and should be read in conjunction with Section 3 of the December Report.

4.1.3 The Receivers have obtained the following third-party information in relation to the Client AuM as at 13 December 2023 and 12 January 2024:

- (a) IBA statements generated from the IBA platform that disclose the investments held in the four IBA accounts as at 13 December 2023 and 12 January 2024 (refer **Documents 063** and **Document 062**).
- (b) IBHK statements generated from the IBA platform that disclose the investments held in the two IBHK accounts as at 13 December 2023 and 12 January 2024 (refer **Documents 063** and **Document 062**).
- (c) HSBC bank statements provided by Mr Lymer that disclose the quantum of cash held in HSBC Client Accounts as at 30 November 2023 (refer **Document 064**).
- (d) HSBC account balances as at 29 December 2023, with respect to the HSBC Client Accounts based on information provided by Mr Lymer (refer **Document 005**).
- (e) Westpac bank statements that disclose the quantum of cash in the Westpac Client Accounts as at 13 December 2023 and 9 January 2024 (refer **Document 067**).

4.1.4 As detailed in the relevant sections below, the information available to the Receivers in respect of the Client AuM is limited by virtue of the following:

- (a) The Receivers lost access to the Salesforce system on 8 December 2023 and are still in the process of re-gaining access to the system.
- (b) The Partial G-Suite Image (refer section 7.3) has been accessed by the Receivers, a review of which indicates the potential existence of Client AuM held outside of the IBA platform. Further investigations with relevant third parties has commenced.

4.1.5 The December Report identified a variance of US\$69.1 million between Client AuM reported on the Brite Advisor Salesforce platform and Client AuM verified as at 9 November 2023.

4.1.6 The Receivers are not in a position to provide a specific update in relation to variance. Notwithstanding, the Receivers believe it is likely that the variance has increased (absent recovery of any addition Client AuM assets) since the December Report by virtue of the general 8% growth in the stock portfolio over this period (detailed further in section 4.4).

4.2 Findings – Update on Client AuM as at 13 December 2023

4.2.1 Set out in this section, is an update on the Client AuM as at 13 December 2023 (date of appointment of the Receivers) and 12 January 2024 which is held in the following types of accounts:

- (a) Westpac Client Accounts;
- (b) HSBC Client Accounts in the name of Brite HK;
- (c) IBA accounts; and
- (d) IBHK accounts in the name of Brite HK.

4.2.2 A summary of the funds identified as at 13 December 2023 is provided below.

| Summary of Client AuM as at 13 December 2023 | | | |
|--|----------------|-----------------|----------------|
| US\$'000 | Gross funds | Margin loans | Client AuM |
| Westpac Client Accounts | 5,446 | - | 5,446 |
| HSBC Hong Kong Client Accounts ¹ | 1,847 | - | 1,847 |
| Total funds held in Westpac Client Accounts and HSBC Client Accounts | 7,293 | - | 7,293 |
| IBA Accounts | 663,856 | (18,831) | 645,024 |
| IBHK Accounts | 101 | (0) | 100 |
| Total funds held in Interactive Brokers accounts | 663,956 | (18,831) | 645,125 |
| Total Client AuM reconciled to third party statements | 671,250 | (18,831) | 652,418 |

1. HSBC account balances as at 30 November 2023. Statements as at 13 December 2023 have not been provided.

4.2.3 The Receivers understand from their discussions with Interactive Brokers that the amounts disclosed on the Interactive Brokers Statements (refer **Documents 062 & Document 063**) as 'Cash – Short' represent the outstanding margin loans as at 13 December 2023.

4.2.4 Since the December Report, funds held in Westpac Client Accounts increased by circa US\$2.7 million largely as a result of a transfer of funds previously held by Brite Advisors on the Moventum platform on 13 November 2023.

4.2.5 Since the December Report:

- (a) IBHK stocks and bonds were liquidated, and all funds held in IBHK accounts (absent residual interest accrual) were transferred to IBA Accounts in accordance with the 24 November 2023 Court Orders; and
- (b) Client AuM held in IBA and IBHK platforms increased in total by circa US\$36.7 million (between 9 November 2023 and 13 December 2023) largely as a result of favourable market movements and interest accruals for the period.

4.3 Findings – Summary of Client AuM as at 12 January 2024

4.3.1 To provide a comprehensive view of the growth in the IB portfolio, the Receivers have summarised the Client AuM position as at 12 January 2024 which is held in the following types of accounts:

- (a) Westpac Client Accounts;
- (b) HSBC Client Accounts in the name of Brite HK;
- (c) IBA accounts; and
- (d) IBHK accounts in the name of Brite HK.

| Summary of Client AuM as at 12 January 2024 | | | |
|--|----------------|-----------------|----------------|
| US\$'000 | Gross funds | Margin loans | Client AuM |
| Westpac Client Accounts ¹ | 7,308 | - | 7,308 |
| HSBC Hong Kong Client Accounts ² | 0 | - | 0 |
| Total funds held in Westpac Client Accounts and HSBC Client Accounts | 7,309 | - | 7,309 |
| IBA Accounts | 673,800 | (16,177) | 657,623 |
| IBHK Accounts | 2 | (0) | 2 |
| Total funds held in Interactive Brokers accounts | 673,803 | (16,177) | 657,626 |
| Total Client AuM reconciled to third party statements | 681,111 | (16,177) | 664,934 |

1. Westpac client account balances as at 9 January 2024. Statements as at 12 January 2024 are not available yet.

2. HSBC account balances as at 29 December 2023 based on information provided by Mr Lymer.

4.3.2 The statements disclose a net margin loan liability of US\$16.2 million, which has reduced from US\$19.9 million as at 9 November 2023 and reported in the December Report. The reduction in the total margin loans and driver of movement is predominantly cash dividend received on portfolio equities that are credited to the two IBA loan account facilities. Further investigation is required in relation to this practice and the reporting of dividends at beneficiary level.

4.3.3 In accordance with the 24 November 2023 Court Orders, the following bank transfers were made from HSBC client accounts to the Westpac Client Accounts:

- (a) USD \$1,386,048.81;
- (b) €123,221.33;
- (c) £258,667.91; and
- (d) \$856.25.

In total, circa USD\$1.8 million has been transferred to the Westpac Client Accounts.

4.3.4 Since 13 December 2023:

- (a) the residual interest accrual of circa \$100k held in IBHK accounts were transferred to IBA Accounts; and
- (b) Client AuM held in IBA and IBHK platforms increased in total by circa US\$12.5 million (between 13 December 2023 and 12 January 2024) largely as a result of favourable market movements and interest accruals for the period.

4.3.5 Client AuM as at 12 January 2024 stated above are balances prior to any pension withdrawal amounts paid in accordance with the 21 December Orders.

4.4 Findings – Growth in portfolio since 9 November 2023

4.4.1 A summary of the growth in the IB portfolio since 9 November 2023 is set out below.

| IBA - Account movements as at 12 January 2023 | | | | | | |
|---|----------------------------------|-----------------------------------|------------------|----------------|--------|--|
| Asset type | As at 9/11/2023 (incl. IB HK) | As at 13/12/2023 (incl. IB HK) | As at 12/01/2024 | Total movement | | |
| | US\$'000 | US\$'000 | US\$'000 | US\$'000 | % | |
| Cash (long) | 61,932 | 117,899 | 119,392 | 57,460 | 93% | |
| Cash (short) | (19,931) | (18,831) | (16,177) | 3,754 | (19%) | |
| Stock - IBA | 509,794 | 542,882 | 551,239 | 41,445 | 8% | |
| Stock - IB HK | 53,406 | - | 0 | (53,405) | (100%) | |
| Bonds | 2,999 | 2,783 | 2,809 | (190) | (6%) | |
| Broker Interest Accruals | 46 | 153 | 146 | n/a | n/a | |
| Bond Interest Accruals | 13 | 11 | 19 | n/a | n/a | |
| Dividend Accruals | 29 | 228 | 198 | n/a | n/a | |
| Total | 608,287 | 645,125 | 657,626 | 49,063 | | |

4.4.2 Since 9 November 2023, the total balance in the IBA accounts has increased by circa US\$49 million.

4.4.3 Cash balances held has increased by circa US\$57.4 million, largely attributable to the liquidation of the IBHK stocks on 12 December 2023 totalling circa US\$53.4 million as at 9 November 2023 plus any additional growth prior to transfer and general interest accrual. All stocks and bonds held in the IBHK accounts were

liquidated and the total cash transferred to IBA on 12 December 2023 in accordance with the 24 November 2023 Court Orders.

- 4.4.4 The margin loans balance has reduced by circa US\$3.8 million. The movements in the margin loan accounts have not been explained and are currently being investigated by the Receivers.
- 4.4.5 The stock balance of the portfolios has increased by circa US\$41 million or 8% due to positive movements in the global equities and indices markets.
- 4.4.6 Periodic interest and dividend accruals have also continued to contribute to increasing Client AuM.
- 4.4.7 The Receivers have not authorised any dealing instructions in relation to Client AuM. The net growth in the IB portfolio is solely attributable to movements in the global equity and indices markets and interest and dividend accrual.
- 4.4.8 No management fees have been drawn or paid in relation to Client AuM since 9 November 2023.
- 4.4.9 Since 12 January 2024, the Receivers have drawn down funds from the Interactive Brokers platform the equivalent of circa US\$1.25 million on account of operating costs and circa US\$3.0 million on account of pension withdrawal requests.
- 4.4.10 The Receivers have engaged BML to undertake a risk review of the Brite Advisors Client AuM stock and bonds portfolio, in particular its alignment with the risk parameters of Brite Advisors' portfolio offerings.
- 4.4.11 BML's Chief Investment Officer, Ted Alexander, has been managing investment portfolios since 2008 in London and Sydney, and has been the lead Portfolio Manager on multiple funds covering equities and bonds in US, Europe and Asia. Mr Alexander holds a Master of Philosophy in Economics from the University of Oxford as Rhodes Scholar and First Class Honours in Economics from the University of Tasmania. BML also hold an AFSL.

4.5 Findings – Client AuM Stock variance analysis

- 4.5.1 The December Report identified a variance of US\$69.1 million between Client AuM reported on the Brite Advisor Salesforce platform and Client AuM verified as at 9 November 2023, based on information available at the date of the December Report.
- 4.5.2 The Receivers have not been able to access Salesforce since 8 December 2023 and have not been given a full listing of Beneficiary contact details. As such, we have not been able to progress investigations into the amounts owing to individual Beneficiaries or bring each Beneficiaries' individual investment position up to date for recent market movements.
- 4.5.3 The Receivers anticipate that the variance in the Client AuM has increased since the December Report by virtue of:
 - (a) the general 8% growth in the stock portfolio over this period; and
 - (b) the substantial cash balance that has been returned from IBHK is not currently invested in the market has not therefore had the benefit of growth, it would otherwise would have had if invested in the market. Brite Advisors had maintained clients' positions on the Salesforce system, meaning Beneficiaries are not aware that stocks were divested into cash and transferred to Hong Kong in the first place.
- 4.5.4 With the assistance of i-Convergence and BML, the Receivers have been investigating the variance at individual stock and instrument level, and identified multiple variances that require further investigation to understand the potential impact of the variances on individual portfolios.
- 4.5.5 The Receivers are investigating additional Client AuM assets and the Receivers have written to nine third parties in relation to potential assets that may be the property of Brite Advisors and/or its clients (refer sections 2.3.5 and 2.3.12).

4.6 Findings – Identified Anomalies with Client AuM

- 4.6.1 The loan facilities with Interactive Brokers totalling circa US\$18.8 million as at the date of the Receivers' appointment (13 December 2023) and reduced to circa US\$16.2 million as at 12 January 2024, represented

by Brite Advisors as margin loans are not specific margin loans. Rather these facilities are loan facilities drawn by Brite Advisors which are secured by all assets held on the Interactive Brokers platform on behalf of Brite Advisors.

4.6.2 The Receivers are liaising with Interactive Brokers to investigate the specific nature and transaction history of these debt facilities. At this stage, the Receivers have not formed a view as to whether they suspect that Brite Advisors has breached any fiduciary duties to the Trustees or the Beneficiaries regarding the debt facilities being secured by Client AuM.

4.6.3 The Receivers propose to investigate the debt facilities with Interactive Brokers further and with the assistance of BML consider whether the closing out of these facilities is possible and appropriate.

4.7 **Beneficiary reconciliation**

4.7.1 The Receivers have not had access to Salesforce since 8 December 2023 and given that we have not been provided with, nor can we ascertain a full list of beneficiary contact details. Accordingly, the Receivers have been unable to meaningfully engage with Beneficiaries to independently verify the quantum of funds invested, withdrawn, fees paid and overall Client AuM at the Beneficiary level.

4.7.2 In addition, the limitations and short comings in documentation with Trustees has also delayed the Receivers' ability to obtain Beneficiary data and engage with Trustees and Beneficiaries. Further, several Trustees have requested that the Receivers refrain from contacting the Beneficiaries directly at this stage.

4.7.3 The Receivers intend to engage in correspondence with Beneficiaries in relation to the particulars of their investments once Salesforce access is reinstated.

4.8 **Client AuM Systems update**

4.8.1 Since their appointment on 13 December 2023, the Receivers have corresponded in detail with third party service providers of data systems associated with the Client AuM to establish ongoing operating arrangements, access rights and the ability to bring up to date and maintain such systems.

4.8.2 Relevant client systems include:

- (a) **G-Suite** - Brite Advisor's internal cloud-based IT environment housing the company's electronic books and records, including but not limited to email communications, electronic file server and archived documents, and historical company record back-ups.
- (b) **Interactive Brokers** - Electronic cash and financial instrument trading platform that provides broker/dealer services. Brite Advisors operates an Interactive Brokers omnibus broker account, which facilitates trades on behalf of beneficiaries.
- (c) **AutoRek** - Self maintained financial and operational reconciliation software that uses automation to reconcile AuM data from Interactive Broker accounts on a daily basis. AutoRek acts as a tool to assist with the delineation and reconciliation of the significant volume of financial data, which is then displayed and stored via Salesforce.
- (d) **Salesforce** - Electronic CRM tool. Sales force provides a cloud-based CRM software that hosts beneficiary details and matches and presents AuM data from AutoRek to allow beneficiaries to access details of their individual investment portfolio via an app.
- (e) **Xero** - General accounting and bookkeeping software package, which was utilised by Brite Advisors to record day to day operating transactions, including but not limited to (i) payment of suppliers and Brite Group wages, (ii) payment of regular withdrawal requests or total surrenders, (iii) transfers of funds to related entities within the Brite Group, and (iv) recording of funds under management. Xero also generates historical management accounts in relation to Brite Advisors, such as balance sheet and profit and loss statements.

4.8.3 The Receivers have obtained a static partial image of the Brite Advisors G-Suite environment to aid their investigations into the affairs of Brite Advisors. Access to the G-Suite environment was initially obtained but subsequently revoked. Accordingly, the Receivers do not have access to the live G-Suite environment, nor do they have a full image of the data contained on the G-Suite.

4.8.4 The Receivers are engaging with other Client AuM service providers to establish suitable contractual and/or ongoing operational arrangements, which has been established with Interactive Brokers. Discussions with AutoRek, Salesforce and Xero are ongoing, however the Receivers presently have viewing access to the AutoRek and Xero data.

4.8.5 To assist with updating, operating and maintaining Client AuM systems, the Receivers have engaged third party sub-contractor, i-Convergence.

4.8.6 The services provided by i-Convergence to the Receivers broadly include:

- (a) running and maintenance of core systems, including but not limited to Salesforce, AutoRek and Xero;
- (b) asset, cash and dividend reconciliations;
- (c) fee and surrender rebate calculations;
- (d) assisting with pension withdrawals;
- (e) Interactive Brokers and Beneficiary asset reconciliation and historical variation reporting; and
- (f) all associated administration.

4.9 Platform Agreements and documentation with Trustees

4.9.1 In the December Report, we noted that we held sample Platform Agreements and Acknowledgment of Fees documents. Following our appointment as Receivers, we issued correspondence to each of the 17 Trustees that we understand to be clients of Brite Advisors requesting that they urgently provide:

- (a) platform agreements;
- (b) investment mandates; and
- (c) any other contractual arrangements in place which govern the terms of the management of Client AuM.

4.9.2 **Document 069** to the report sets out the documentation relating to the Administrators, Trustees and underlying Beneficiaries that the Receivers have been provided with to date, including documents identified in the available books and records and documents that have been supplied by the Trustees in response to the Receivers' request. As can be seen from that schedule:

- (a) 10 of the 17 Trustees have **not** been able to provide us with any platform agreement or other documents purportedly entered into with Brite Advisors, nor have we been able to identify any such documents from our review of the available books and records; and
- (b) of the six Trustees that **have** supplied platform agreements between them and Brite Advisors, we believe at least three of them are related entities of Brite Advisors. One Trustee has provided an alternative trustee agreement.

4.9.3 Our understanding of the contractual framework governing the relationship between Brite Advisors and the Trustees is limited by the lack of available documentation. Where information and documentation is available, we have reviewed that material with a view to identifying:

- (a) what fund management obligations Brite Advisors owes and to whom;
- (b) how Trustees' and individual Beneficiaries' funds were to be pooled and or aggregated, and how Brite Advisors was required to segregate the funds;
- (c) authorisations to disburse Client AuM other than for discretionary investment purposes, for example, for fees and charges payable to Brite Advisors, Trustees and financial advisors;
- (d) authorisations Brite Advisors held with respect to the investment of Client AuM; and
- (e) whether Brite Advisors purportedly had any entitlement to use Client AuM as collateral for borrowings, and if so, for what purpose.

4.9.4 While that review is ongoing, it has revealed a number of issues that require further investigation and legal advice, including:

- (a) whether and to what extent Brite Advisors has breached its obligations under the agreements including with respect to:
 - (i) the extent to which pooling and aggregating funds was permissible, including whether Brite Advisors in fact complied with its contractual obligation to aggregate only those managed portfolios that held the same model portfolio allocation (that is, the same risk profile); and
 - (ii) the purpose for which margin loans were secured against Client AuM, including that the available platform agreements appear to limit borrowings for the purposes of raising platform fees and exit fees;
- (b) whether the pooling and aggregation of Client AuM purportedly authorised by the available platform agreements, and the level of control that Brite Advisors had over investment decisions with respect to the Client AuM, indicates that the arrangement might constitute a MIS;
- (c) whether Brite Advisors had a valid and enforceable entitlement to fee revenue arising from the documents, noting that the available documents between Brite Advisors and the Trustees, indicate that any such fee entitlement was dependent upon authorisation provided by the Beneficiary in a separate document entitled 'Managed Portfolio Application', and where we have been unable to identify or obtain copies of completed Managed Portfolio Applications; and
- (d) where no documents can be identified as governing the arrangement between Brite Advisors and a Trustee, the extent to which the Receivers are bound, or authorised, to liaise with such Trustees with respect to Client AuM that relates to Beneficiary clients of that Trustee, and how the Receivers are to identify and characterise that Trustee's (and the underlying Beneficiaries) entitlement to the Client AuM.

