



10 April 2025

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

Update regarding Receivers' present position on Corporate Trustee feedback on Minerva Notes

I refer to the orders of the Federal Court of Australia (the **Court**) dated 6 February 2024, appointing Robert Michael Kirman and I as:

- court appointed receivers and managers of the property, assets and undertakings held by Brite Advisors on trust for others (**Receivers**); and
- joint and several liquidators of Brite Advisors.

On 25 March 2025, the Receivers filed a supplementary explanatory memorandum (**Supplementary EM**) and a minute of proposed orders setting out the orders that the Receivers propose the Court makes to give effect to our recommended distribution methodology (**Distribution Methodology Application**).

At section 2.10.2(d) of the Supplementary EM, the Receivers noted that we had received feedback on the explanatory memorandum dated 4 December 2024 (**Explanatory Memorandum**) from one of the Corporate Trustees on 25 March 2025 (being the day of filing the Supplementary EM), that we had not yet had an opportunity to consider that feedback in detail, but that we would do so and publish a circular setting out the Receivers' present position in response to that feedback.

Feedback received from STM Malta and Receivers' response

Annexed to this circular is an addendum to the Supplementary Explanatory Memorandum which outlines the feedback received from STM Malta and the Receivers' response.

In short, the Receivers consider that STM Malta has raised legitimate factual queries and legal points of some merit. Nonetheless, the Receivers presently remain of the view that the way they have proposed to treat the Minerva Beneficiaries, as outlined in the Explanatory Memorandum, is the most appropriate approach. However, the Receivers consider it appropriate to:

- prepare a supplementary factual report to provide further facts for the Court and deal with the factual issues raised by STM Malta to the extent possible; and
- in accordance with the Receivers' role as independent officers and to assist the Court, present both approaches to the valuation and treatment of the Beneficiaries' entitlements relating to Minerva Notes, being the proposal in the Explanatory Memorandum and STM Malta's proposal, to the Court at the Distribution Methodology Application hearing. The legal arguments underpinning both approaches will be outlined in written submissions in full to assist the Court.

The Receivers propose to file the supplementary factual report with the Court by **2 May 2025**.



The Receivers will invite consultation with STM Malta, and any other Corporate Trustee, on the submissions to be filed in advance of the Distribution Methodology Application hearing to ensure that those submissions adequately capture the approach and arguments put forward by STM Malta.

Upcoming Court milestones

Any person wishing to be heard on the Distribution Methodology Application as an interested party must make an application to the Court for leave to be heard, and serve a copy of that application on the Receivers, by **22 April 2025**.

The Court has listed a first return hearing for the programming of any such applications for leave to be heard that are filed on **7 May 2025 at 10am AWST**. We expect that the hearing will be livestreamed on the Court's YouTube channel: [Federal Court of Australia - YouTube](https://www.youtube.com/@federalcourtau)

Yours faithfully

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

Linda Smith

Receiver and Manager



Addendum to Supplementary Explanatory Memorandum dated 25 March 2025

The text that follows in this addendum should be read as being inserted after paragraph 2.10.7 of the Receivers' Supplementary Explanatory Memorandum dated 25 March 2025.

Further feedback and response (STM Malta)

2.10.8 STM Malta has provided feedback in response to the Receivers' position on the Minerva Notes. STM Malta's position is that the Minerva Beneficiaries have no entitlement to share proportionately with the other Beneficiaries who are proposed to participate in the Deficient Mixed Fund.

2.10.9 Specifically, the key points raised by STM Malta are that:

- It is not proper to treat a potential (but non-extant) claim for breach of fiduciary duty as a forgone conclusion.
- It is unclear whether Brite Advisors would have a defence of fully informed consent from each Beneficiary / Corporate Trustee.
- Even if Brite Advisors would not have a defence, the Minerva Beneficiaries would need to establish causation. In that regard STM Malta considers that it is not apparent that any losses suffered by the Minerva Beneficiaries, by reason of the low prospects of recovery of the investment in the Minerva Notes, were caused by the breach of duty.
- Even if the claim were made out, the remedy flowing from the alleged breach would be a personal remedy which would not give the Minerva Beneficiaries a right to share proportionately in the Deficient Mixed Fund.
- Crediting Minerva Beneficiaries with the cost of their investment in the Minerva Notes was itself a breach of trust. The transactions crediting the Minerva Beneficiaries can be avoided by other Beneficiaries.
- Any sale back to Brite Advisors should not be given any effect to in circumstances where the sale back occurred with no apparent instructions given by the respective Minerva Beneficiary.

