



Federal Court of Australia

District Registry: Western Australia Registry

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and others named in
the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

AMENDED ORDER
(Amended pursuant to r 39.05(e) of the *Federal Court Rules 2011* (Cth))

JUDGE: Justice O'Sullivan

DATE OF ORDER: 15 September 2025

WHERE MADE: Perth

For the purposes of this order:

“Beneficiaries” or “Beneficiary” means those people or any person with a beneficial interest in the Trust Assets, either directly or through a Corporate Trustee.

“Corporate Trustee” means any trustee or pension administrator who itself holds its interest in the Trust Assets on trust for underlying beneficiaries.

“Deficient Mixed Fund” means the pooled fund defined in order 2 below.

“Excluded Assets” means the cash identified in orders 8 and 9 below, and the Moventum Assets.

“IB Accounts” means the following accounts held in the name of Brite Advisors with Interactive Brokers Australia Pty Ltd and containing the Trust Assets:

- a) I5876295
- b) UL3311311



- c) UL3311312
- d) I6075976
- e) UL6060948
- f) UL6060949
- g) I3214939
- h) U3214940
- i) I12469256
- j) UL9224189
- k) US9224190

“Interim Funds Manager” means BML Funds Management Pty Ltd in its role as interim fund manager appointed pursuant to orders in this matter dated 6 March 2024.

“Minerva Notes” means the financial notes held by Brite Advisors and which were issued by Minerva Lending Plc.

“Moventum Assets” means the financial notes held by Brite Advisors on trust for certain Beneficiaries which are held on the platform provided by Moventum S.C.A.

“Receivers” means Linda Methven Smith and Robert Michael Kirman in their capacity as joint and several court-appointed receivers and managers of the Trust Assets.

“Structured Notes” means the financial notes held by Brite Advisors on trust for certain Beneficiaries, not being the Minerva Notes or the Moventum Assets.

“Trust Assets” means the property, assets and undertakings held by the Defendant on trust for another to which the Receivers have been appointed, jointly and severally, as receivers and managers.



“Verified Entitlement” means the entitlement of each Beneficiary as calculated and verified in accordance with the orders in this matter dated 2 September 2024.

“Westpac Client Accounts” means the following accounts held in the name of Brite Advisors with Westpac Banking Corporation:

- a) AUD – 036-237 450549
- b) CHF – 034-770 001769
- c) ZAR – 034-762 003019
- d) EUR – 034-705 036500
- e) USD – 034-702 136274
- f) GBP – 034-703 011086
- g) NZD – 034-748 032163

“Westpac Operating Accounts” means the following accounts held in the name of Brite Advisors with Westpac Banking Corporation:

- a) AUD – 036-230 149905
- b) CHF – 034-770 001857
- c) ZAR – 034-762 002649
- d) EUR – 034-705 040737
- e) USD – 034-702 241939
- f) GBP – 034-703 025840

THE COURT ORDERS THAT:

1. The Receivers would be acting properly and are justified in adopting the following approach to determining and making a distribution from the Trust Assets to Corporate Trustees or Beneficiaries.



Deficient Mixed Fund

2. The Receivers can treat:
- (a) the assets and cash contained in the IB Accounts;
 - (b) the cash contained in the Westpac Client Accounts which does not form a part of the Excluded Assets;
 - (c) the cash contained in the Westpac Operating Accounts;
 - (d) the proceeds of any assets in the IB Accounts that have, pursuant to orders of the Court, been liquidated and transferred out of the IB Accounts;
 - (e) the assets and cash contained in the EU Moventum Account;
 - (f) any future recoveries as contemplated by orders 6 and 38 below; and
 - (g) any interest accrued on (b), (c), (d), (e) or (f),

as a pooled fund (together the **Deficient Mixed Fund**), with each Beneficiary having an equitable charge over the entire pooled fund to the value of their Verified Entitlement (to the extent it includes assets and cash which Brite Advisors held or purported to hold in the IB Accounts), but without any traceable interest to specific assets or cash in the Deficient Mixed Fund.

3. In respect of Beneficiaries whose Verified Entitlement includes an entitlement to the Deficient Mixed Fund, the Receivers can calculate the amount of their distribution relating to such assets (**Beneficiary's Deficient Mixed Fund Distribution**) on a *pari passu* basis as follows.

$$\text{Beneficiary's Deficient Mixed Fund Distribution} = \frac{BE - Loans}{TE - TL} * \text{Final Total Value} - (\text{Withdrawals} + \text{Tax}) - ID$$

Where:

BE (Beneficiary Entitlement) is the total value of an individual Beneficiary's Verified Entitlement relating to assets and cash which Brite Advisors held or purported to hold in the IB Accounts.

TE (Total Entitlements) is the sum of each and every BE.



TL (Total Loans) is the sum of each and every Loan.

Final Total Value is the total value of the Deficient Mixed Fund, less any amount representing the value of the Retained Funds identified in order 20 and the IB Margin Loan Security Assets identified in order 17 below, plus any pension withdrawals paid to Beneficiaries after 13 December 2023 as required by order 27 and any Tax that has been paid by the Receivers before the Valuation Date. The Final Value is to be determined as at the Valuation Date, as defined in order 27. For clarity, the Deficient Mixed Fund does not include the Excluded Assets.

Withdrawals are post-appointment pension/hardship withdrawals paid to that Beneficiary. This represents a set-off against the Beneficiary's distribution.