4.9.5 We have also identified a number of documents entitled 'Convertible Loan Subscription Form', which appear to contemplate:

- (a) a Beneficiary advancing part of their Client AuM to BAG for a guaranteed return by way of interest, with the purpose of the loan expressed as "*for the expansion of [BAG]'s business including the funding of acquisitions, capital expenditures, repayment of existing third party refinancing, and growth of operations of [BAG]'s subsidiaries as well as the acquisition of additional subsidiaries to expand [BAG]'s portfolio in accordance with [BAG]'s business objectives*"; and
- (b) the Beneficiary being able to elect to convert the debt owed to them to shares in BAG.

4.9.6 Further investigation is required to identify whether:

- (a) the borrowing from Client AuM that the Convertible Loan Subscription documents purport to document constitutes fundraising that is caught by Chapter 6D of the Act; and
- (b) if so, whether Brite Advisors complied with the disclosure requirements mandated by Chapter 6D of the Act.

4.9.7 We have been unable to identify any documents within the available books and records that appear to be directed at compliance with those disclosure requirements.

4.10 Brite Advisors USA

4.10.1 The Receivers have been corresponding with Martin Byrne, the CEO of Brite US.

4.10.2 Mr Byrne has provided the Receivers with a number of documents including:

- (a) A Platform Agreement dated 1 August 2019 between Brite US and BAG (**Document 070**).
- (b) An unexecuted "Acknowledgement of Omnibus Account Usage and Risks" document (**Document 071**).
- (c) An Investment Advisory Agreement between Brite US and STM Malta Trust and Company Management Limited dated 5 September 2019 (**Document 072**).
- (d) A Brite US Disclosure Brochure dated 31 March 2023 (**Document 073**).
- (e) Details of October 2023 Advisory fees totalling \$262,936.95.

4.10.3 Brite US have requested that the Receivers consider making payment of the ongoing monthly advisory fees, which we understand have historically been paid indirectly by Brite Advisors via the Brite Group's central finance function.

4.10.4 While the Receivers are currently considering the request, our initial observations on the matter are as follows:

- (a) The Receivers have been unable to identify a direct contractual relationship between Brite Advisors and Brite US, that expressly permits a draw down on Client AuM by Brite Advisors to pay advisory fees to Brite US.
- (b) The Receivers have not yet been able to form a view as to whether the Trustees are authorised by the Beneficiaries to direct Brite Advisors to disburse the Client AuM to pay advisory fees to Brite US.
- (c) The Receivers are unclear as why Brite US entered into a Platform Agreement with BAG (as opposed to Brite Advisors) and how this agreement operates in conjunction with various Platform Agreements entered into with Trustees and the Investment Mandates signed by the underlying Beneficiaries.

5 Response – Sub-paragraph 1(d) of the 13 December Orders – Solvency of Brite Advisors

5.1 Scope and approach

5.1.1 Sub-paragraph 1(d) of the 13 December Orders requires the Receivers to provide an opinion as to the solvency of Brite Advisors.

5.1.2 This section represents an update on the Receivers' progress since the December Report was issued and should be read in conjunction with section 4 of the December Report.

5.1.3 The Receivers have not received sufficient information in relation to the financial position of Brite Advisors to form a concluded view of the solvency of the company. Ordinarily, a solvency assessment would be based on a balance sheet test, cash flow test, and consideration of capital adequacy.

5.1.4 In particular, the Receivers have not received all information which they consider is necessary to identify the assets and liabilities of Brite Advisors (which impacts on any solvency assessment), including:

- (a) Information to understand the accounting treatment of revenue, expenses and related party loan accounts and how this aligns with agreements that Brite Advisors has entered into with third parties.
- (b) Information to understand the transactions recorded with related parties, including:
 - (i) any loan agreements between Brite Advisors and related parties;
 - (ii) supporting documents for related entity transactions recorded in the Xero loan account; and
 - (iii) invoices.
- (c) The amounts owing to each of the Beneficiaries.
- (d) The realisable value of Non-IB Asset held on other Platforms
- (e) Information relating to the income tax position of Brite Advisors as detailed at sections 3.7 and 8.2.63 to 8.2.65.
- (f) Liabilities outstanding pursuant to outsourcing agreements and Trustee arrangements, including administration costs, wages, fees and other costs.
- (g) The transactions recorded in the Xero do not distinguish between transactions which are entered into by Brite Advisors, beneficially and those which are entered into in a non-beneficial capacity. As such, it is difficult to also distinguish between which assets and liabilities are those of Brite Advisors and are beneficially held. This distinction impacts upon the analysis of Brite Advisors' solvency position (discussed further at Section 5.2).

5.1.5 In addition, any solvency analysis would necessarily be impacted by the characterisation of the capacity in which Brite Advisors' assets are held, and liabilities owed, as well as the capacity in which revenue is earned and expenses are incurred. Any assets held, or revenue earned, in a non-beneficial capacity is not a source of liquidity for Brite Advisors in its own right.

5.2 Findings

5.2.1 From the information currently available, the Receivers consider it likely that Brite Advisors was insolvent from at least the 27 October 2023 and likely earlier, based on the following observations and those contained in Section 4 of the December Report, on the basis that:

- (a) The Client AuM is impressed with a trust and therefore has been excluded from the balance sheet solvency analysis.
- (b) The difference between the Client AuM in fact held in the Westpac Client Accounts and Interactive Brokers accounts and the Client AuM disclosed in the Client AuM Data Pack as at 9 November 2023 is US\$69 million (refer the December Report). Based on the Receivers' assessment of Brite Advisors' assets (refer section 3.4), Brite Advisors had materially insufficient assets available to fund this shortfall which is an indicator of insolvency.

- (c) As at the Receivers' appointment, estimated liabilities (including employee entitlements, trading and other operating expenses and other liabilities) total \$845,244 however we note this does not include (i) any liability owing under the IB Credit Facility, (ii) any liability owing under the outsourcing agreements, and (iii) the outstanding margin loans. Noting Brite Advisors had available cash in the Westpac Operating Accounts of approximately \$27,883 and no other known available beneficially held assets (outside of the related party loans (refer section 3.4.8) and any entitlement to revenue from interest of fees), Brite Advisors' had insufficient assets available to fund these incurred expenses which is an indicator of insolvency.
- (d) From a cash flow perspective, as set out at section 5.1.3, further investigations are required to determine whether Brite Advisors had a valid and enforceable entitlement to fee revenue.
- (e) Brite Advisors' taxation liabilities.

5.2.2 As noted in section 8.3 onwards, there was a failure to (i) segregate the Client AuM and (ii) distinguish in what capacity Brite Advisors was acting when entering into transactions.

5.2.3 When considering the solvency of Brite Advisors in a non-beneficial capacity, as set out at section 8.2 below, the Receivers have located correspondence which indicates knowledge of the variance in Client AuM as early as the year ended 30 June 2020 as a result of BAG drawing down of Client AuM as and when needed to meet expenses, over and above fee entitlements.

6 Response – Sub-paragraph 1(e) of the 13 December Orders – Return to creditors/investors in the event Brite Advisors was wound up

6.1 Scope and approach

- 6.1.1 Sub-paragraph 1(e) of the 13 December Orders requires the Receivers to determine the return to creditors in the event that Brite Advisors was wound up.
- 6.1.2 This section represents an update on the Receivers' progress since the December Report was issued and should be read in conjunction with Section 5 of the December Report.
- 6.1.3 The Receivers' analysis in relation to the financial position of Brite Advisors is provided at section 3.
- 6.1.4 The Receivers' analysis in relation to the Client AuM position is provided at section 4.

6.2 Findings

- 6.2.1 The Receivers are currently unable to provide an estimated return to creditors in the event that Brite Advisors was wound up. This is in view of the Receivers' inability to form a concluded opinion in respect of the following matters:
 - (a) The ability of Brite Advisors to realise and distribute the Client AuM in an insolvency situation, particularly in the context of the deficiency in Client AuM, in the absence of receiving appropriate orders from the Court.
 - (b) The margin facility currently outstanding on the IBA accounts and Interactive Brokers' contractual right to offset the debt owing against Client AuM in certain circumstances. In this regard, we note that we have not been able to form a view as to whether Interactive Brokers is presently entitled to exercise that right of set off.
 - (c) Verification of the Beneficiary data, including verification of amounts invested, funds withdrawn and fees at Beneficiary level.
 - (d) At least one Beneficiary has claimed that their funds have been segregated from the general pool of Client AuM which will require further investigation and legal advice.
 - (e) Brite Advisors' entitlement to receive accrued fee and interest revenue.
 - (f) Brite Advisors' alleged obligation to meet the outstanding operating costs of the broader Brite Group which would result in an indebtedness of those parties to Brite Advisors.
 - (g) The quantum and recoverability of loan accounts with various entities in the Brite Group.
 - (h) Brite Advisors' taxation liabilities.
 - (i) Liabilities in relation to the Subsidiary Guarantee Agreement in relation to a USD\$10 million credit facility provided by Interactive Brokers LLC to BAG.
 - (j) Appropriate characterisation of creditors and investors, including identification of assets from which their debts and claims could be paid.
 - (k) Whether there are any claims available to be pursued in any subsequent winding up of Brite Advisors by the liquidators.

7 Response – Sub-paragraphs 1(f) and 1(g) of the 13 December Orders – Books and records

7.1 Scope and approach

- 7.1.1 The Receivers are required to consider the adequacy and accuracy of the financial records of Brite Advisors in accordance with sub-paragraph 1(f) of the 13 December Orders.
- 7.1.2 The Receivers are also required to identify any other information necessary to enable the financial position of Brite Advisors to be assessed in accordance with sub-paragraph 1(g) of the 13 December Orders.
- 7.1.3 The books and records provided to the Receivers are summarised at Annexure D.

7.2 Findings - Sub-paragraph 1(f) of the 13 December Orders

- 7.2.1 The Receivers do not consider that Brite Advisors have maintained proper books and records on the following reasons:
 - (a) The Directors have failed to provide an appropriately completed ROCAP to the Receivers setting out the assets and liabilities of Brite Advisor as of the 13 December 2023.
 - (b) The Directors have failed to provide the Receivers with access to the IT systems which recorded the transactions relating to Client AuM.
 - (c) The Directors have been unable to cause other entities within the Brite Group to provide the Receivers with the books and records and data systems access that they were ordered by the Court to provide or cause to be provided.
 - (d) Brite Advisors does not appear to have implemented appropriate policies, processes, systems and controls to manage client money and assets, including a failure to maintain adequate records.
 - (e) Brite Advisors has failed to prepare and lodge with ASIC financial reports, annual profit and loss statements and balance sheets.
 - (f) The inadequate maintenance of books and records demonstrating:
 - (i) Income and expenditure.
 - (ii) The election, choice, estimate, determination or calculation made under the Tax Acts.
 - (iii) Records to explain all transactions, dates and amount and character of transactions.
 - (g) The inaccuracy of Xero data, in particular in relation to:
 - (i) Reported income and expenditure.
 - (ii) Whether transactions were entered into by Brite Advisors in its own capacity or in a trust capacity, in particular with regard to transactions with Interactive Brokers.
 - (iii) The nature of transactions entered into by Brite Advisors with related parties through loan accounts.
 - (iv) Journal entries posted, such as loan account and foreign currency journals.
 - (v) The removal of Interactive Broker accounts from Xero from 30 June 2020 onwards.
 - (h) The accuracy of the income tax position, in particular in relation to:
 - (i) Queries identified with respect to the fee income reported by Brite Advisors in its tax returns.
 - (ii) A number of issues in relation to the platform agreements and uncertainty as to the value of Client AuM.
 - (iii) Transfer of funds to Hong Kong and entitlement to fees.
 - (iv) Accrued income in BAG loan account.

- (i) Concerns with foreign exchange gains and losses not reported in Xero or the SPFS, income not being reported in the income tax returns.
- (j) Concerns with deductible expenses, including receipts and payments from Interactive Brokers and transactions with related parties.
- (k) Concerns with Brite Group loan accounts and payments, in particular:
 - (i) The decision to allocate transactions with multiple entities into one loan account.
 - (ii) The significant unsubstantiated journal entries recorded in Xero and allocation of the receipts from Interactive Brokers (which have the effect of reducing the significant loan balances outstanding). In the event the income from Interactive Brokers is "fees" or "commissions" the assessable income would be significantly understated each year.
 - (iii) To the extent that Brite Advisors enters into transactions under an outsourcing agreement, the transactions should be reflected in the Brite Advisors Profit & Loss account, not via a loan account with BAG or BAH.
 - (iv) For each service being provided by an international party, the fees charged would need to be reviewed and determined whether there are on arm's length terms for transfer pricing purposes. Brite Advisors would be denied an income tax deduction for these costs under Australian transfer pricing laws.
- (l) Brite Advisors has not paid superannuation payments in a timely manner and a potential SGC liability exists.

7.3 Findings – Sub-paragraph 1(g) of the 13 December Orders

7.3.1 Appendix D sets out further information requested from the Directors to assess the financial position of Brite Advisors in accordance with sub-paragraph 1(g) of the 13 December Orders and the Receivers continue to review the Partial G-Suite Image.

8 Response – Sub-paragraphs 1(h) and 1(i) of the 13 December Orders – Suspected contraventions of the Act

8.1 Scope and approach

8.1.1 In accordance with Order 1(h) and 1(i) of the 13 December Orders, the Receivers are required to provide an opinion as to whether there are any suspected contraventions of any provisions of the Act by Brite Advisors and/or any of its directors and officers.

8.1.2 The Receivers have undertaken their investigations with a view to identifying suspected contraventions for the purposes of providing the opinion required by these orders. The Receivers' investigations and opinion as to any suspected contraventions is set out below.

8.1.3 We note, the word "suspect" has been held by Australian courts to mean more than a mere idle wondering, amounting to a positive feeling of actual apprehension or mistrust giving rise to "a slight opinion but without sufficient evidence". These cases have informed the approach of the Receivers in identifying suspected contraventions.

8.1.4 Although the 13 December Orders require the identification of suspected contraventions of the Act only, the Receivers have also referenced other suspected contraventions where appropriate.

8.1.5 The Receivers' framework for identifying suspected contraventions has been divided into two parts set out below, being (i) key facts identified through the Receivers' investigations, and (ii) the suspected contraventions arising from those facts.

8.1.6 In summary, the Receivers suspect contraventions of the Act may have occurred, including:

- (a) Suspected systemic mishandling of client funds and client assets, including the use of client money, or funds borrowed using client assets as security, to pay Brite Group expenses and fund acquisitions of other businesses.
- (b) A suspected failure to implement appropriate policies, processes, systems and controls to manage client money and assets, including a failure to maintain adequate records.
- (c) A suspected failure to maintain adequate books and records and a failure to prepare and lodge with ASIC financial reports, annual profit and loss statements and balance sheets.
- (d) A suspected failure to report suspected breaches of obligations to ASIC when there were reasonable grounds to believe a reportable situation had arisen.
- (e) Suspected engagement in (i) dishonest conduct; or (ii) misleading or deceptive conduct, in relation to representations made regarding Brite Advisors' business and, in particular, how the business was operated.
- (f) Suspected breaches of the directors' duties to act in the best interests of the company and to not improperly use their position, as well as a breach of the duty to prevent insolvent trading in relation to conduct taking place as Brite Advisors approached the zone of insolvency.
- (g) Suspected breaches of the directors' duty to exercise reasonable care and diligence, particularly as it relates to the core requirements to facilitate appropriate oversight of the company as well as compliance with financial services laws and authorisation of problematic transactions.
- (h) Suspected breaches of the duty to provide assistance to the Court appointed Receiver in undertaking their role in accordance with the orders of the Court.

(i) Suspected breaches of Brite Advisors' general obligations as an AFSL holder, including the obligations to: do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; comply with the conditions of the licence; comply with the financial services laws; take reasonable steps to ensure that its representatives comply with the financial services laws; have available adequate resources (including financial, technological and human resources) to provide the financial services covered by the licence; and have adequate risk management systems. This also includes suspected non-compliance with the requirements associated with the provision of Managed Discretionary Accounts and suspected improper provision of financial services by representatives of Brite Advisors.

In addition to the above suspected contraventions, further investigations are required to establish whether there are any suspected breaches of the disclosure requirements relating to the offering of securities as a result of fundraising activities by Brite Advisors targeted at clients.

In addition to the above suspected contraventions, the Receivers also suspect that there are, or have been, various other suspected contraventions of the law, including breach of equitable duties, breach of taxation legislation, and the commission of fraud related offences under state laws.

8.2 Key Facts

Key Fact 1: Background, corporate structure, directors, other officers and agents

8.2.1 As set out at section 1.4 of the December Report, we understand the operations of the Brite Group to be as follows:

- (a) the Brite Group provides asset management, advisory and pension administration services to individual clients (Beneficiaries) seeking to invest their retirement funds, primarily UK pensions;
- (b) Brite Advisors offers personalised investment plans and a platform to assist pension providers, recognised overseas pension schemes and self-managed superannuation funds to invest Beneficiaries' retirement savings; and
- (c) Brite Advisors acts as the asset manager within the Brite Group and holds agreements associated with management of the Beneficiaries' funds with Beneficiaries and Trustees (including pension scheme trustees and pension scheme administrators).