2.10.10 The Receivers have previously set out the facts uncovered through their investigations into the Minerva Notes in the Second Report, [2.3], the Fourth Report, [5.6.52] – [5.6.71] and Appendix 4, and the Explanatory Memorandum, [2.2.39] – [2.2.45] (the key facts are also reiterated at 2.10.4 of the Supplementary Explanatory Memorandum). Set out below are matters drawn from those sources and supplemented in places to provide further detail relevant to the matters raised by STM Malta. In particular the Receivers note:

- Between September 2017 and October 2018, Brite Advisors invested funds from both Corporate Trustee deposits and funds drawn from the IBA Accounts. From the Receivers' investigations, it appears that the funds which were drawn from the IBA Accounts are not funds which were deducted from specific Beneficiaries' available cash. Rather, these drawdowns appear to be unauthorised withdrawals and, as such, this conduct would constitute a breach of trust by Brite Advisors (**Drawdown Breach**).
- Given the timing of purchases of the Minerva Notes and the receipt of funds from Beneficiaries, it appears that Brite Advisors must have been purchasing some of the Minerva Notes as principal rather than merely as agent on behalf of Corporate Trustees / Beneficiaries. Where purchased as principal, these notes would have then later been on-sold to Beneficiaries. Again, it is not clear from investigations conducted to date what proportion of the notes were purchased as principal. It does not appear that Brite Advisors disclosed to any purchasers (Corporate Trustees or Beneficiaries) that it was selling the notes as principal.



- In exchange for Brite Advisors' purchase of the Minerva Notes, BAG was able to obtain a finance facility for its own benefit. It does not appear that this was disclosed to any purchasers (Corporate Trustees or Beneficiaries).
- The Receivers' investigations indicate that Brite Advisors' conduct in selling the Minerva Notes to Beneficiaries likely constituted a breach of fiduciary duty (as well as constituting violations of the *Corporations Act 2001*) (**Selling Breach**).

2.10.11 At present, the Receivers consider that their proposed distribution approach as outlined in the Explanatory Memorandum is preferable to the position put forward by STM Malta, including for the following reasons:

- The material reviewed by the Receivers to date provides a proper basis for them to form the view that there was likely a Selling Breach.
- The Receivers agree that fully informed consent may provide a defence to a claim for breach of fiduciary duty. Whether fully informed consent has been given is a question of fact, taking into consideration all the circumstances of the particular case. The Receivers' investigation to date has not yet identified any evidence that would support this defence. The Receivers are of the view that investigating the circumstances surrounding possible disclosure to and consent received from the various Corporate Trustees, Beneficiaries and possibly those Beneficiaries' financial advisors, would require a significant investment of time and resources. The Receivers do not propose to conduct these investigations.
- The Receivers agree that the Minerva Beneficiaries would need to establish a causal connection to make out the claim. However, as Brite Advisors owed custodial duties as a trustee, a sufficient connection will exist when the loss would not have occurred if there had been no breach of duty, irrespective of whether separate or concurrent causes can be identified. The breach does not need to be causative of the non-recoverability of the Minerva Notes. The Receivers consider that causation would be readily established in this case.
- Regarding the likely remedy flowing from a breach of fiduciary duty, the Receivers note the feedback provided and will present these considerations in its submissions to the Court.
- The Receivers also note the claims which STM Malta has identified the remaining Beneficiaries (who did not invest in Minerva Notes) may have against certain Minerva Beneficiaries in relation to the proceeds of the Drawdown Breach.

2.10.12 The Receivers' present position is informed by an assessment of the rights of interested parties infused with pragmatism, both as to the limits on fact finding and the folly of effectively seeking to litigate what amounts to complex trust claims between Beneficiaries, using the Client AuM to fund that litigation.

2.10.13 The Receivers consider that STM Malta has raised legitimate factual queries and legal points of some merit. Nonetheless, the Receivers presently remain of the view that the way they have proposed to treat the Minerva Beneficiaries, as outlined in the Explanatory Memorandum, is the most appropriate approach. However, the Receivers consider it appropriate to:

- prepare a supplementary factual report **by 2 May 2025** to provide further facts for the Court and deal with the factual issues raised by STM Malta to the extent possible; and
- in accordance with the Receivers' role as independent officers and to assist the Court, present both approaches to the valuation and treatment of the Beneficiaries' entitlements relating to Minerva Notes, being the proposal in the Explanatory Memorandum and STM Malta's proposal, to the Court at the Distribution Methodology Application hearing. The legal arguments underpinning both approaches will be outlined in written submissions in full to assist the



Court. The Receivers will invite consultation with STM Malta, and any other Corporate Trustee, on the submissions to be filed in advance of the Distribution Methodology Application hearing to ensure that those submissions adequately capture the approach put forward by STM Malta.