8.2.2 A summary of the key personnel of the Brite Group and what we understand their role to be in the Brite Group is as follows:

| Personnel | Position | Location | Relevant entity |
|-------------------|-------------------------|---------------------|---|
| Mark Donnelly | Chief Executive Officer | Australia / HK / UK | <ul style="list-style-type: none"> ▪ Co-founder and CEO of the Brite Group. ▪ Holds ultimate controlling interest in Brite Advisors via his 100% shareholding in Aurom Group Limited (UK company number 13737061) which, in turn holds 100% shareholding in BAH, Brite Advisors' parent entity (refer Document 074 and Document 075). |
| David McKenna | Chief Marketing Officer | UK | <ul style="list-style-type: none"> ▪ Director of BAG (refer Document 076). |
| Richard Lissenden | Head of Advisory | UK | <ul style="list-style-type: none"> ▪ Director of BAG (refer Document 076). ▪ Employed by BAG (unknown if current) (employment contract sighted). |
| John Lymer | In-House Legal | HK | <ul style="list-style-type: none"> ▪ Director of Brite Advisors (refer Document 075). ▪ Former director of BAG. Mr Lymer recently advised that he resigned as a Director of BAG on 21 December 2023 (refer Document 076). ▪ Holds 32.1% controlling interest in BAG (refer Document 031). |

| Personnel | Position | Location | Relevant entity |
|-------------------|-----------------------------------|---------------------|---|
| | | | <ul style="list-style-type: none"> ▪ Holds the ultimate controlling interest in Basi & Basi Financial Planning Limited (UK company number 7046189) through his majority shareholding in BAG (refer Document 078). |
| Erika Nicholson | Head of Accounts | HK | <ul style="list-style-type: none"> ▪ Likely employed by BAG. Further investigations required. |
| Gordon Couch | Head of Compliance (former) | HK | <ul style="list-style-type: none"> ▪ Formerly employed by BAG (employment contract sighted). We understand that Mr Couch is incarcerated in Scotland after being found guilty of embezzlement in 2022. |
| Francois Vauville | Operations & Project Manager | France / UK | <ul style="list-style-type: none"> ▪ Employed by BAG (unknown if current) (pay slip sighted). |
| Wing Chun Man | Head of Trading | HK | <ul style="list-style-type: none"> ▪ Employed by BAG (unknown if current) (employment documentation sighted). |
| Stefano Morelli | Chief Investment Officer | Dubai | <ul style="list-style-type: none"> ▪ Employed by BAG (unknown if current) (consultancy agreement sighted). |
| Michael Lightfoot | Chief Technology Officer (former) | UK | <ul style="list-style-type: none"> ▪ Agreement with BAH 2021 Limited (UK company number 06093923) (agreement sighted). ▪ BAH 2021 Limited's 100% shareholder is Mark Donnelly (refer Document 084). |
| Ramon Falzon | Chief Financial Officer | Australia | <ul style="list-style-type: none"> ▪ CFO of BAG (employment contract sighted). |
| Carole Donnelly | Accounts | Australia / HK / UK | <ul style="list-style-type: none"> ▪ Beneficiary of The Witroy Discretionary Trust 2019 (Trustees are Standard and Pacific Fiduciary Management Limited) who has a 30% ownership interest in BAG (refer Document 086). ▪ Employed by the finance department of BAG (unknown if current) (employment contract sighted). |

Source: Document 100

8.2.3 The Receivers have conducted further investigations regarding the corporate structure, board and potential de-facto / shadow directors and the Receivers findings are set out below.

Corporate Structure

8.2.4 As set out at section 2.5.2, the Receivers' investigations indicate that the Brite Group corporate structure is more extensive than previously reported in the December Report.

8.2.5 As set out at section 2.5.4, the group structure has been dynamic over the prior five years evidenced by several iterations of the group structure diagram and the Group's recent history of acquisitions (refer section 2.4). Further, we have identified additional entities which were not disclosed in the previous version of the Group structure provided to ASIC by the Directors.

8.2.6 As set out at section 2.5.3, the broader group structure and the transactions that have occurred between the member entities are also complex to trace noting the frequent names changes to group entities and the similar names being used in different jurisdictions.

8.2.7 As set out at section 2.5.7, the Receivers have also identified a number of other related Australian entities which require further investigation.

Board and potential de facto / shadow directors

8.2.8 According to ASIC records, the Directors of Brite Advisors are John Lymer, Dean Clarke and Keith Sedergreen (refer **Document 075**).

8.2.9 Based on the Receivers' investigations to date, the Receivers consider that there is evidence to suggest that:

- (a) Mr Mark Donnelly appears to be the controlling mind of Brite Advisors and the broader Brite Group. Mr Donnelly had significant involvement in and knowledge of the operations and affairs of Brite Advisors, to the extent that he had effective control which he routinely exercised and for practical purposes assumed the role of a director (refer section 8.2.12);
- (b) BAG, through its director and employees as agents, had significant involvement in and knowledge of the operations and affairs of Brite Advisors, to the extent that it had effective control which it routinely exercised (refer section 8.2.13);
- (c) Mr John Lymer had significant involvement in and knowledge of the operations and affairs of Brite Advisors, to the extent that he likely had effective control which he routinely exercised and for practical purposes appears to have assumed the role of a director during the periods when he was not an appointed Director according to ASIC records (refer section 8.2.14);
- (d) Mr Dean Clarke had involvement in and knowledge of the operations and affairs of Brite Advisors and since 8 February 2018 has been the responsible manager appointed to supervise Brite Advisors' provision of financial services under the AFSL (refer section 8.2.15 and **Document 088**).
- (e) Mr Keith Sedergreen had limited involvement in and knowledge of the operations and affairs of Brite Advisors, both before and during his appointment as director. Mr Sedergreen was appointed director on 29 June 2023 (refer section 8.2.16); and
- (f) Mr Richard Johnsson (Brite Advisors' former director) had limited involvement in and knowledge of the operations and affairs of Brite Advisors, both before, during and after his appointment as director. Mr Johnsson was appointed a director on 19 September 2017 and resigned as director on 22 March 2023. (refer section 8.2.17).

Other persons with significant involvement

8.2.10 Based on the Receivers' investigations to date, the Receivers consider that there is evidence to suggest that:

- (a) Mrs Carole Donnelly had significant involvement in and knowledge of the operations and affairs of Brite Advisors although did not exercise effective control (refer section 8.2.18);
- (b) Ms Erika Nicholson had significant involvement in and knowledge of the operations and affairs of Brite Advisors (refer section 8.2.19);
- (c) Mr Chun Wing Man had significant involvement in and knowledge of the operations and affairs of Brite Advisors (refer section 8.2.20); and
- (d) Mr Richard Lissenden had significant involvement in and knowledge of the operations and affairs of Brite Advisors (refer section 8.2.21).

8.2.11 The information arising from the Receivers' investigations which has formed the above views are set out below.

8.2.12 In relation to Mr Donnelly, the Receivers identified the following evidence during their investigation:

- (a) Mr Donnelly was involved in and had knowledge of Brite Advisors' and the Brite Group's operations, including acting as a representative of Brite Advisors or the Brite Group in correspondence with various internal and external parties, including (i) Beneficiaries, (ii) Trustees, (iii) employees, (iv) solicitors, and (v) accountant and the auditor.
- (b) Mr Donnelly executed documents as an authorised signatory of Brite Advisors and was nominated as an authorised signatory.
- (c) Mr Donnelly exercised management functions in respect of Brite Advisors' operations, including (i) seeking advice from and corresponding with legal and other advisors regarding Brite Advisors' matters, (ii) being involved in correspondence with financiers, (iii) providing instructions to legal advisors regarding Brite Advisors' matters, and (iv) instructing employees in respect of Brite Advisors' matters.

- (d) Mr Donnelly arranged the \$5 million partial repayment of the IB Credit Facility, including corresponding with Interactive Brokers, arranging the payment via correspondence with Ms Nicholson and Mrs Donnelly and providing confirmation of the payment to Interactive Brokers once made (refer section 3.6.4).
- (e) The Receivers have located correspondence which indicates that Mr Donnelly was involved in the transfer of the Client AuM to HK (refer section 2.2).
- (f) The Receivers have located correspondence which indicates that Mr Donnelly had knowledge of or was involved in the transfer of Client AuM from Brite HK's HSBC Client Accounts to Brite HK's 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name and appears to be seeking to mislead the HK regulatory authority (refer section 2.2).
- (g) Mr Donnelly is a signatory (though inactive since January 2023) on 12 of Brite Advisors' 13 current Westpac bank accounts (including six of the Westpac Client Accounts) and there is evidence of Mr Donnelly having approved payments from Brite Advisors' accounts.
- (h) Mr Donnelly was one of four people with 'Super Admin' access to the Brite Group's G-Suite system, which contained the records of Brite Advisors.
- (i) Mr Donnelly instructed Mr Chun to conduct drawdowns and trades from the IB accounts.
- (j) Mr Donnelly was involved in the related party acquisitions (refer section 2.4).
- (k) There appeared to be the usual practice that all withdrawal requests from the Brite Advisors IB accounts needed to be approved by Mr Donnelly.

Refer to **Document 089** and the referenced sections for evidence of the above.

8.2.13 In relation to BAG, the Receivers identified the following information during the investigation:

- (a) BAG was involved in and had knowledge of Brite Advisors' operations, by virtue of being the counterparty to the outsourcing agreement with Brite Advisors pursuant to which Brite Advisors' outsourced all aspects of the 'Brite Platform' to BAG other than regulatory compliance (refer sections 8.2.22 to 8.2.25).
- (b) BAG's director (former as at 21 December 2023), Mr Lymer, and other employees, including Ms Nicholson and Mr Chun, were actively involved in the regulatory, finance and trading/funds management operations of Brite Advisors. Brite Advisors had no employees capable of performing this work.
- (c) The Receivers have located correspondence from BAG (executed by Mr Lymer) to one of the Trustees, Sovereign Pension Services (UK) Limited which refers to the existing platform agreement in place for the Brite Platform and discusses the intention to set-up a separate entity to 'house the assets of Members of UK SIPP Providers', despite the fact that the platform agreement is with Brite Advisors.
- (d) BAG's employees (Ms Nicholson, Mrs Donnelly and Mr Lissenden) were signatories on all of Brite Advisors' 13 current Westpac Client Accounts and Westpac Operating Accounts and there is evidence of Ms Nicholson, Mr Lissenden and Ms Donnelly approving payments from Brite Advisors' accounts.
- (e) BAG's employees (Mr Chun and Ms Nicholson) are users on Brite Advisors' IBA accounts and there is evidence of Mr Chun processing drawdowns from Brite Advisors' IBA accounts.
- (f) BAG employee, Ms Nicholson, is reported as maintaining or posting journal entries in Brite Advisors' financial records during the six months prior to the Receivers' appointment.

Refer to **Document 090** and the referenced sections for evidence of the above.

8.2.14 In relation to Mr Lymer, the Receivers identified the following information during their investigation:

- (a) Mr Lymer was involved in and had knowledge of Brite Advisors' and the Brite Group's operations, including acting as a representative of Brite Advisors or the Brite Group in correspondence with various internal and external parties, including (i) Beneficiaries, (ii) Trustees, (iii) employees, (iv) solicitors, and (v) accountants.

- (b) Mr Lymer executed at least one document as an authorised signatory of Brite Advisors during the period he was not an appointed director.
- (c) Mr Lymer was involved in the partial \$5m repayment of the IB Credit Facility, including being included on correspondence with Interactive Brokers (refer section 3.6.4).
- (d) The Receivers have located correspondence which indicates that Mr Lymer was involved in the transfer of the Client AuM to HK (refer section 2.2).
- (e) The Receivers have located correspondence which indicates that Mr Lymer had knowledge of or was involved in the transfer of Client AuM from Brite HK's HSBC Client Account to Brite HK's 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name and appears to be seeking to mislead the HK regulatory authority (refer section 2.2).
- (f) Mr Lymer was a director of BAG and recently advised that he resigned as a director on 21 December 2023. Mr Lymer was/is also director of related entities Global Fiduciary Solutions Limited (which has been wound up) and 480 Plus HK Limited and is shareholder of Basi & Basi Financial Planning Limited.

Refer to **Document 091** and the referenced sections for evidence of the above.

8.2.15 In relation to Mr Clarke, the Receivers identified the following information during their investigation:

- (a) Mr Clarke was identified as the Brite Group 'Head of Compliance' in an organizational chart dated 2019 and was the noted as Responsible Manager on the AFSL.
- (b) The Receivers have located correspondence which indicates that Mr Clarke was involved in the transfer of the Client AuM to HK (refer section 2.2).
- (c) Mr Clarke is a signatory on all 13 of Brite Advisors' current Westpac Client Accounts and Westpac Operational Accounts and there is evidence of Mr Clarke approving payments from Brite Advisors' accounts.
- (d) Mr Clarke was a listed user on Brite Advisors' IBA accounts.

Refer to **Document 092** and the referenced sections for evidence of the above.

8.2.16 In relation to Mr Sedergreen, the Receivers identified the following information during their investigation:

- (a) Mr Sedergreen was appointed a Director of Brite Advisors on 29 June 2023.
- (b) Mr Sedergreen was not a signatory on any of Brite Advisors' current Westpac Client Accounts or Westpac Operational Accounts.
- (c) Mr Sedergreen was not a listed user on Brite Advisors' IBA accounts.
- (d) Mr Sedergreen was not reported as maintaining or posting journal entries in Brite Advisors' financial records during the past six months.

Refer to **Document 093** and the referenced sections for evidence of the above.

8.2.17 In relation to Mr Richard Johnsson, the Receivers identified the following information during their investigation:

- (a) Mr Johnsson executed documents as a Director of Brite Advisors at the instruction of Mr Donnelly.
- (b) Mr Johnsson was not a signatory on any of Brite Advisors' current Westpac Client Accounts or Westpac Operational Accounts.
- (c) Mr Johnsson was not a listed user on Brite Advisors' IBA accounts.

Refer to **Document 094** and the referenced sections for evidence of the above.

8.2.18 In relation to Mrs Donnelly, the Receivers identified the following information during their investigation:

- (a) Mrs Donnelly worked in the administration and accounts team of the Brite Group in Hong Kong and there is evidence of Mrs Donnelly being involved in undertaking administration and accounts work with respect to Brite Advisors' operations.

- (b) Mrs Donnelly was a director of Brite Advisors from 8 April 2016 to 20 August 2016 and from 16 January 2020 to 16 January 2020.
- (c) Mrs Donnelly was involved in the partial repayment of the IB Credit Facility. The Receivers found correspondence from Mrs Donnelly to Mr Donnelly confirming payment of funds from Brite Advisors' account (refer section 3.6.4).
- (d) Mrs Donnelly is a signatory on all 13 of Brite Advisors' current Westpac Client Accounts and Westpac Operational Accounts and there is evidence of Mrs Donnelly having approved payments from Brite Advisors' accounts.
- (e) Mrs Donnelly is the sole beneficiary of Standard and Pacific Fiduciary Management Ltd ATF the Witroy Discretionary Trust 2019 which holds 30% of BAG via Brite Holdings Limited (2149000). Mrs Donnelly also formerly acted as Director of BSF Developments Pty Ltd (a company associated with Mark Donnelly and Tribune Limited) and consented to act as director of Global Fiduciary Solutions Limited, which was subsequently renamed to BAG.

Refer to **Document 095** and the referenced sections for evidence of the above.

8.2.19 In relation to Ms Nicholson, the Receivers identified the following information during their investigation:

- (a) Ms Nicholson is the Head of Accounts for the Brite Group and there is evidence of Ms Nicholson having been involved in finance and accounts matters in respect of Brite Advisors.
- (b) Ms Nicholson either was involved or had knowledge of the partial repayment of the IB Credit Facility from Brite Advisors' account. The Receivers found correspondence from Mr Donnelly to Ms Nicholson, regarding the repayment and providing Interactive Brokers' bank account details which indicates that Ms Nicholson may have been responsible for arranging the repayment (refer section 3.6.4).
- (c) The Receivers have located correspondence which indicates that Ms Nicholson was involved in the transfer of the Client AuM to HK (refer section 2.2).
- (d) The Receivers have located correspondence which indicates that Ms Nicholson had knowledge of or was involved in the transfer of Client AuM from Brite HK's client account to Brite HK's 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name and appears to be seeking to mislead the HK regulatory authority (refer section 2.2).
- (e) Ms Nicholson was a signatory on all 13 of Brite Advisors' current Westpac Client Accounts and Westpac Operating Accounts and there is evidence of Ms Nicholson having approved payments from Brite Advisors' accounts.
- (f) Ms Nicholson was a listed user on Brite Advisors' IBA accounts.
- (g) Ms Nicholson was reported as maintaining or posting journal entries in Brite Advisors' financial records during the past six months.
- (h) Ms Nicholson had knowledge of a variance in the funds held in Interactive Brokers dating back to 2020 which is evidenced by correspondence between Ms Nicholson and Mr Ramon Falzon (refer section 4).
- (i) Ms Nicholson was involved in correspondence regarding drawdowns of funds from IBA accounts and payments from Brite Advisors' accounts.

Refer to **Document 096** and the referenced sections for evidence of the above.

8.2.20 In relation to Mr Chun Wing Man, the Receivers identified the following information during their investigation:

- (a) Mr Chun is the Head of Trading for the Brite Group.
- (b) Mr Chun was a listed user on Brite Advisors' IBA accounts and there is evidence of Mr Chun having executed trades and made drawdowns from Brite Advisors' IBA accounts.
- (c) The Receivers have located evidence of Mr Chun initiating drawdowns in Brite Advisors' IBA accounts which funded payments to Brite SA and Brite Insurance in respect of its expenses (refer section 3.4.15 and 3.4.17).

(d) The Receivers have located correspondence which indicates that Mr Chun was involved in the transfer of the Client AuM to HK (refer section 2.2).

Refer to **Document 097** and the referenced sections for evidence of the above.

8.2.21 In relation to Mr Lissenden, the Receivers identified the following information during their investigation:

(a) Mr Lissenden is the Head of Advisory for the Brite Group and there is evidence of Mr Lissenden having been involved in Beneficiary matters in respect of Brite Advisors.

(b) Mr Lissenden is a Director of BAG (refer section 8.2.2).

(c) The Receivers have located correspondence which indicates that Mr Lissenden had knowledge of or was involved in the transfer of Client AuM from Brite HK's HSBC Client Account to Brite HK's 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name and appears to be seeking to mislead the HK regulatory authority (refer section 2.2).

(d) Mr Lissenden is a signatory on all 13 of Brite Advisors' current Westpac Client Accounts and Westpac Operating Accounts and there is evidence that Mr Lissenden approved at least one payment from Brite Advisors' accounts.

Refer to **Document 098** and the referenced sections for evidence of the above.

Key Facts 2: Delivery of financial services and outsourcing

8.2.22 As set out in the December Report, the Receivers have identified two outsourcing agreements in place between Brite Advisors and two related parties, being:

(a) The Outsourcing and Servicing Agreement between Brite Advisors and BAG dated 14 April 2017 (refer **Document 099**). Pursuant to the outsourcing agreement:

- (i) BAG agrees to engage Brite Advisors with the discretionary account management of the 'Brite Platform' under the AFSL (clause 1.1);
- (ii) Brite Advisors outsources all areas of the 'Brite Platform' to BAG other than regulatory compliance (clause 1.2);
- (iii) if the outsourcing agreement is terminated, Brite Advisors will fully cooperate with the migration of the "Assets under Management" to another entity with the same or equivalent licensing conditions as the AFSL (clause 2.2);
- (iv) all fees, performance bonuses and other deductibles of the Brite Platform are owed to BAG by Brite Advisors on the request of BAG (clause 5.1);
- (v) BAG will redistribute all revenue of the Brite Platform (clause 5.2); and
- (vi) Brite Advisors will be responsible for all income tax liabilities relating to the fees owed to BAG (clause 5.4).

(b) The Outsourcing and Servicing Agreement between Brite Advisors and Brite HK dated 22 June 2023 (refer **Document 006**). The terms of the GIML Outsourcing Agreement are similar terms to the previous agreement with BAG although the outsourcing was framed as being in relation to all "custodial and discretionary management services" relating to "certain clients".

8.2.23 The written statement made by Brite Advisors in response to a notice issued by ASIC to it under section 912C(1) of the Act stated that "The entire Brite Group collaborates and provides services throughout each function, combining to produce our completely integrated solution" (refer Page 1 of **Document 100**). According to the statement, the Brite Group operates as follows:

(a) The Accounts Department, which was led by Erika Nicholson in HK and, who we consider was likely employed by BAG (though further investigations are required to confirm), administered incoming Client AuM into Brite Advisors' Westpac Client Accounts, made transfers to the Client AuM accounts held by Brite Advisors with IBA and processed the upfront 5% fee (refer page 5 and 11). The Accounts Department was also involved in dealing with outgoing Client AuM, including transferring the requested withdrawal amounts to the respective Trustees' bank accounts (from Page 13).

- (b) The Settlements Department, which was led by Charles Yu in HK, who we understand was an employee of BAG (employment contract sighted), was responsible for checking any trade order against a Beneficiary's holding and available funds and, if those matters were in order, provided dealing instructions to the Trading Department. After confirmation from the Trading Department of completion of the trade, the Settlements Department downloaded the Interactive Brokers Trade confirmation from the Interactive Brokers platform, initiated an 'auto update' for the client position for the mobile app and generated the client daily valuation report (pages 9 to 11). The Settlement Department also managed outgoing funds, which included selling positions if there was insufficient cash held by the client to meet the client's obligations and providing withdrawal instructions to the Trading Department (from page 13).
- (c) The Trading Department, which was led by Chun Wing Man in HK, who we understand was an employee of BAG (employment documentation sighted) was responsible for identifying incoming funds in Brite Advisors' Interactive Brokers accounts as related to a specific Beneficiary and for placing trades according to instructions received (pages 5 and 9). The Trading Department also dealt with outgoing funds, including processing the transfer of funds from Brite Advisors' Interactive Brokers accounts to Westpac and performing end of month reconciliations against Interactive Brokers statements (from page 13).
- (d) Those people with the key roles and responsibilities are identified on page 20 and 21 of the written statement. As set out in the table that appears on those pages, all departments of the Brite Group's operations outside of 'Licence and Corporate Management', are located outside of Australia and none of the key people listed in that document, with the exception of Dean Clarke, Gerry Duffy, John Lymer and Richard Johnsson, are directors (current or former) or employees of Brite Advisors.

- 8.2.24 The Receivers' investigation has not to date identified any evidence to indicate that Brite Advisors had the resources, capacity or documented policies, procedures, systems and controls which would enable it to either: (a) exercise any degree of oversight of BAG / Brite HK employees in their provision of financial services under Brite Advisors' AFSL; or (b) monitor the performance of BAG / Brite HK for all outsourced functions and appropriately deal with instances of substandard performance (whether by reference to applicable service level agreements or Brite Advisors' obligations as a licensee).
- 8.2.25 The Directors have failed to provide accurate financial information, books and records and access to the IT systems used to manage the Client AuM to the Receivers.

Key Facts 3: Problematic transactions

- 8.2.26 The Receivers have identified a number of transactions involving Client AuM as set out below.

Transfer of Client AuM to HK

- 8.2.27 As set out at section 2.2, during the period from June 2023 to November 2023, Client AuM totalling circa \$129.4 million was divested from accounts held by Brite Advisors in IBA, to Brite Advisors Westpac Client Accounts. That Client AuM was then transferred overseas in tranches into an HSBC Client Account in Hong Kong, held in the name of Brite HK, following which we understand that the majority of Client AuM was then reinvested in IBHK accounts, held in the name of Brite HK.
- 8.2.28 Despite numerous requests to the Directors, the Receivers have not received a list of the Beneficiaries whose funds were moved to Brite HK.
- 8.2.29 Despite numerous requests to Directors, the Receivers have not received a full account of the Client AuM whilst in the custody of Brite HK. In particular, we have not been provided with (i) all cashiering transactions supporting all transfers from HSBC to IBHK, support for withdrawals taken from HSBC or IBHK to meet expenses or client withdrawals, (ii) documentation relating to any margin loans or other loans secured against the IBHK accounts, or (iii) access to detailed accounting ledgers showing the full accounting treatment of the funds while in the custody of Brite HK. This information was requested in our letter to the Directors issued on 17 January 2024.
- 8.2.30 The Directors have not produced correspondence or documents, to demonstrate that the Trustees:
 - (a) were aware of the transfer of funds from Brite Advisors to Brite HK;
 - (b) consented to the divestment of funds from IBA; or

(c) consented to Brite HK taking custody of the funds.

8.2.31 From a review of the HSBC statements, the Receivers have identified a number of withdrawals and deposits from Brite HK's accounts which require further investigation, including payments totalling circa US\$1.9 million were recorded as being paid with the narratives 'BIB-FEES', 'BIB-US ADVISORY' and 'BIB-OPS'.

8.2.32 The Receivers have located correspondence dated 6 October 2023 from Mr Tommy Li (understood to be one of Brite HK's responsible officers) to Mr Mark Donnelly and Mr John Lymer (to which Ms Erika Nicholson and Mr Richard Lissenden were copied), discussing their response to an email received from the SFC requesting information regarding payments made from Brite HK's HSBC Client Account (which held the Client AuM transferred from Brite Advisors' accounts to Brite HK) to Brite HK's 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name. Mr Li's email states:

'There is no legitimate reason for BHKL to move the money from the client segregated account to house account, as the only agreement between BHKL and PTY is the service agreement.'

[...]

'I am proactive collaborating with other colleagues (e.g. Leslie, Paul...etc) on preparing reply to SFC and may seek advice from ComplianceDirect if necessary, I will try to see if we can make up some documents and present them in a way that SFC may think our acts are controversial, instead of intentional violations.'

8.2.33 From the Receivers' review of the transactions set out in the SFC's email, once the funds are moved from Brite HK's HSBC Client Account to the 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name, they are generally paid the same day to an unknown payee. The Receivers are unaware of the basis for these payments and further investigations are required.

8.2.34 To date, funds totalling circa \$115.8 million have been returned to Brite Advisors' Westpac Client Accounts and IBA accounts:

- (a) Funds returned from Brite HK's IBHK to Brite Advisors' IBA accounts on 11 December 2023 and 12 January 2024 totalling \$113.0 million.
- (b) Funds returned from Brite HK's HSBC Client Accounts to Brite Advisors' Westpac Client Accounts between 21 December 2023 and 29 December 2023 totalling \$2.7 million.

8.2.35 The Receivers have located correspondence which indicates that Mr Clarke, Ms Nicholson, Mr Chun, Mr Lymer and Mr Donnelly were involved in the funds transfers (refer **Document 102**).

Transfer of client funds to related parties to meet group expenses

8.2.36 As set out at section 3.4.8 onwards, according to Xero records, net funds totalling \$91 million were transferred from Brite Advisors accounts to related entities in the period from FY16. The Receivers' investigations in respect of the funds transferred to Brite SA and Brite Advisors (Insurance) Ltd are summarised below, which account for \$35.2 million of the transfers. Further investigations are required in respect of the basis for the funds transferred to the other related entities and whether those funds are drawdowns from Client AuM, which account for \$55.8 million of the transfers.

8.2.37 The Directors have failed to provide:

- (a) A satisfactory explanation and response following Mr Lymer's 8 December 2023 (refer **Document 004**) stating that the amounts paid to various Brite Group entities through the related party loan accounts were as a result of a purported entitlement to fees including trustee fees, legal fees, upfront 5% and 1% NAV fees, interest etc. The Receivers have not been provided with documents to support for these claims and note the purported revenue is not recorded in the financial statements of Brite Advisors.
- (b) Source documents such as revenue calculations, fee/advisory invoices in support of claims to revenue entitlement for BAG (or other related entities) under the BAG Outsourcing Agreement or arrangements entered into with Trustees/Administrators.

8.2.38 The Receivers have not been able to identify any justification for the payment of Client AuM to related parties to meet Brite Group expenses noting:

- (a) Drawing down on the client funds to meet broader Brite Group expenses does not appear to be permitted or contemplated by the platform agreements, investment mandates and account opening documentation that the Receivers have to hand.
- (b) The payments for the broader Brite Group expenses from Client AuM were made as and when required/requested by Brite Group entities.
- (c) Brite Advisors and BAG failed to keep a proper account of the fees that were purportedly drawn from Client AuM and did not account for the fees as revenue in the financial records of Brite Advisors.
- (d) Any purported corresponding liability owed to BAG under the BAG Outsourcing Agreement was not recorded or disclosed in Brite Advisors' financial reports or income tax returns.
- (e) Brite Advisors failed to segregate the Client AuM and it is not clear from the transactions it entered into with various related entities whether it was acting in its own capacity, or whether it was acting in a trust capacity with respect to those transactions.
- (f) All related party transactions were processed into one loan account.
- (g) The related party transactions were not appropriately disclosed in the financial statements.
- (h) The cross-border nature of the transactions has not been declared on the income tax returns.

8.2.39 As set out at sections 3.4.18 to 3.4.27, Brite Advisors was paying Brite SA's expenses on an ongoing basis with funds totalling \$5,630,039 being transferred from the ZAR Westpac Operating Account during the period May 2020 to August 2023.

Further investigations are required in respect of the basis for the quantum of funds transferred to Brite SA.

The Receivers have reviewed two of the payments to Brite SA which occurred in early-2023 and it appears that the funds for the payments originate from drawdowns from IBA account [REDACTED] 295 held by Brite Advisors, which are recorded as being initiated by Chun Wing Man.

8.2.40 As set out at sections 3.4.15 to 3.4.17, during the period January 2019 to October 2023, net funds totalling \$29,550,950 were transferred from Brite Advisors accounts to Brite Insurance and of this amount, Brite Advisors' Xero records report transfers totalling \$19,960,368 which are described as 'expenses'.

Further investigations are required in respect of the basis for the quantum of funds transferred to Brite Insurance.

The Receivers have reviewed two of the payments which refer to 'expenses' in the Xero records and it appears that the funds for the payments originate from drawdowns from the IBA account [REDACTED] 939 held by Brite Advisors, which are recorded as being initiated by Chun Wing Man.

8.2.41 As set out in the Crowe Horwath Report (refer **Document 036**), Brite Advisors' SPFS omit disclosures in relation to accounting standards including revenue recognition policies, client funds under management, transactions with related parties and borrowings and was required to prepare GPFS in FY2023. The Crowe Horwath Report also found that Brite Advisors failed to properly segregate the Client AuM and account for related party transactions correctly, including any liability owing to BAG by way of revenue entitlement under the BAG Outsourcing Agreement. The Client AuM appears to have been effectively used to pay the broader expenses of the Brite Group as and when required, in addition to various transactions ostensibly for the benefit of Mr Donnelly and other entities in the Brite Group.

Related party acquisitions

8.2.42 As set out at section 2.4, the Receivers have identified several acquisitions made by members of the Brite Group since 2018. The Receivers have identified circa \$8.9 million of payments from Brite Advisors' accounts relating to 10 business acquisitions made by the Brite Group, where the purchasers include BAG and Mr Donnelly (amongst other related entities). The Receivers investigated the payments made and suspect the payments were made or partly made from Client AuM or funds borrowed using Client AuM as security.

8.2.43 The Receivers have identified some documents where Beneficiaries purport to provide loans to Brite Advisors for the purpose of the Brite Group acquisitions (refer to section 3.4.24). Further investigations are required to establish whether there was adequate disclosure to Beneficiaries in advance of these agreements being executed.

Partial repayment of IB Credit Facility

8.2.44 As set out at section 3.6, on 14 December 2020, funds totalling US\$5 million were paid from Brite Advisors' USD Westpac Operating Account in partial repayment of the US\$10 million IB Credit Facility (of which Brite Advisors is a guarantor).

The funds were deposited into the USD Westpac Operating Account from Brite Advisors' USD Westpac Client Account on 14 December 2020.

All of the receipts into the USD Westpac Client Account during December 2020 (which had an opening balance for December 2020 of US\$166.38), either reference the Trustees, individuals' names (presumably Beneficiaries) or had the description "Overseas Telegraphic Transfer" and "Brite Advisors Pty Ltd".

The Receivers have reviewed the two largest transactions in the period to 14 December 2020 with the description "Overseas Telegraphic Transfer" and "Brite Advisors Pty Ltd" and have confirmed that the funds for the payments originate from a drawdown from the IBA account [REDACTED] 295 held by Brite Advisors, which are recorded as being initiated by Chun Wing Man.

As set out at section 3.6.4, based on correspondence located, Mr Donnelly, Mr Lymer, Mrs Donnelly and Ms Nicholson took steps to facilitate the transaction, with Mr Donnelly appearing to arrange for the payment.

Key Facts 4: Systems, controls, policies and procedures

8.2.45 In August 2022, Brite Advisors engaged PWC to (i) conduct a review of the current state of key controls for specific client related processes, and (ii) prepare Brite-branded process maps for certain client processes and sub-processes. PWC issued their report on 31 May 2023 (**PWC Report**) (refer **Document 103**). The Receivers have reviewed the PWC Report and some of the matters identified are summarised below along with the Receivers' observations (where applicable):

- (a) *There is no independent review of client account and financial account master data (including client's risk profile and fees charges) in Salesforce based on the client's approved and signed agreements. (C3)*
- (b) *There is no independent review of monthly trade reconciliation to ensure the IB's total portfolio matches with Brite's total portfolio and individual client's portfolio reconciles to Brite's total portfolio (units per holding). The information should be reviewed by an independent staff member to ensure accuracy. (C12)*

The Receivers comment as follows:

- (i) As set out at section 4.5 of this Report, the Receivers' are of the view that there is a material variance between Client AuM portfolios and verified Client AuM.
- (ii) As set out at section 3 of the December Report, the former Investigative Accountants identified a variance of US\$69 million between the Client AuM Data Pack and HSBC, Westpac and Interactive Brokers Accounts as at 9 November 2023, meaning that system of using AutoRek/Salesforce does not result in the IB accounts reconciling to actual Client AuM held.
- (iii) The Receivers have located email correspondence between Ms Erika Nicholson and Mr Ramon Falzon, discussing the BAG 2020 audit and queries raised by the auditor. The correspondence indicates there may have been a material deficiency in the funds held in Interactive Brokers as far back as 2020 and that the existence of this deficiency was known to key personnel of the Brite Group (refer **Document 104**). An extract from the correspondence is below.

On 15 September 2022, Ms Nicholson stated in an email to Mr Falzon as follows:

"As we don't do that, I am trying to think what is the best way to reply to the auditor. The way we are doing means we are not managing the drawdown according to what we are entitled to and has caused the drawdown to be higher than revenue booked in 2021 and 2022, hence the margin in IB which we are trying to justify with future deals, loans, non IB asset, etc."

- (c) *An investor can request a change to their risk profile which is then updated by the Admin Team. There is no review that the client's risk profile is updated in Salesforce based on the client's approved and signed documentation. The information should be reviewed by an independent staff member to ensure accuracy. (C13)*
- (d) *There is no review of Dealings Instructions to ensure that any updates to client's risk profile are communicated to the Administration team. This information is used to update the dealing instructions which should then be reviewed by an independent staff member to ensure accuracy. Subsequently, the dealing instructions are sent to the Trading team to ensure accurate transactions in accordance to the client's instructions. (C14)*
- (e) *There is review of updates to the client database performed by the Trading Team to ensure that rebalance changes are updated in the client database. The information is not peer reviewed by an independent staff member to ensure accuracy. Further, there is no validation for the accuracy of data feeds from Bloomberg and Refinitiv, prior or post rebalance. (C18)*

Refer to the Receivers' comments above.

We note PWC's finding may have been partially mitigated by the recent implementation of AutoRek in August 2023.

- (f) *There is no review of client fees to ensure that the client fee charges are updated in Salesforce based on the client's approved and signed documentation. The information should be reviewed by an independent staff member to ensure accuracy. (C20)*

The Receivers comment as follows:

- (i) As set out at section 4.9, the Receivers have been provided with an incomplete set of Platform Agreements for the Trustees, with 10 of 17 Trustees not able to provide us with any platform agreement or other documents purportedly entered into with Brite Advisors, nor have we been able to identify any such documents from our review of the available books and records.

In the context of the above, a matter which requires further investigation and legal advice, is whether Brite Advisors had a valid and enforceable entitlement to fee revenue arising from the documents, noting that the available documents between Brite Advisors and the Trustees, indicate that the fee entitlement was dependent upon authorisation provided by the Beneficiaries in a separate document entitled 'Managed Portfolio Application', and where we have been unable to identify or obtain copies of completed Managed Portfolio Applications.

- (ii) As set out at section 2 of the December Report, according to the Xero records, Brite Advisors' does not drawdown its fee entitlement as revenue in Brite Advisors' financial accounts. Rather, fee drawdowns are recorded as repayments by Brite Advisors of the BAG and BAH loan accounts. This further complicates the assessment of whether fee drawdowns are appropriate in accordance with the documented agreements with Beneficiaries. Further investigation is required.
- (iii) The Receivers have located email correspondence between Ms Erika Nicholson and Mr Ramon Falzon, discussing the BAG 2020 audit and queries raised by the auditor. The emails appear to imply that there were insufficient process around reconciliation of fee drawdowns to fee entitlement and that key personnel within the Brite Group were aware of the inadequacy of the controls and processes around Brite Advisors' purported fee draw downs (refer **Document 104**).
- (iv) An extract from the correspondence is below.

On 15 September 2022, Ms Nicholson states to Mr Falzon:

"2) Revenue funds withdrawn from IB

This is a bit sensitive and not so easy to reconcile with the above, as funds are withdrawn whenever required and for any amounts required at any point in time. The transaction is DR bank / CR Amount due to IB. Ideally we should withdraw amounts based on the process above. For example: once a week/monthly we withdraw the funds according to how much revenue we booked for the period and that transaction offsets the "Amount due to IB" account. This way we could show anyone the correlation between revenue booked and funds withdrawn.

As we don't do that, I am trying to think what is the best way to reply to the auditor. The way we are doing means we are not managing the drawdown according to what we are entitled to and has caused the drawdown to be higher than revenue booked in 2021 and 2022, hence the margin in IB which we are trying to justify with future deals, loans, non IB asset, etc."

On 15 September 2022, Mr Falzon responded to Ms Nicholson:

"Hi Erika,

Point 1 reads well & should be fine as an explanation. However, I agree with you that Point 2 is very sensitive as it will show a lack of process & control gap from our side, which would be a big no no for an auditor. I reckon we should review your draft response together tomorrow in our catch up, as we've got to be transparent, however this will potentially open up a big can of worms for the auditor.

Do you agree?"

(g) *There is no review daily fee value checks to ensure that reconciliations are performed daily between fees charged and fee instructions to ensure accuracy. (C22)*

Refer to the Receivers' comments above.

(h) *The Operations Team commence the withdrawal process. There is no peer review of matching signatories to client details to ensure that before any withdrawal request is entered into Salesforce, a match between signatory and client details is performed to ensure accuracy within withdrawal process. (C25)*

Refer to the Receivers' comments above.

(i) *There is no review that the funds being withdrawn from IB to Westpac account are matched to client records in Salesforce based on client reference ID, payment amount and client surname. (C28)*

As set out at Section 3 of the December Report, Beneficiaries' funds are comingled in the Interactive Brokers' accounts. In the context of the identified variance of US\$69 million between the Client AuM Data Pack and HSBC, Westpac and Interactive Brokers Accounts as at 9 November 2023 (refer section 4), it is not possible to use Brite Advisors' records to reconcile Client AuM on a Beneficiary level.

The Receivers repeat their comments above regarding the recording of fee drawdowns.

Further investigations are required however this is evidence of lack of (or insufficient) processes/controls.

(j) *During the understanding of the processes, we noted that these [information technology] systems and EUDA [End-User Developed Applications] are not subject to adequate governance and controls, including:*

- (i) *No defined user administration process to gain access to above information sources.*
- (ii) *There is no periodic user access review process in place to ensure the access granted to users remains appropriate and meets the correspondent jurisdiction requirements (e.g.: data privacy)*
- (iii) *No adequate change management controls. (C32)*

We note PWC's finding may have been partially mitigated by the recent implementation of AutoRek in August 2023.

(k) *The Operations team perform daily trade matching and reconciliation between IB and Portfolio Valuation System. We noted that weaknesses around segregation of duties exist between the following:*

- (i) *Reconciliation is completed using the EUDA application whereby the Operations Team Lead maintains the EUDA and underlying matching rules/scripts and completes the daily and monthly reconciliation process using this application.*
- (ii) *The monthly and daily reconciliation is completed by matching Brite system data against an IB data extract. The IB data is loaded into the EUDA application, then the reconciliation is manually completed by the Operations team which increases the risk of error in reconciliation process.*
- (iii) *The EUDA application is saved in OneDrive which is accessible by all operations team members. As a result, there is a risk that any human error or unauthorised changes may remain undetected through this process. (C34)*

Refer to the Receivers' comments above.

We note PWC's finding may have been partially mitigated by the recent implementation of AutoRek in August 2023.

Key Facts 5: Compliance

8.2.46 The Receivers make the following comments regarding Brite Advisors' compliance matters:

- (a) At various times, Mr Gordon Couch and Mr Dean Clarke appear to act as the Brite Group's Head of Compliance (refer **Document 105**, **Document 106** and **Document 107**).
- (b) The Receivers have located examples of minutes for the 'Brite Global Compliance Committee' which had members in various countries, including Mark Donnelly and John Lymer. Neither Mr Clarke, Mr Sedergreen or Mr Johnsson were recorded as attendees at those meetings on the minutes reviewed however Mr Joe Kerwin was noted as an attendee (example minutes sighted).
- (c) The Brite Group also appeared to hold various team meetings at various times, including (i) a Hong Kong 'Ops' meeting, (ii) Asset Management meeting, (iii) Pensions Team Meeting, and (iv) Management meetings (example minutes sighted).
- (d) On the basis of our enquires, Brite Advisors does not appear to have any compliance staff employed by Brite Advisors itself or whose job it was to act on behalf of Brite Advisors to ensure compliance.
- (e) As set out at section 2.2, the Receivers have located correspondence dated 6 October 2023 from Mr Tommy Li (understood to be one of Brite HK's responsible officers) to Mr Donnelly and Mr Lymer (to which Ms Nicholson and Mr Lissenden were copied), discussing their response to an email received from the SFC requesting information regarding payments made from Brite HK's HSBC Client Account (which held the Client AuM transferred from Brite Advisors' accounts to Brite HK) to Brite HK's 'house' account, which we believe to be the HSBC Operating Account held in Brite HK's name. Mr Li's email states:

'There is no legitimate reason for BHKL to move the money from the client segregated account to house account, as the only agreement between BHKL and PTY is the service agreement.'

[...]

'I am proactive collaborating with other colleagues (e.g. Leslie, Paul...etc) on preparing reply to SFC and may seek advice from ComplianceDirect if necessary, I will try to see if we can make up some documents and present them in a way that SFC may think our acts are controversial, instead of intentional violations.'

- (f) The Directors (excluding Mr Lymer) did not appear to have oversight or management of BAG's activities or control of the technology systems required to conduct the required discretionary asset management services under the BAH Outsourcing Agreement. This observation is based on the following evidence:
 - (i) The key employees required to undertake Brite Advisors' operations were located in HK and the UK and employed by BAG or other related entities (refer section 8.2.2).
 - (ii) Mr Lymer has advised that the AutoRek system was held in the name of Brite Technologies (a UK entity), the Salesforce system in the name of Brite Financial Consultants LLC (Dubai entity)

and the G-Suite system in the name of Brite Financial Consultants LLC (Dubai entity) (refer **Document 005**).

No Directors or staff of Brite Advisors had Super Admin access to the Brite Group G-Suite system (refer **Document 114**).

(iii) In response to the 21 December Orders, which required the Directors to deliver up, or cause to be delivered up, the G-Suite data and access to systems, the Receivers received a response from Mr Lymer on 27 December 2023, advising that 'the directors of Brite Advisors Pty Ltd have formally written to individuals, group entities, and third-parties requesting access to systems and cooperation with your needs' (refer **Document 132**). The Receivers have not been provided with the records or system access required to be provided under the 21 December Orders by the Directors.

The failure to provide the data or access to the systems, and to cause that data and access to be provided, suggests that the Directors may not have control of the data and technology systems required to conduct Brite Advisors' operations.

(iv) On 14 December 2023, the Receivers requested that the Directors provide a schedule of contact details for the current Beneficiaries (refer **Document 119**). In Mr Lymer's response on 27 December 2023, Mr Lymer has advised that he has 'referred to the below named entities in the Group for their formal response' (refer **Document 132**). To date, the Receivers have not been provided with the requested list, which evidences that the Directors did not have control of Brite Advisors' records.

(g) As set out above, Brite Advisors had entered into the BAG Outsourcing Agreement, under which BAG was responsible for all areas of the Brite Platform other than regulatory compliance. The matters set out above indicate that compliance and regulatory oversight was, in fact, purportedly managed by BAG.

Key Facts 6: Financial, technological and human resources

8.2.47 On the Receivers' appointment, Brite Advisors had two direct employees, Mr Alan Leeming and Mr Ryal Rosen, and several contractors, being Mr Joe Kerwin, Mr Gerard Duffy, Mr Dean Clarke and Mr Keith Sedergreen.

8.2.48 The Receivers understand the roles of Brite Advisors' employees and contractors to be as follows:

- (a) The Receivers have been unable to engage with the second former employee of Brite Advisors, Mr Alan Leeming. Mr Leeming does not, and did not, appear to have any role in Brite Advisors' operations.
- (b) The Receivers understand that Mr Ryal Rosen was employed by Brite Advisors to set-up a new office for Brite Advisors in Melbourne and establish a new client base.
- (c) The Receivers understand that Mr Joe Kerwin was an advisor responsible for attracting new clients and managing his existing clients.
- (d) The Receivers understand that Mr Gerard Duffy was an authorised representative for Brite Advisors.

The Receivers discuss the roles of Mr Clarke and Mr Sedergreen at section 8.2.9.

8.2.49 Brite Advisors had limited financial resources outside of the Client AuM, with funds in its Westpac Operating Accounts of approximately \$27,000 at the time of the Receivers' appointment and minimal other assets outside of related party loans.

8.2.50 As set out at section 8.2.2, the Receivers understand that Ms Erika Nicholson was the Brite Group's Head of Accounts and Mr Michael Lightfoot was the Brite Group's Chief Technology Officer.

8.2.51 According to the written statement made by Brite Advisors in response to a notice issued by ASIC to it under section 912C(1) of the Act (refer **Document 100**), Ms Nicholson's accounts department includes Mrs Carole Donnelly and another staff member. Refer to section 8.2.23 for details of the accounts departments operations.

8.2.52 The Receivers understand that UK entities, Brite Technologies Limited and BAH 2021 Limited are the key entities responsible for the IT systems that support the broader Brite Group, overseen by Mr Michael Lightfoot.

8.2.53 As set out at section 8.2.23, the key employees required to undertake Brite Advisors' operations were located in HK and the UK and were employed by BAG or other related entities.

8.2.54 Mr Lymer has advised that the AutoRek system was held in the name of Brite Technologies (UK entity), the Salesforce system in the name of Brite Financial Consultants LLC (Dubai entity) and the G-Suite system in the name of Brite Financial Consultants LLC (Dubai entity) (refer **Document 005**).

8.2.55 No Directors or staff of Brite Advisors had Super Admin access to the Brite Group G-Suite system (refer **Document 114**).

8.2.56 In response to the 21 December Orders, which required the Directors to deliver up, or cause to be delivered up, the G-Suite data and access to systems, the Receivers received a response from Mr Lymer on 27 December 2023, advising that 'the directors of Brite Advisors Pty Ltd have formally written to individuals, group entities, and third-parties requesting access to systems and cooperation with your needs' (refer **Document 132**). The Receivers have not been provided with the records or system access required to be provided under the 21 December Orders by the Directors.

The failure to provide the data or access to the systems suggests that the Directors may not have control of the technology systems required to conduct Brite Advisors' operations.

Key Facts 7: Client money and asset management

8.2.57 The Receivers make the following comments regarding Brite Advisors' client money and asset management operations:

- (a) Refer to section 8.2.23 for details of the Brite Group's operations relating to Client AuM and asset management.
- (b) As set out at section 4.5, the Receivers' are of the view that there is a material variance between Client AuM portfolios and verified Client AuM.
- (c) As set out at section 4.9, the Receivers have been provided with an incomplete set of Platform Agreements for the Trustees, with 10 of 17 Trustees not able to provide us with any platform agreement or other documents purportedly entered into with Brite Advisors, nor have we been able to identify any such documents from our review of the available books and records.

In the context of the above, a matter which requires further investigation and legal advice, is the extent to which the Receivers are bound, or authorised, to liaise with such Trustees with respect to Client AuM that relates to Beneficiary clients of that Trustee, and how the Receivers are to identify and characterise that Trustee's (and the underlying Beneficiaries) entitlement to the Client AuM.

- (d) As set out at section 3 of the December Report, the former Investigative Accountants identified a variance of US\$69 million between the Client AuM Data Pack and HSBC, Westpac and Interactive Brokers Accounts as at 9 November 2023, meaning that AutoRek/Salesforce was not reconciling to actual Client AuM held.
- (e) As set out at section 3 of the December Report, Client AuM was comingled in seven Westpac bank accounts, four HSBC Hong Kong bank accounts in the name of Brite HK, four IBA accounts and two IBHK accounts in the name of Brite HK as at 9 November 2023.
- (f) Further investigations are required in respect of any third party's knowledge and/or involvement in Brite Advisors' client money and asset management operations.

Key Fact 8: ASIC breach reports

8.2.58 To the best of the Receivers' knowledge, Brite Advisors has only filed three breach reports with ASIC in respect of the outstanding FY22 financial accounts. The Receivers understand breach reports were filed on 28 April 2023, 2 June 2023 and 10 November 2023.

Key Fact 9: Financial reporting

8.2.59 The Receivers had concerns regarding the several aspects of the financial reports, business activity statements and income tax returns filed by Brite Advisors. Noting the specialist areas of accounting and taxation, together with the complexity of the group structure, the Receivers engaged Crowe Horwath to provide an independent report in relation to potential contraventions by Brite Advisors with respect to financial reporting and taxation compliance. This report is **Document 036**.

8.2.60 From review of the Xero records maintained by Brite Advisors, the Financial Reports and the Crowe Horwath report, the Receivers have identified the following shortcomings in relation to the financial reporting:

- (a) the Directors of Brite Advisors determined to prepare SPFS for the financial years FY2019 to FY2023, meaning that important disclosures in relation to accounting standards including revenue recognition policies, client funds under management, transactions with related parties and borrowings have not been made.
- (b) From 30 June 2021, Brite Advisors was a "Tier 1" company and was required to prepare GPFS for FY2023. SPFS have been prepared for FY2023 and signed by the Director, however, these were not audited.
- (c) Brite Advisors may have been eligible to continue to prepare SPFS in the 30 June 2022 year, if it had relief under the transitional provisions. Further work would be required to determine this.
- (d) Brite Advisors failed to properly segregate the Client AuM and account for related party transactions correctly, including any liability owed to BAG by way of revenue entitlement under the BAG Outsourcing Agreement. The Client AuM, or funds borrowed using Client AuM as security, was effectively used to pay the broader expenses of the group as and when required, in addition to various transactions for the benefit of Mr Donnelly and other entities in the Group.
- (e) Brite Advisors' lodgement of the SPFS were late in FY2022 (being due on 30 November 2022 and lodged on 2 November 2023) and FY2023 (being due on 30 October 2023 and still outstanding).
- (f) The FY2022 SPFS contained a qualified audit opinion on the basis the auditor was unable to verify the approximately \$856 million of Client AuM, indicating that Brite Advisors has not kept proper books records.
- (g) The way in which Brite Advisors operated its business and managed the Client AuM appears to have the characteristics of an unregistered MIS, in particular noting:
 - (i) The pooling of contributions from beneficiaries.
 - (ii) The lack of documentation governing the terms of the management of the Client AuM with 11 out of the 17 Trustees and lack of control by the underlying Trustees and Beneficiaries.
 - (iii) The lack of segregation of client funds and the continual use of the funds as a pool being available to the broader Brite Group and Mr Donnelly to use for the benefit of related parties.

8.2.61 The Crowe Horwath Report flags a number of further areas arising from their financial reporting review that would require further investigation (refer pages 14 and 15 of the Crowe Horwath Report at **Document 036**).

8.2.62 Following the appointment of the Receivers, the inability of the Directors to provide accurate and timely information has continued, as demonstrated (i) by the inability to provide a ROCAP stating the asset and liability position as at 13 December 2023 and (ii) the inconsistencies and inability to provide accurate information in relation to the assets of Brite Advisors and the Client AuM and Non-IB Assets.

Key Fact 10: Taxation

8.2.63 The Crowe Horwath Report identifies a number of tax compliance issues both in relation to Brite Advisors acting in its own capacity and as a trustee.

8.2.64 Key tax compliance matters identified in respect of Brite Advisors acting in its own capacity include:

- (a) The inadequate maintenance of books and records demonstrating:
 - (i) Income and expenditure.
 - (ii) The election, choice, estimate, determination or calculation made under the Tax Acts.

- (iii) Records to explain all transactions, dates and amount and character of transactions.
- (b) The inaccuracy of Xero data, in particular in relation to:
 - (i) Reported income and expenditure.
 - (ii) Whether transactions were entered into by Brite in its own capacity or in a Trustee capacity, in particular transactions with Interactive Brokers.
 - (iii) The nature of transactions entered into by Brite with related parties through loan accounts.
 - (iv) Journal entries posted, such as loan account and foreign currency journals.
 - (v) The removal of Interactive Broker accounts from Xero from 30 June 2020 onwards.
- (c) The accuracy of the income tax position, in particular in relation to:
 - (i) Concerns with fee income reported.
 - (ii) Number of issues in relation to the Platform Agreements and uncertainty as to the value of Client AuM.
 - (iii) Transfer of funds to Hong Kong and entitlement to fees.
 - (iv) Accrued income in BAG loan account.
- (d) Concerns with foreign exchange gains and losses not reported in Xero or the SPFS, income not being reported in the income tax returns.
- (e) Concerns with deductible expenses, including receipts and payments from Interactive Brokers and transactions with related parties.
- (f) Concerns with Brite Group loan accounts and payments, in particular:
 - (i) The decision to allocate transactions with multiple entities into one loan account.
 - (ii) The significant unsubstantiated journal entries recorded in Xero and allocation of the receipts from Interactive Brokers (which have the effect of reducing the significant loan balances outstanding). In the event the income from Interactive Brokers is "fees" or "commissions" the assessable income would be significantly understated each year.
 - (iii) To the extent that Brite Advisors enters into transactions under an outsourcing agreement, the transactions should be reflected in the Brite Advisors Profit & Loss account, not via a loan account with BAG or BAH.
 - (iv) For each service being provided by an international party, the fees charged would need to be reviewed and determined whether there are on arm's length terms for transfer pricing purposes. Brite would be denied an income tax deduction for these costs under Australian transfer pricing laws.
- (g) Brite Advisors has not paid superannuation payments in a timely manner and a potential SGC liability exists.
- (h) Further investigations are required to determine if PAYG was payable on various arrangements with Directors and Advisors.
 - (i) Noting the cross-border nature of the transactions with related parties, transfer pricing rules apply. Brite Advisors was obliged to make transfer pricing adjustments on their income tax returns, where related party transactions were not at arm's length. Brite Advisors was obliged to file an International Dealing Schedule (IDS) in the event the balances of any loans with international related parties exceeds \$2m during the year (not just the balance at the year-end) which was not done.
 - (j) In the company tax returns, item 30 asks if the taxpayer has 'directly or indirectly sent to, or received from, one of the countries specified in the instructions, any funds or property'. Specified countries include Hong Kong and the British Virgin Islands. We note that each of the 2019 through 2022 returns have answered this question "No".

8.2.65 Key tax compliance matters identified in respect of Brite Advisors acting as a trustee include:

- (a) Brite Advisors is a trustee of a trust that distributes income to non-resident beneficiaries who are Trustees of other trusts (being the Pension Schemes), Brite Advisors may have incurred a tax liability. Brite Advisors did not lodge income tax returns with the ATO in its capacity as trustee.
- (b) In the event that Brite Advisors was operating an MIS which was registered with ASIC, certain tax provisions would apply.

Key Fact 11: Representations made regarding Brite Advisors' business

8.2.66 The Receivers make the following comments regarding representations made regarding Brite Advisors' business:

- (a) As set out above, Brite Advisors have entered into the BAG Outsourcing Agreement and the GIML Outsourcing Agreement with BAG and Brite HK respectively pursuant to which all areas of the Brite Platform are purportedly outsourced other than regulatory compliance. The matters set out at section 8.2.22, indicate that, despite this, regulatory compliance was managed by BAG.

The Receivers note that the Brite Advisors' standard form platform agreement states that:

'Brite Advisors Pty Ltd is licensed and regulated by the [ASIC] with [AFSL] Licence Number 337670.'

'Money held by Interactive Brokers for your Account will be held in compliance with the rules relating to client money as issued by ASIC.'
- (b) As set out at section 2.2, during the period from June 2023 to November 2023, Client AuM totalling circa \$129.4 million was divested from accounts held by Brite Advisors in IBA, to Brite Advisors Westpac Client Accounts. The Client AuM were then transferred overseas in tranches into an HSBC Client Account in Hong Kong, held in the name of Brite HK, following which we understand that the majority of Client AuM was then reinvested in IBHK accounts, held in the name of Brite HK.

The Directors have not produced correspondence or documents, to demonstrate that the Trustees:

 - (i) were aware of the transfer of funds from Brite Advisor to Brite HK;
 - (ii) consented to the divestment of funds from IBA; or
 - (iii) consented to Brite HK taking custody of the funds.

The Receivers note that the Brite Advisors' standard form platform agreement states that:

'Brite Advisors Pty Ltd is licensed and regulated by the [ASIC] with [AFSL] Licence Number 337670.'

'We are the custodian of your assets during the term of the Platform Agreement and assets held or traded with Interactive Brokers will be in our name.'

'Investments which Interactive Brokers hold for your Account will be registered in the name of [Brite Advisors], controlled by Interactive Brokers or a member of Interactive Brokers' group.'

'Money held by Interactive Brokers for your Account will be held in compliance with the rules relating to client money as issued by ASIC.'
- (c) The Receivers have engaged Funds Manager, BML, to provide advice in respect of the management of the Client AuM. BML is investigating the overall risk profile of the Client AuM, including the non-IB assets and the risk profile.

The Receivers note that the Brite Advisors' standard form platform agreement states that:

'The Model Portfolios are investments managed and maintained by the Discretionary Account Manager. [Brite Advisors] uses asset allocations designed to represent particular investment objectives and risk profiles and to reflect prudent diversification. The Model Portfolios are periodically reviewed. They may be rebalanced with the aim of continued alignment with the particular investment objective and risk profile underlying its composition. There is no guarantee that the objective will be achieved.'

[Brite Advisors] has the responsibility (including responsibility for complying with related regulatory requirements) for our own operations and the operation of your Account and Managed Portfolios, and generally for our ongoing relationship with you. In particular, we are responsible for the opening of, and management of, Managed Portfolios for you, making all necessary anti-money laundering compliance and identity verification checks, and accepting orders and executing or arranging investment transactions on your behalf.'

(d) As set out at section 3 of the December Report, the Investigative Accountants identified a variance of US\$69 million between the Client AuM Data Pack and HSBC, Westpac and Interactive Brokers Accounts as at 9 November 2023, meaning that AutoRek/Salesforce (which feeds into the Brite Platform accessible by Beneficiaries) is inaccurate and does not reconcile to actual Client AuM held.

The Receivers note that the Brite Advisors' standard form platform agreement states that:

'Where Interactive Brokers or [Brite Advisors] have registered or recorded your investments in an account, sometime with investments belonging to other clients of ours, [Brite Advisors] shall keep a records of your entitlement to your investments, otherwise known as your Account.'

(e) As set out at Section 3 of the December Report, Beneficiaries' funds are comingled in the Interactive Brokers' accounts. In the context of the identified variance of US\$69 million between the Client AuM Data Pack and HSBC, Westpac and Interactive Brokers Accounts as at 9 November 2023 (refer section 4), it is not possible to use Brite Advisors' records to reconcile Client AuM on a Beneficiary level.

The Receivers note that the Brite Advisors' standard form platform agreement states that:

'Where Interactive Brokers or [Brite Advisors] have registered or recorded your investments in an account, sometime with investments belonging to other clients of ours, [Brite Advisors] shall keep a records of your entitlement to your investments, otherwise known as your Account.'

(f) As set out at section 2 of the December Report, according to the Xero records, Brite Advisors' does not drawdown its fee entitlement as revenue in Brite Advisors' financial accounts but instead fee drawdowns are recorded as repayments of the BAG and BAH loan accounts therefore, it is difficult to determine whether fee drawdowns are appropriate having regard to the documented agreements with Beneficiaries and further investigations are required.

The Receivers have located email correspondence between Ms Erika Nicholson and Mr Ramon Falzon, discussing the BAG 2020 audit and queries raised by the auditor, which indicates insufficient process around reconciliation of fee drawdowns to fee entitlement (refer **Document 104**).

The Receivers note that the Brite Advisors' Platform Agreement states that:

'The fees are payable monthly in arrears, and will be calculated end of day and aggregated over the month.'

'When we collect fees and charges due, including payments to any Financial Advisor as described above, we will collect them from Managed Portfolios in accordance with any instruction given to us in the Managed Portfolio Application.'

(g) As set out at section 2.4, the Receivers have identified several acquisitions made by members of the Brite Group since 2018. Investigations into each acquisition are not yet complete; however, our preliminary findings in relation to 10 acquisitions are that we suspect that the payments were made or partly made from Client AuM or funds borrowed using Client AuM as security.

'Money held by Interactive Brokers for your Account will be held in compliance with the rules relating to client money as issued by ASIC.'

(h) As set out at section 3.4.8 onwards, according to Xero records, net funds totalling \$91 million were transferred from Brite Advisors accounts to related entities in the period from FY16. The Receivers' investigations in respect of the funds transferred to Brite SA and Brite Insurance are set out at section 3.4.15 to 3.4.27. Further investigations are required in respect of the basis for the funds transferred to the other related entities totalling \$55.8 million.

'Money held by Interactive Brokers for your Account will be held in compliance with the rules relating to client money as issued by ASIC.'

8.3 Suspected Contraventions

Client Money Contraventions

8.3.1 The Receivers suspect that Brite Advisors has breached a number of provisions of the Act (including sections 912A(1)(a), 993B, 993C, 912AAC, and 912AEC) because of what appears to be its systemic mishandling of client funds and client assets: see key facts 1, 2, 3 and 7.

8.3.2 The Receivers suspect that Brite Advisors has breached a number of provisions of the Act (including 912A(1)(a), (b), (c), (ca), (d), 912AAC, 912AEC, 988A, and 988E) because of what appears to be its failure to implement appropriate policies, processes, systems, and controls to appropriately manage client money and assets: see key facts 1, 2, 4, 5, 6 and 7.

8.3.3 As client money is taken to be held in trust by a licensee for the benefit of the client (under section 981H), the Receivers also suspect that Brite Advisors has breached its equitable duties as a trustee because of what appears to be its systemic mishandling of client funds and client assets: see key facts 1, 2, 3 and 7. The Receivers suspect that a number of individuals and entities may be liable in equity for their participation, assistance or procurement of those breaches of trust, or through their knowing receipt of trust property. The Receivers suspect that those individuals and entities may include:

- (a) Mr Donnelly;
- (b) Mr Lymer;
- (c) Mr Clarke;
- (d) Mr Johnsson;
- (e) BAG;
- (f) Ms Nicholson;
- (g) Mrs Donnelly;
- (h) Ramon Falzon;
- (i) Mr Chun; and
- (j) Mr Lissenden.

8.3.4 The Receivers suspect that the misappropriation of client funds may constitute the commission of a fraud offence (such as under sections 192E, 192G and 192H of the Crimes Act 1900 (NSW) or section 409 or 424 of the Criminal Code (WA) or equivalents) by Brite Advisors and those parties identified in the above paragraph who appear to have participated in, assisted or procured the offences.

Financial Reporting

8.3.5 The Receivers suspect that Brite Advisors has breached a number of provisions of the Act (including section 989B, 988A, 286, and 319) because of what appears to be its failure to: (a) maintain adequate books and records; and (b) meet its mandated financial reporting obligations: see key facts 1, 2, 7 and 9.

ASIC Breach Reporting

8.3.6 The Receivers suspect that Brite Advisors has breached its obligation under section 912DAA of the Act to notify ASIC of any reportable situation: see the suspected breaches in this section and key fact 8.

Dishonest Conduct or Misleading or Deceptive Conduct

8.3.7 The Receivers suspect that Brite Advisors may have engaged in (i) dishonest conduct; or (ii) misleading or deceptive conduct, (or both) under sections 1041G and 1041H of the Act. This suspicion arises for a number of reasons, including what appears to be (i) the apparent misuse of client money and the shortfall in client funds/assets which appears to have been concealed; (ii) the misreporting to clients of their asset position; and (iii) the misleading of auditors and regulatory authorities in relation to (i) and (ii). See in particular key fact 1 and 11, assessed against the backdrop of key facts 2 through 10.

8.3.8 The Receivers suspect that a number of individuals and entities would be liable for the same course of conduct, either independently under section 1041G and 1041H or for being involved in Brite Advisors'

conduct under sections 1041H and section 79 of the Act. The Receivers suspect that those individuals and entities may include:

- (a) Mr Donnelly;
- (b) Mr Lymer;
- (c) BAG;
- (d) Ms Nicholson;
- (e) Mrs Donnelly;
- (f) Ramon Falzon; and
- (g) Mr Chun.

Directors Duties Contraventions

8.3.9 The Receivers suspect that several individuals and entities have breached the obligations under section 181 of the Act to exercise their powers and discharge their duties (a) in good faith in the best interests of the corporation; and (b) for a proper purpose. While there are many instances of potential breaches, the most prominent appear to include the following suspected conduct:

- (a) likely causing Brite Advisors to act unlawfully by mishandling client funds in order to fund acquisitions made by related parties and more broadly for the benefit of related parties;
- (b) likely disregarding the interests of creditors once Brite Advisor's solvency was put at risk; and
- (c) likely disregarding the interests of Beneficiaries, to whom Brite Advisors owed fiduciary obligations contemplated by statute, for the benefit of the Brite Group.

See key facts 1 through 7 and 11. The individuals and entities suspected of breaching these obligations are:

- (d) Mr Donnelly (as a de facto or shadow director)
- (e) Mr Lymer (as a director and de facto or shadow director during the period he was not formally appointed)
- (f) Mr Clarke (as a director)
- (g) Mr Johnsson (during the time he was director)
- (h) Mr Sedergreen (as a director)
- (i) BAG (as a shadow director or for assisting Mr Donnelly and Mr Lymer's suspected breaches)
- (j) Ms Nicholson (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (k) Mrs Donnelly (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (l) Ramon Falzon (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (m) Mr Chun (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)

8.3.10 As set out at section 5, the Receivers also suspect that several individuals have breached their duty to prevent insolvent trading under section 588G. These include:

- (a) Mr Donnelly (as a de facto or shadow director);
- (b) Mr Lymer (as a director and de facto or shadow director during the period he was not formally appointed);
- (c) Mr Johnsson (during the time he was director);
- (d) Mr Sedergreen (during the time he was director); and
- (e) Mr Clarke (as a director).

8.3.11 The Receivers suspect that several individuals and entities have failed to exercise reasonable care and diligence, particularly as it relates to the core requirements to facilitate appropriate oversight of the company

as well as compliance with financial services laws (section 180 and the so-called 'stepping stone' liability for the contraventions of Brite Advisors). These include:

- (a) Mr Donnelly (as a de facto or shadow director)
- (b) Mr Lymer (as shadow director when not a formal director)
- (c) Mr Clarke (as a director)
- (d) Mr Johnsson (during the time he was director)
- (e) Mr Sedergreen (as a director)
- (f) BAG (as a shadow director or for assisting Mr Donnelly and Mr Lymer's suspected breaches)
- (g) Ms Nicholson (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (h) Mrs Donnelly (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (i) Ramon Falzon (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)
- (j) Mr Chun (potentially for assisting BAG, Mr Donnelly and Mr Lymer's suspected breaches)

8.3.12 The Receivers suspect that the conduct identified above may in some cases also amount to a breach of sections 182 and 184 of the Act for improper use of the position of director (including de facto / shadow directors, as well as knowing assistance in these breaches).

Tax Contraventions

8.3.13 The Receivers suspect that there have been various violations of obligations, by Brite Advisors and by its directors and officers, relating to financial records and financial reporting (section 262A of the Income Tax Assessment Act 1936 ("ITAA 1936") and sections 801 and 815 of the Income Tax Assessment Act 1997 ("ITAA 1997")). See key fact 1 and 10.

Failure to assist the Receivers

8.3.14 The Receivers suspect that there have been various violations of obligations by its directors and officers for failure to assist the Receivers (potentially of sections 429, 431, 590 and 1314 of the Act), including (i) failure to complete a ROCAP which adequately explains the affairs of the company, (ii) failure to provide Brite Advisors' records, and (iii) failure to disclose Client AuM held with Moventum (refer sections 2.3.13 to 2.3.5). See key fact 1, 5 and 9.

AFSL Contraventions

8.3.15 The Receivers suspect that, there have likely to have been various violations of Brite Advisor's general obligations as an AFSL holder (sections 912A(1)(a), (b), (c), (ca), (d) and (h) of the Act), arising from the various issues identified above and the general mismanagement of the business.

8.3.16 In addition, the Receivers assumes that Brite Advisors sought to rely on the relief granted to providers of Managed Discretionary Account services (ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968). However, the Receivers suspect that Brite Advisors has failed to comply with the conditions on which such relief is available (one or more of sections 912AEA to 912AEG of the Act). In addition to the contraventions which violation of those sections may entail, if the Receivers are not entitled to the above relief, the Receivers suspect that Brite Advisors would be operating an unregistered MIS in violation of section 601ED of the Act. See key facts 1 through 9 and 11.

8.3.17 The Receivers suspect that, following the BAG Outsourcing Agreement being entered into in 2017, Brite Advisors relied on representatives of the Brite Group to provide financial services under its AFSL in circumstances which violated section 911B of the Act. See key facts 1 and 2.

Fundraising Contraventions

8.3.18 The Receivers suspect that Brite Advisors issued debentures to existing Beneficiaries. Further investigations are required to establish whether there was adequate disclosure in compliance with Chapter 6D of the Act. If there was inadequate disclosure it may contravene sections 727 and section 912A(1)(a) of the Act. See key facts 1 to 3.

A Documents relied upon

Schedule of documents relied upon

| Document number | Details |
|-----------------|---|
| 001 | Court Orders made by the Federal Court of Australia on 13 December 2023 appointing Linda Smith and Robert Kirman as Receivers and Managers |
| 002 | Court Orders made by the Federal Court of Australia on 21 December 2023 to obtain further books and records and in relation to the pension withdrawal request process |
| 003 | Letter from the Receivers to the Directors dated 17 January 2024 |
| 004 | Letter from Directors dated 8 December 2023 |
| 005 | Directors' Recommendations in correspondence dated 11 January 2024 |
| 006 | Outsourcing and Servicing Agreement between Brite Advisors and Brite HK dated 22 June 2017 |
| 007 | Correspondence between Brite employees setting up a transfer of ROW funds |
| 008 | Mr Li's correspondence to Mr Donnelly and Mr Lymer regarding the movement of funds |
| 009 | Brite HK HSBC operating account statement for July 2023 and August 2023 |
| 010 | Court Orders made by the Federal Court of Australia on 24 November 2023 |
| 011 | Contract notes from various trustees totalling GBP8,850,000 |
| 012 | Schedule of transactions extracted from Xero management accounts relating to Minerva |
| 013 | Letter from Receivers to Minerva dated 20 December 2023 |
| 014 | Letter from Receivers to Minerva dated 15 January 2024 |
| 015 | Statement of asset positions held by Moventum in the name Brite Advisors Pty Ltd |
| 016 | Schedule of transactions with Moventum extracted from the Xero management accounts |
| 017 | Letter to Moventum dated 10 January 2024 |
| 018 | Response from Moventum dated 12 January 2024 |
| 019 | Schedule of transactions on the Moventum platform |
| 020 | Correspondence between Moventum and the Receivers regarding bank account payments |
| 021 | Westpac USD statement extract |
| 022 | Westpac GBP statement extract |
| 023 | Letter to Novia Global dated 22 December 2023 |
| 024 | Response from Novia Global to Receivers dated 29 December 2022 |
| 025 | Letter to Utmost Worldwide dated 2 January 2024 |
| 026 | Response from Utmost Worldwide to the Receivers dated 8 January 2024 |
| 027 | Correspondence from the Receivers to additional parties identified during their investigations |
| 028 | Xero extract of Brite Advisors Pty Ltd's balance sheet as at 13 December 2023 |
| 030 | Further entities identified relating to acquisitions of entities with funds from Brite Advisors Pty Ltd |
| 031 | Group structure provided to the Receivers in the books and records of the company |
| 032 | Brite Advisory Holdings Limited (UK company number 06093923) company search |
| 033 | 115 entities the Receivers understand to be associated with the Brite Group and/or Mr Donnelly. |
| 035 | 8 Australian related entities, including Brite Advisors |

| | |
|-----|---|
| 036 | Crowe Horwarth Report dated 23 January 2024 |
| 038 | IB statement detailing transactions |
| 039 | Schedule of transactions between the related parties of the Brite Group extracted from Xero management accounts |
| 040 | Schedule of transactions with Brite Insurance |
| 041 | Westpac bank statements provided to the Receivers |
| 042 | Interactive brokers statement for account [REDACTED] 939 |
| 043 | Letter from Brite SA requesting funds to pay the wages of the Brite SA staff dated 22 December 2023 |
| 044 | Response from Receivers to Brite SA dated 28 December 2023 |
| 045 | Response from Brite SA to Receivers dated 16 January 2024 |
| 046 | Schedule of transactions relating to Brite SA extracted from Xero Management Accounts |
| 047 | Xero extract of Brite SA loan account |
| 048 | Bank statements detailing Brite SA transactions |
| 049 | Bank statements detailing Brite SA transactions |
| 050 | Interactive brokers activity statement |
| 051 | Interactive brokers activity statement |
| 052 | Example of the convertible loan agreement signed by Beneficiaries |
| 053 | Westpac bank statements provided to the Receivers |
| 054 | Xero extract of Westpac client to Westpac operating accounts |
| 055 | Interactive brokers activity statement |
| 056 | Westpac payment slip and corresponding email confirming payment |
| 057 | Xero extract of Westpac operating account to IB |
| 058 | Correspondence bundle between Brite employees regarding IB payments |
| 059 | Summary schedule of interest payments to Interactive Brokers |
| 060 | Collated Westpac payment summaries |
| 061 | Correspondence from the Receivers to IBA |
| 062 | Interactive brokers activity statements as at 12 January 2024 in Microsoft excel format |
| 063 | Interactive brokers activity statements as at 13 December 2023 in Microsoft excel format |
| 064 | HSBC client bank statements as at 30 November 2023 |
| 067 | Westpack bank statements extracts showing balances as at 13 December 2023 and 9 January 2024 |
| 069 | Schedule of documentation relating to the Administrators, Trustees and underlying Beneficiaries the Receivers have been provided with to date |
| 070 | Platform agreement between Brite US and Brite Advisory Group |
| 071 | Unexecuted Brite US Acknowledgement of Omnibus Account Usage and Risks |
| 072 | Executed advisory management agreement dated 5 September 2019 between Brite US and STM Malta Trust |
| 073 | Disclosure brochure dated 31 March 2023, provided to clients from Brite US |
| 074 | Aurom Group Limited company search |
| 075 | Brite Advisors Pty Ltd company search |

| | |
|-----|---|
| 076 | Brite Advisory Group company search |
| 078 | Basi & Basi Financial Planning Limited company search |
| 084 | BAH 2021 Limited company search |
| 086 | Wider company structure chart which incorporates the ownership of the Witroy Discretionary Truste |
| 088 | Brite Advisors Pty Ltd Australian Financial Securities License from 8 February 2018 |
| 089 | Collation of evidence relating to the activities of Mr Donnelly |
| 090 | Collation of evidence relating to the activities of BAG |
| 091 | Collation of evidence relating to the activities of Mr Lymer |
| 092 | Collation of evidence relating to the activities of Mr Clarke |
| 093 | Collation of evidence relating to the activities of Mr Sedergreen |
| 094 | Collation of evidence relating to the activities of Mr Johnsson |
| 095 | Collation of evidence relating to the activities of Mrs Donnelly |
| 096 | Collation of evidence relating to the activities of Ms Nicholson |
| 097 | Collation of evidence relating to the activities of Mr Chun |
| 098 | Collation of evidence relating to the activities of Mr Lissenden |
| 099 | Outsourcing agreement dated 14 April 2017 between Brite Advisory Group Limited and Brite Advisors Pty Ltd |
| 100 | Written statement from ASIC detailing the Brite Model including; investment strategies, how return on funds are generated, option to opt in or out of Brite model for new clients and a description of how cleints exist and are they locked in for certain terms |
| 102 | Correspondence between Mr Dean Clarke, Ms Erika Nicholson, Mr Chun Wing Man, Mr John Lymer and Mr Mark Donnelly regarding funds transfers |
| 103 | PWC report into the processes and key control for client related processes at Brite Advisors |
| 104 | Correspondence between Mr Falzon and Ms Nicholson regarding correspondence to the auditor |
| 105 | Correspondence between Mr McKenna, Mr Lissenden and Mr Donnelly |
| 106 | Form completed by Mr Couch adding himself as an authorised signatory of Brite Advisors |
| 107 | Group organizational chart from 2019 showing how each person sits in the hierarchy relating to Mr Donnelly |
| 114 | Correspondence from B Payne of the Receivers' office detailing account and permissions history of the Brite Advisors G-suite account |
| 115 | Letter from Directors to Investigative Accountants |
| 116 | Letter from Receivers to Directors on appointment as Receivers |
| 117 | Email from Linda Smith to Directors |
| 118 | Email from John Lymer to Linda Smith |
| 119 | Email from Linda Smith to John Lymer |
| 121 | Email from John Lymer to Linda Smith |
| 122 | Email from Linda Smith to John Lymer |
| 123 | Email from John Lymer to Linda Smith |
| 124 | Email from John Lymer to Linda Smith |
| 126 | Letters from HWLE to Mr Donnelly, Mr Lissenden and Mr Lightfoot |
| 132 | Email from John Lymer to Linda Smith |

| | |
|-----|---|
| 133 | Email from Linda Smith to John Lymer |
| 136 | Letter from Receivers to Directors |
| 140 | Completed ROCAP submitted by John Lymer |
| 141 | Completed ROCAP submitted by Keith Sedergreen |
| 142 | Completed ROCAP submitted by Dean Clarke |
| 145 | Emails from Receivers to Directors |
| 147 | Letter from Directors to Receivers |
| 150 | Letter from Receivers to Directors |
| 151 | Letter from Directors to Receivers |
| 152 | IB Credit Facility - Loan Agreement |
| 153 | IB Credit Facility - Subsidiary Guarantee Agreement |

B Receivers' CVs



Linda Smith

POSITION Partner
PHONE +61 8 6363 7633
EMAIL lsmith@mcgrathnicol.com
WEBSITE mcgrathnicol.com

PERTH OFFICE
Level 19
2 The Esplanade
Perth WA 6000

Qualifications & Memberships

- Registered Liquidator
- Member, CA ANZ
- Member, ARITA
- ARITA, WA Division Committee Member
- Member, Institute of Chartered Accountants Scotland
- Certified Proficiency in Insolvency (Insolvency Practitioners Association, UK)
- BA (Hons) in Finance and Marketing

Linda is a highly skilled restructuring and insolvency professional, with extensive experience in leading complex restructuring matters and conducting independent business reviews.

Linda's experience includes leading a number of high-profile formal insolvency appointments, managing business trade on scenarios and recovery actions.

She has also led significant forensic investigations, providing reports to regulators. Linda provides practical advice to companies experiencing financial difficulties, conducting independent business reviews and implementing turnaround strategies.

Recent engagements include managing the liquidation of ASX listed Continental Coal Limited and undertaking an independent business review of an ASX listed mining company. During her career, Linda has worked across a broad range of industries including mining, property, construction and retail in Australia and the United Kingdom.

Engagement Experience

- Managed a range of large and complex formal insolvency appointments involving significant forensic investigations, reporting to regulators. Recent matters include the Caratti Group and the Chris Marco 'ponzi' Scheme, along with the liquidation of ASX listed Continental Coal Limited.
- Managed a range of Liquidator recovery actions for the benefit of creditors, with experience in director examinations, voidable transactions and transfer of assets to phoenix companies.
- Conducts independent business reviews for lenders, assessing the financial position of borrowers and determining strategies for restructuring or reducing debt. Recent assignments include a review of ASX listed mining operations.
- Voluntary administration of gold producer GMK Exploration Pty Ltd, including the trade on and business sale.
- Voluntary administration of Midwest Vanadium, an ASX listed mine in remote WA.
- Receivership of ASX listed Apex Minerals NL, involving the business sale of gold operations.
- Previous corporate restructuring experience in the UK included the implementation of the successful restructure of some high-profile retail chains such as The Gadget Shop and USC.



McGrathNicol



Rob Kirman

| | | |
|----------|--------------------------|-----------------|
| POSITION | Partner | PERTH OFFICE |
| PHONE | +61 8 6363 7685 | |
| MOBILE | +61 414 425 578 | Level 19 |
| EMAIL | rkirman@mcgrathnicol.com | 2 The Esplanade |
| WEBSITE | mcgrathnicol.com | Perth WA 6000 |

Qualifications & Memberships

- Registered Liquidator
- Member, ARITA
- Member, TMA
- Member, CA ANZ
- Bachelor of Science (Honours) in Special Mathematics

Board Roles

- Board Member, McGrathNicol

Rob has over 25 years' of restructuring experience and is the Partner in charge of the McGrathNicol Perth office. Prior to joining McGrathNicol in 2004, Rob worked for an international advisory and restructuring firm in the UK.

As a national firm with representation on the panel of each of Australia's big four banks, McGrathNicol is known for its commercial acumen, exceptional leadership and our highly regarded specialists.

Rob has a proven reputation for providing his clients with strategic and innovative solutions to challenging situations and is highly skilled at considering issues from the perspective of different stakeholders.

He has led teams in financial assignments such as restructuring, insolvency, business improvement and transactions. He has also conducted numerous business reviews, assisted companies with business improvement, strategic planning, working capital management and capital reorganisation.

Rob has been an appointee in relation to a range of recent high-profile matters including The Chris Marco Scheme, the related entities of Alan Caratti, Tiger Resources Ltd, Alita Resources Ltd and MZI resources Ltd.

Rob's sector experience is broad and includes mining, property, construction, hospitality, transport and logistics, agribusiness and manufacturing.

Engagement Experience

- Numerous business reviews and restructurings including performance improvement, strategic planning, working capital management and capital reorganisation.
- Due diligence and transaction services support.
- Voluntary Administrator of Tiger Resources Ltd, an ASX listed company with an investment in a copper mine in the Democratic Republic of Congo.
- Voluntary Administrator of Alita Resources Ltd, an SGX listed company with an investment in a lithium mine in WA.
- Voluntary Administrator of MZI Resources, an ASX listed company Mineral Sands producer.
- Liquidator and Receiver & Manager of the Chris Marco Scheme, an unregistered and alleged 'ponzi' scheme of more than 300 investors.
- Liquidator of the related entities of Alan Caratti, an appointment that has included the investigation of a number of significant contraventions of the Corporations Act.

C Key staff and qualifications

| Assisting staff | | |
|-----------------|-------------------|-------------------|
| Name | Position | Years' experience |
| Linda Smith | Partner, Receiver | 18 |
| Robert Kirman | Partner, Receiver | 26 |
| Mark Knight | Director | 17 |
| Lauren Burton | Director | 10 |
| Michael Holmes | Senior Manager | 9 |
| Annie Purbrick | Manager | 5 |
| Antoine Cleuet | Assistant Manager | 4 |

D Books and records

D.1 Books and records used for the Report

This section should be read in conjunction with the Appendix D of the December Report which outlines the books and records obtained and steps taken to obtain the records prior to 8 December 2023. The below relates to steps taken by the Receivers and records obtained on and after 8 December 2023.

Steps taken to secure records

Pursuant to Order 8 of the 9 November Orders and 13 December Orders, Brite Advisors was required to immediately deliver up to the Receivers all books and records in their possession, custody or control which relate to the Property of Brite Advisors. The steps taken by the Receivers to obtain the relevant records in accordance with Order 8 since issuing the December Report, are set out at Appendix D.2 and a high-level summary of the key records obtained from Brite Advisors by the Receivers since issuing the December Report are set out at Appendix D.3.

This section should be read in conjunction with the Appendix D of the December Report which outlines the steps taken by the Investigative Accountants prior to 7 December 2023.

We note that Appendix D.2 represents a summary of the key correspondence regarding records access and is not an exhaustive listing of all correspondence between the parties. We note that in view of the time afforded to the Receivers and delay in access to books and records, an exhaustive review of book and records has not been undertaken.

Books and records and limitations on Report

Paragraph 8 of the 13 December Orders required Brite Advisors to immediately deliver up all books, records and other papers (including all files, computer records and other data) in its possession, custody or control which relate to the property of Brite Advisors. "Property" for that purpose was defined in the 13 December Orders in a broad manner and extends to property held by Brite Advisors other than in a solely beneficial capacity, including the Client AuM. The definition of Property extends to such property held on behalf of or on account of Brite Advisors directly or indirectly by:

- Brite Advisory Group Limited; and/or
- Brite Hong Kong Limited.

We are of the opinion that Brite Advisors has not provided us with all of the books and records that were required to be delivered up to the Receivers under the 13 December Orders. Further, access to and provision of those books and records that have been delivered up by Brite Advisors was delayed.

The limited books and records provided and delays in accessing information have limited the Receivers' ability to investigate the affairs of Brite Advisors as contemplated by the 13 December Orders. The Receivers have had insufficient time to conduct an exhaustive review of all books and records that have been provided and to date, our review has been limited to key word searches focussed on key matters of investigation, in particular with respect to the Partial G-Suite Image, noting:

- the length of time it took for the partial back up copy of the Partial G-Suite Image to be provided to the Receivers via cloud-based transfer, which only completed on 9 January 2024; and
- the volume of data (being approximately 2TB) meaning that the Receivers have had to prioritise the upload to the document review platform of data for the accounts (i.e. mailboxes and document folders) of key persons identified.

The Directors have not provided substantive responses to several queries and requests for information in relation to critical matters, including:

- Platform Agreements for 11 out of 17 Trustees.
- Supporting documents including invoices for relating party transactions including journal entities for significant transactions characterised as related party loans in Xero totalling circa \$91.4m.
- Source documents such as revenue calculations, fee/advisory invoices in support of claims to revenue entitlement for BAG (or other related entities) under the BAG Outsourcing Agreement or arrangements entered into Trustees.
- Full account of funds transferred to Brite HK, including all documentation to support where funds were directed from Brite HK's HSBC accounts, including:

- A reconciliation showing the use and allocation of the Client AuM from June 2023 until the funds were returned to Australia, including all cashiering transactions supporting (i) transactions from HSBC accounts to IBHK, (ii) any withdrawals from HSBC or IBHK to meet expenses/client withdrawals/platform fees etc, and (iii) the relevant statements from IBHK showing the funds being closed out and subsequent return to the Australian receiving accounts;
- Access to relevant Xero files (or other accounting software) and/or detailed accounting ledgers showing the full accounting treatment of the funds while in the custody of Brite HK;
- Details of all expenses paid from the Client AuM while in custody of Brite HK, including supporting documents; and
- All documentation relating to any margin loans or other loans secured against the IBHK accounts.

▪ Lack of information disclosed in Mr Lymer's letter of 11 January 2024, making references to several assets held outside of IB accounts (non-IB assets).

In light of these issues, the Receivers have been unable to reach a concluded opinion in relation to several scope items as required by the 13 December Orders.

HWLE Requests

On 19 December 2023, at the Receivers' instruction, HWLE issued a letter to each of Mr Lightfoot, Mr Donnelly, and Mr Lissenden demanding that they deliver up to the Receivers all data contained in, and access to, the Data Systems.

In response to that demand, the Receivers were provided with access to the G-Suite system. This access was subsequently revoked by someone in the Brite Group less than two hours later.

During the short time that the Receivers had access to the G-Suite system, we identified that it contained 3TB of data which included mailbox data and other documents.

The Receivers obtained a copy of the Partial G-Suite Image on 9 January 2024. The Partial G-Suite Image has enabled the Receivers to significantly progress their investigations, however, given that the data is incomplete and the limited time available, the Receivers' conclusions may not be complete.

The data is still in the process of being uploaded to the Receivers' forensic review platform. The Receivers have prioritised the upload of key personnel accounts and have utilised this data to progress their investigations using key word searches.

21 December Orders

Noting the significant deficiencies in the books and records produced by the Directors and the lack of access to critical systems, on 21 December 2023, the Receivers obtained Court Orders which required the Directors to direct third party service providers and related parties to immediately deliver up the books and records relating to the Property (as defined in the Orders) and provide access to Brite Advisors' data systems (including G-Suite and Salesforce).

At the instruction of the Receivers, HWLE issued correspondence to Mr Donnelly, Mr Vauville and Mr Lissenden, serving notice of the 21 December Orders and drawing their attention to the requirements under Order 2 of the 21 December Orders. Mr Donnelly, Mr Vauville and Mr Lissenden have not complied with the 21 December Orders.

The Directors provided three letters to the Receivers requesting the delivery of records relating to the Property and to facilitate access to Brite Advisors' systems issued to (i) AutoRek, (ii) Salesforce, and (iii) Mr Donnelly, Mr Vauville, Mr Lissenden, Brite Financial Consultants LLC and Brite Technologies Limited.

The Receivers do not consider that these letters demonstrate compliance with the 21 December Orders. Specifically:

- The 21 December Orders required the Directors to direct all Brite Group Entities. That term is defined broadly as all entities that are "associated entities" of Brite Advisors. The only Brite Group Entities to whom the letter has been addressed are Brite Financial Consultants LLC and Brite Technologies Limited. Further, the Receivers would have expected the letter to be addressed to those Brite Group Entities that had clear involvement in management of the Client AuM, including Brite HK or BAG (noting that the documents provided by the Directors to date, such as the GIML Outsourcing Agreement, indicate that those entities hold key roles with respect to the Client AuM).
- The Receivers have not been provided with any covering emails or proof of postage of the letters to be able to verify they have been sent.

Upon receipt of the 21 December Orders, the Receivers took steps to obtain the information as directed by the orders from third party providers directly. In this regard, the Receivers have been liaising with various external parties to gain access to Brite Advisors' systems and obtain copies of Brite Advisors' records.

Information from third parties

The Receivers have issued written books and records requests to a range of third parties who they considered may have information and records which relate to the Property of Brite Advisors. A high-level summary of the key parties written to and the information received since issuing the December Report is set out below.

We note that the Receivers also issued correspondence to a range of other parties, including banking institutions, share registries, government departments, and Trustees to assist in determining Brite Advisors' assets and liabilities position. As no additional assets and/or liabilities were identified, these parties have been excluded from the schedule below.

Summary of responses to books and records requests issued to third parties

| Third party | Relationship to Brite Advisors | Books and records received |
|--|--|---|
| Total Care Accounting and Business Solutions | Accounting advisor | <ul style="list-style-type: none"> ▪ Financial statements for FY21 and FY22. ▪ Income tax returns for FY21 and FY22. ▪ Xero extracts supporting income tax returns lodged. ▪ Extract from ATO portal reporting current balances of Brite Advisors' taxation liabilities. ▪ Running balance account for (i) GST and PAYG account for the period 1 April 2020 to 5 October 2022 for Brite Advisors', and (ii) income tax account for the period 1 May 2021 to 25 November 2022. |
| AutoRek | Automated financial and reconciliation software provider | <ul style="list-style-type: none"> ▪ Access to Brite Advisors' AutoRek account provided on 19 December 2023. |
| Xero | Accounting software provider | <ul style="list-style-type: none"> ▪ Access to Brite Advisors' Xero file provided on 19 January 2024. |
| IBA | Online broker | <ul style="list-style-type: none"> ▪ Various activity statements relating to the period from 9 November 2023 to 12 January 2024. ▪ Margin loan statements / reports for the period from 9 November 2023 to 12 January 2024. |
| IBHK | Online broker | <ul style="list-style-type: none"> ▪ No response received. |
| Westpac | Banking institute | <ul style="list-style-type: none"> ▪ Bank statements for Brite Advisors' accounts. The bank statements received from Westpac and other sources are set out at Appendix D.4. |
| HSBC HK | Banking institute | <ul style="list-style-type: none"> ▪ No response received. The bank statements received from other sources are set out at Appendix D.4. |
| Trustees | Clients | <ul style="list-style-type: none"> ▪ No response received from two Trustees. ▪ Responses from Trustees mainly comprised spreadsheets containing the contact details and investment details (including current or recent valuation, fees and charges, etc) for each of the Beneficiaries who are members of the Trustee's scheme(s), Platform Agreements and other agreements governing the terms of the management of Client AuM, and information relating to pension withdrawal requests from beneficiaries. |

Bank statements

The Receivers have obtained bank statements for Brite Advisors' accounts. The listing of the bank statements received for each respective account is set out at Appendix D.4. Due to the volume, the Receivers have only enclosed the bank statements relevant to the matters set out in the Report.

Interactive Brokers statements

The Receivers have obtained activity statements for Brite Advisors' Interactive Brokers accounts. The listing of the statements received for each respective account is set out at Appendix D.5.

Access to Data Systems

To date, the Receivers have been provided with access to Brite Advisors' Xero and AutoRek directly from the suppliers. The Receivers have not yet received access to other key data systems including Salesforce and the G-Suite system.

Outstanding information

The outstanding information the Receivers require in order to fully investigate the affairs of Brite Advisors is set out in the letter issued to the Directors dated 17 January 2024 (refer **Document 003**).

D.2 Steps taken by Receivers to obtain records

Set out below is a schedule summarising the correspondence between the Investigative Accountants / Receivers and the Directors since 7 December 2023 (i.e. since issuing the December Report) in relation to provision of the records of Brite Advisors:

| Steps taken by Receivers to obtain records | | |
|---|---|------------------------|
| Date | Relevant details | Document Number |
| 8 Dec-23 | Letter from Directors to Investigative Accountants | Document 115 |
| 13 Dec-23 | Letter from Receivers to Directors on appointment as Receivers | Document 116 |
| 13 Dec-23 | Email from Linda Smith to Directors | Document 117 |
| 14 Dec-23 | Email from John Lymer to Linda Smith | Document 118 |
| 14 Dec-23 | Phone call between Receivers' team and Directors | n/a |
| 14 Dec-23 | Email from Linda Smith to John Lymer | Document 119 |
| 15 Dec-23 | Email from John Lymer to Linda Smith | Document 121 |
| 15 Dec-23 | Email from Linda Smith to John Lymer | Document 122 |
| 18 Dec-23 | Email from John Lymer to Linda Smith | Document 123 |
| 19 Dec-23 | Email from John Lymer to Linda Smith | Document 124 |
| 19 Dec-23 | Letters from HWLE to Mr Donnelly, Mr Lissenden and Mr Lightfoot | Document 126 |
| 27 Dec-23 | Email from John Lymer to Linda Smith | Document 132 |
| 27 Dec-23 | Email from Linda Smith to John Lymer | Document 133 |
| 28 Dec-23 | Email from John Lymer to Linda Smith | Document 134 |
| 2 Jan-24 | Letter from Receivers to Directors | Document 136 |
| 8 Jan-24 | Completed ROCAP submitted by John Lymer | Document 140 |
| 9 Jan-24 | Completed ROCAP submitted by Keith Sedergreen | Document 141 |
| 9 Jan-24 | Completed ROCAP submitted by Dean Clarke | Document 142 |
| 10 Jan-24 | Emails from Receivers to Directors | Document 145 |
| 11 Jan-24 | Letter from Directors to Receivers | Document 147 |

Steps taken by Receivers to obtain records

| | | |
|-----------|------------------------------------|--------------|
| 17 Jan-24 | Letter from Receivers to Directors | Document 150 |
| 18 Jan-24 | Letter from Directors to Receivers | Document 151 |

Note: Appendix D.2 represents a summary of the key correspondence regarding records access and is not an exhaustive listing of all correspondence between the parties.

D.3 Access to Brite Advisors' books and records

The Receivers have been provided with the following books and records since the December Report:

Access to Brite Advisors' books and records

| Date | Data source | Overview of documents | Comments |
|-----------|--|--|--|
| 8 Dec-23 | John Lymer provided by email | <ul style="list-style-type: none"> Various Xero extracts of general journal entries in BAG's accounts Asia Credit Hong Kong account statements for the period 1 Nov-17 to 30 Apr-18 BAG's board resolutions from 2020 approving loans to be paid to Mark Donnelly Copies of invoices raised by BAG from 2019 to 2023 for 5% of individual investment values | |
| 15 Dec-23 | John Lymer provided by email | <ul style="list-style-type: none"> HSBC statements for client accounts only for the period 1 Nov-23 to 30 Nov-23 | |
| 18 Dec-23 | John Lymer provided by Google Drive upload | <ul style="list-style-type: none"> Supporting documents for pension withdrawal requests received including dealing instructions and correspondence from Trustees/Beneficiaries | |
| 19 Dec-23 | John Lymer provided by email | <ul style="list-style-type: none"> Excel spreadsheet containing the contact details of the Trustees that deal with Brite Advisors | |
| 28 Dec-23 | John Lymer provided by Google Drive upload | <ul style="list-style-type: none"> PDF copies of 65 emails between John Lymer and other officers of Brite Advisors / Brite Group employees during the periods 20 Jan-16 to 12 Dec-17 and 14 Mar-23 to date (being the periods in which Mr Lymer was a director of Brite Advisors) Three letters addressed to Brite Group entities and related parties, and third party service providers directing to comply with the 21 December Orders | <p>The copies of emails produced by Mr Lymer did not include attachments.</p> <p>The copies of the letters dated 22 Dec-23 did not include evidence of postage or covering email.</p> |
| 9 Jan-24 | Partial G-Suite Image | <ul style="list-style-type: none"> Approximately 2TB data image of the G-suite system, containing mailbox data and other documents. | <p>On 19 December 2023, at the Receivers' instruction, HWLE issued a letter to each of Mr Lightfoot, Mr Donnelly, and Mr Lissenden demanding that they deliver up to the Receivers all data contained in, and access to, the Data Systems.</p> |

Access to Brite Advisors' books and records

In response to that demand, the Receivers were provided with access to the G-Suite system. This access was subsequently revoked by someone in the Brite Group less than two hours later.

During the short time that the Receivers had access to the G-Suite system, we identified that it contained 3TB of data which included mailbox data and other documents.

The Receivers have since obtained a partial back up copy of the Brite Group's G-Suite data (approximately 2TB of 3TB total data) (Partial G-Suite Image). The Partial G-Suite Image has enabled the Receivers to significantly progress their investigations, however, given that the data is incomplete and the limited time available, the Receivers' conclusions may not be complete.

The Receivers were provided with access to the Brite Advisors Xero file on 5 Dec-23, however this was subsequently disabled on 21 Dec-23.

The Receivers have liaised with Xero directly and obtained transfer of the subscription on 19 Jan-24.

| | | |
|-----------|-------------|---|
| 19 Jan-24 | Xero access | <ul style="list-style-type: none">▪ Accounting reports including profit and loss statements, balance sheets, etc▪ All account ledgers including related party loan ledgers |
|-----------|-------------|---|

D.4 Listing of Brite Advisors' Bank Accounts and Statements

The Receivers have been provided with the following bank statements since the December Report:

| Summary of bank statements provided for Brite Advisors' bank accounts | |
|---|--|
| Account information | Additional bank statements provided since December Report |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd AUD Client BSB/Account number: [REDACTED] 549 Currency: AUD | Bank statements provided for the period from 17 October 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd AUD Operational BSB/Account number: [REDACTED] 905 Currency: AUD | Bank statements provided for the period 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd CHF Client BSB/Account number: [REDACTED] 769 Currency: CHF | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd CHF Operational BSB/Account number: [REDACTED] 857 Currency: CHF | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd ZAR Client BSB/Account number: [REDACTED] 019 Currency: ZAR | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd ZAR Operational BSB/Account number: [REDACTED] 649 Currency: ZAR | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd NZD Client BSB/Account number: [REDACTED] 163 Currency: NZD | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac Account name: Brite Advisors Pty Ltd EUR Client BSB/Account number: [REDACTED] 500 Currency: EUR | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |
| Account owner: Brite Advisors Pty Ltd Banking institution: Westpac | Bank statements provided for the period from 1 December 2023 to 18 January 2024. |

Summary of bank statements provided for Brite Advisors' bank accounts

Account name: Brite Advisors Pty Ltd

EUR Operational

BSB/Account number: [REDACTED] 737

Currency: EUR

Account owner: Brite Advisors Pty Ltd

Bank statements provided for the period from 1 December 2023 to 18 January 2024.

Banking institution: Westpac

Account name: Brite Advisors Pty Ltd

GBP Client

BSB/Account number: [REDACTED] 086

Currency: GBP

Account owner: Brite Advisors Pty Ltd

Bank statements provided for the period from 1 December 2023 to 18 January 2024.

Banking institution: Westpac

Account name: Brite Advisors Pty Ltd

GBP Operational

BSB/Account number: [REDACTED] 840

Currency: GBP

Account owner: Brite Advisors Pty Ltd

Bank statements provided for the period from 1 December 2023 to 18 January 2024.

Banking institution: Westpac

Account name: Brite Advisors Pty Ltd

USD Client

BSB/Account number: [REDACTED] 274

Currency: USD

Account owner: Brite Advisors Pty Ltd

Bank statements provided for the period from 1 December 2023 to 18 January 2024.

Banking institution: Westpac

Account name: Brite Advisors Pty Ltd

USD Operational

BSB/Account number: [REDACTED] 939

Currency: USD

Summary of bank statements held for other Brite Group accounts

Account information

Additional bank statements provided since December Report

Account owner: Brite Hong Kong Limited (formerly Brite Advisors Limited)

No additional bank statements provided.

Banking institution: HSBC

Account name: Client account

BSB/Account number: [REDACTED] 292

Currency: HKD

Account owner: Brite Hong Kong Limited (formerly Genesis Investment Management Limited)

Bank statements provided for the period 1 November 2023 to 30 November 2023.

Banking institution: HSBC

Account name: CombiNations Account

BSB/Account number: [REDACTED] 274

Currency: USD

Account owner: Brite Hong Kong Limited (formerly Genesis Investment Management Limited)

Bank statements provided for the period 1 November 2023 to 30 November 2023.

Banking institution: HSBC

Account name: CombiNations Account

BSB/Account number: [REDACTED] 275

Currency: EUR

Summary of bank statements held for other Brite Group accounts

| | |
|---|--|
| Account owner: Brite Hong Kong Limited (formerly Genesis Investment Management Limited) Banking institution: HSBC Account name: CombiNations Account BSB/Account number: [REDACTED] 276 Currency: GBP | Bank statements provided for the period 1 November 2023 to 30 November 2023. |
| Account owner: Brite Hong Kong Limited (formerly Genesis Investment Management Limited) Banking institution: HSBC Account name: CombiNations Account BSB/Account number: [REDACTED] 277 Currency: AUD | Bank statements provided for the period 1 November 2023 to 30 November 2023. |
| Account owner: Brite Hong Kong Limited (formerly Brite Advisors Limited) Banking Institution: HSBC Account name: HSBC Business Direct / Operational BSB/Account number: [REDACTED] 836 | No additional bank statements provided. |

D.5 Listing of Interactive Brokers Accounts and Statements

Summary of statements held for Brite Advisors' Interactive Brokers accounts

| Account information | Availability of statements |
|--|--|
| IB Australia | |
| Account owner: Brite Advisors Pty Ltd Account number: [REDACTED] 295 Account type: Master account Currency: USD | Activity statement provided as at 13 December 2023. Summarised statement provided as at 12 January 2024. |
| Account owner: Brite Advisors Pty Ltd Account number: [REDACTED] 311 Account type: Sub-account Currency: USD | Activity statement provided as at 13 December 2023. Summarised statement provided as at 12 January 2024. |
| Account owner: Brite Advisors Pty Ltd Account number: [REDACTED] 312 Account type: Sub-account Currency: USD | Activity statement provided as at 13 December 2023. Summarised statement provided as at 12 January 2024. |
| Account owner: Brite Advisors Pty Ltd Account number: [REDACTED] 939 Account type: Master account Currency: USD | Activity statement provided as at 13 December 2023. Summarised statement provided as at 12 January 2024. |
| Account owner: Brite Advisors Pty Ltd Account number: [REDACTED] 940 Account type: Sub-account Currency: GBP | Activity statement provided as at 13 December 2023. Summarised statement provided as at 12 January 2024. |
| Account owner: Brite Advisors Pty Ltd Account number: [REDACTED] 256 Account type: Master account Currency: USD | Activity statement provided as at 13 December 2023. Summarised statement provided as at 12 January 2024. |

Summary of statements held for Brite Advisors' Interactive Brokers accounts

Account owner: Brite Advisors Pty Ltd Activity statement provided for the period 1 December 2023 to 31 December 2023.
Account number: [REDACTED]190 Summarised statement provided as at 12 January 2024.

Account type: Sub-account
Currency: USD

Account owner: Brite Advisors Pty Ltd Activity statement provided as at 13 December 2023. Summarised statement provided
Account number: [REDACTED]189 as at 12 January 2024.
Account type: Sub-account
Currency: USD

Account owner: Brite Advisors Pty Ltd Activity statement provided as at 13 December 2023. Summarised statement provided
Account number: [REDACTED]976 as at 12 January 2024.
Account type: Master account
Currency: USD

Account owner: Brite Advisors Pty Ltd Activity statement provided as at 13 December 2023. Summarised statement provided
Account number: [REDACTED]948 as at 12 January 2024.
Account type: Sub-account
Currency: USD

Account owner: Brite Advisors Pty Ltd Activity statement provided as at 13 December 2023. Summarised statement provided
Account number: [REDACTED]949 as at 12 January 2024.
Account type: Sub-account
Currency: USD

IB Hong Kong

Account owner: Brite Hong Kong No additional statements provided.
Limited

Account number: [REDACTED]830
Account type: Master account
Currency: GBP

Account owner: Brite Hong Kong No additional statements provided.
Limited

Account number: [REDACTED]831 (sub-
account of [REDACTED]830)
Account type: Sub-account (Client
account)
Currency: GBP

Account owner: Brite Hong Kong Activity statement provided as at 13 December 2023. Summarised statement provided
Limited as at 12 January 2024.

Account number: [REDACTED]396
Account type: Master account
Currency: USD

Account owner: Brite Hong Kong Activity statement provided as at 13 December 2023. Summarised statement provided
Limited as at 12 January 2024.

Account number: [REDACTED]937 (sub-
account of [REDACTED]396)
Account type: Sub-account (Client
account)
Currency: USD

Account owner: Brite Hong Kong Activity statement provided as at 13 December 2023. Summarised statement provided
Limited as at 12 January 2024.

Account number: [REDACTED]936 (sub-
account of [REDACTED]396)
Account type: Sub-account (Client
account)
Currency: USD

IB Australia - Closed accounts

Summary of statements held for Brite Advisors' Interactive Brokers accounts

Account owner: Brite Advisors Pty Ltd No additional statements provided.

Account number: [REDACTED] 493

Account type: Master account

Currency: n/a

Account owner: Brite Advisors Pty Ltd No additional statements provided.

Account number: [REDACTED] 586

Account type: Sub-account

Currency: n/a

Account owner: Brite Advisors Pty Ltd No additional statements provided.

Account number: [REDACTED] 585

Account type: Sub-account

Currency: n/a

Account owner: Brite Advisors Pty Ltd No additional statements provided.

Account number: [REDACTED] 295

Account type: Master account

Currency: n/a

Account owner: Brite Advisors Pty Ltd No additional statements provided.

Account number: [REDACTED] 014

Account type: Sub-account

Currency: n/a

Account owner: Brite Advisors Pty Ltd No additional statements provided.

Account number: [REDACTED] 015

Account type: Sub-account

Currency: n/a

E Receivership update on key matters

E.1 Cost update

E.1.1 The schedule below provides an update of the Receivers' costs incurred to 19 January 2024 as against the budget provided to the Court in Ms Smith's third affidavit dated 20 December 2023.

| Brite Advisors - Budget | | | | |
|--|------------------------|----------------------------------|---|--------------------------------|
| Cost | Weekly cost (\$AUD) | Budget to 2 Feb-24 (\$AUD) | Costs incurred to 19 Jan-24 (\$AUD) | Remaining budget (\$AUD) |
| Ongoing costs | | | | |
| Support staff function | 15,296 | 198,843 | (110,164) | 88,679 |
| Admin team support | 7,500 | 52,500 | - | 52,500 |
| Ongoing IT subscription costs | 37,198 | 260,383 | (68,191) | 192,192 |
| Contingency and other overheads | 25,000 | 175,000 | - | 175,000 |
| Insurance costs | 20,000 | 260,000 | (114,324) | 145,676 |
| Legal costs | 75,000 | 525,000 | (250,000) | 275,000 |
| Total ongoing costs | 179,993 | 1,471,727 | (542,679) | 929,047 |
| One-off costs | | | | |
| Salesforce - Outstanding costs | N/A | 313,120 | (334,119) | (20,999) |
| AutoRek - Outstanding costs | N/A | 162,878 | (162,878) | (0) |
| Google Workspace | N/A | 6,825 | - | 6,825 |
| Own Back-up | N/A | 746 | - | 746 |
| Expenses allowance from Orders of 9 November 2023 | N/A | 238,057 | (68,337) | 169,721 |
| Estimated legal costs of Mr Kevin Dundo and associates | N/A | 150,000 | (40,364) | 109,636 |
| Specialist tax, financial reporting and AFSL compliance advice | N/A | 25,000 | (40,000) | (15,000) |
| Total one-off costs | 896,626 | (645,698) | 250,928 | |
| Total estimated costs | 179,993 | 2,368,353 | (1,188,377) | 1,179,976 |

E.1.2 The Receivers estimated a total budget of circa \$2.4 million to 2 February 2024 of which circa \$1.2 million remains as at 19 January 2024. To date, the Receivers have incurred circa \$1.2 million in costs comprising circa \$0.6 million of ongoing post-appointment costs and circa \$0.6 million of one-off pre-appointment costs. The one-off costs include:

- (a) Circa \$334k in relation to outstanding Salesforce invoices which require full payment to restore Brite Advisors' internal systems and allow for beneficiaries to access Client AuM information;
- (a) Circa \$163k in relation to outstanding AutoRek invoices to maintain the AutoRek data platform;
- (b) Circa \$108k in Court approved operating expenses and legal costs of Brite Advisors; and
- (c) \$40k in relation to specialist financial reporting and tax advice.

E.1.3 The Receivers incurred circa \$592k in ongoing costs, comprising (i) circa \$110k in relation to the engagement of i-Convergence to assist with the ongoing operation and maintaining of AuM systems and reporting for a two month period, together with BML in respect of its portfolio risk review, (ii) circa \$68k in AutoRek invoices for the period to 31 March 2024, and (iii) circa \$114k in relation to newly inceptioned professional indemnity and statutory liability insurance policies and ongoing run-off cover in relation to pre-appointment policies.

E.1.4 The Receivers' estimate of legal costs incurred to date total approximately \$250k.

E.1.5 As set out in section 3.4.26, the Receivers have not determined it is appropriate for the Receivers to drawdown on fees and interest on behalf of Brite Advisors. Based on a flat platform fee of 1% p.a. (and excluding any additional transfer and surrender fees or trading, FX and/or rebalancing fees that may additionally be earned by Brite), the Receivers estimate that monthly fee accrual would ordinarily be in the

vicinity of \$0.5 million per month, if drawn. This estimate has also been supported by analysis completed by i-Convergence for the months of October, November and December 2023.

E.1.6 Whilst there are costs associated with the preservation orders and appointment of Receivers, these costs are not expected to exceed the quantum of (i) fees ordinarily drawable by Brite Group entities, and (ii) interest accrued on cash balances held.

E.2 Beneficiaries' pension withdrawal request – update

- E.2.1 Including outstanding requests dating back to the ASIC freezing orders, the Receivers have received and are dealing with approximately 243 pension withdrawal requests, comprising regular withdrawals, pre-commencement lump sum (**PCLS**) entitlements, out of cycle lump sum requests and full surrender requests. 59 full surrender requests have been received to date, which are not permitted pursuant to current Court Orders.
- E.2.2 As at 23 January 2024, 35 pension withdrawal requests equating to US\$384,525 have been assessed to meet the parameters of the 21 December Orders and paid to Trustees for beneficiary distribution, or direct to beneficiaries.
- E.2.3 Subject to confirmation of details and documentation, a further 65 pension withdrawal distributions are in progress.
- E.2.4 Based on the review of Trustee documentation, only nine of the 17 Trustees have sufficient documentation to facilitate the payment of pension withdrawals direct to Trustees. Where documentation is insufficient, the Receivers are seeking express approval and directions from beneficiaries.