Loans are any funds provided by Brite Advisors to that Beneficiary pursuant to a loan agreement and which have not been repaid. This represents a reduction of the Beneficiary's Verified Entitlement.

Tax is any tax liability which the Receivers or Brite Advisors must pay or has paid on behalf of a Corporate Trustee or Beneficiary or an amount that must be withheld or has been withheld in respect of a Corporate Trustee or Beneficiary's tax liability. This represents a deduction against the Beneficiary's distribution.

ID (Interim Distribution) is any distribution already paid for the benefit of that Beneficiary pursuant to an order made by this Court in this matter and as contemplated by order 24A.

4. For the purposes of the calculation of each Beneficiary's Deficient Mixed Fund Distribution in accordance with the above paragraph, the Receivers can treat the following matters as having no impact on that calculation:
 - (a) whether Brite Advisors held or purported to hold model portfolio assets, bespoke portfolio assets or both for the Beneficiary;



- (b) the “Master Account” in which Brite Advisors held or purported to hold that Beneficiary’s assets in;
- (c) the business unit designation or financial advisor appointed (or any other jurisdictional identifier) for that Beneficiary, as reflected in Brite Advisors’ systems;
- (d) any reassurance provided by Brite Advisors or a related or third party that the Beneficiary’s assets were segregated; and
- (e) any representation by Brite Advisors or a related or third party that the Beneficiary held certain identifiable assets in the IB Accounts.

Minerva Notes

- 5. The Receivers can treat Beneficiaries who held Minerva Notes through Brite Advisors as at 13 December 2023 as having an entitlement to the Deficient Mixed Fund equal to the price paid by the Beneficiaries for the notes.
- 6. To the extent Brite Advisors is able to recover any funds linked with the Minerva Notes, such recoveries are to form a part of the Deficient Mixed Fund and are to be distributed in accordance with the Deficient Mixed Fund Distribution formula.

Structured Notes

- 7. The Receivers can treat Beneficiaries on whose behalf Brite Advisors should have held Structured Notes as at 13 December 2023, but where those Structured Notes are not actually held, as having an entitlement to the Deficient Mixed Fund equal to the estimated market value of the Structured Notes as at 13 December 2023.

Excluded Assets

Cash held in Westpac Client Accounts

- 8. The Receivers can distribute the cash held in Brite Advisors’ Westpac Client Accounts as follows.
- 9. In respect of any cash deposited in these accounts by a Beneficiary on or after 16 October 2023 and where that cash remained in the relevant Westpac Account until



the appointment of the Receivers on 13 December 2023, the Receivers can distribute such deposits along with any associated interest accrued back to the depositing Beneficiaries in full.

10. Prior to making the transfer contemplated in the previous order, the Receivers can require that the Beneficiary who is to receive this distribution pay to the Receivers a fee representing a proportionate share of fees and expenses of the Receivers concerning their work in relation to the cash (including investigation, administration and realisation) as approved by the Court. The Receivers can allow a Beneficiary to offset the fee against the cash to be transferred.
11. In respect of any cash deposited in these accounts which represent the proceeds of matured structured notes which were held on the Moventum platform, these funds are to be distributed to Beneficiaries who hold a proprietary right to those notes in accordance with order 13 below.
12. In respect of the remaining cash in the Westpac Client Accounts (excluding amounts withheld in respect of potential tax liabilities), the Receivers are to treat this as part of the Deficient Mixed Fund.

Moventum Assets

13. The Receivers can transfer the structured notes held on the Moventum platform in the USD and GBP accounts, and any proceeds deposited into the Westpac Client Accounts, which are the subject of a Beneficiary's Verified Entitlement, back to the Beneficiary or the Corporate Trustee for the benefit of the Beneficiary entitled to those notes *in specie*. Where notes have matured, the Receivers can transfer the cash received upon maturity along with any interest received to the Beneficiary or the Corporate Trustee for the Beneficiary entitled to that cash.
14. Prior to making the transfer contemplated in the previous order, the Receivers can require that the Beneficiary who is to receive this distribution pay to the Receivers a fee representing a proportionate share of fees and expenses of the Receivers concerning their work in relation to the Moventum Assets (including investigation, administration and transfer) as approved by the Court. The



Receivers can allow a Beneficiary who is entitled to a distribution from the Deficient Mixed Fund to offset the fee against their Deficient Mixed Fund Distribution.

Retention of tax estimate

15. In making the distributions referred to in orders 9, 11, and 13 the Receivers can retain from each such distribution an amount reflecting a conservative estimate of any related tax liability, including any withholding tax liability, of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries required to be satisfied from the Client AuM.
16. The Receivers can use those retained amounts to satisfy those tax liabilities and any amount not needed for that purpose will be distributed in accordance with orders 9, 11, and 13 as appropriate.

IB Margin Loan Security Assets

17. The Receivers will not distribute the cash held in the IB Accounts I5876295, I6075976, and I12469256 and will retain assets adequate to comply with the orders made in this matter dated 5 June 2024 (**IB Margin Loan Security Assets**).
18. Nothing in these orders affects the ongoing operation and effect of the agreements and undertakings recorded in order 3 of the orders made in this matter on 5 June 2024.
19. Until the determination of the Retained Funds as referred to in orders 20 and 21 below, and without limiting or affecting orders 17 and 18 above,
 - (a) the Receivers agree and undertake to the Court that nothing in these orders:
 - (i) has the effect of in any way prejudicing any of the rights of Interactive Brokers Australia Pty Ltd (**IBA**) with respect to the Margin Loan (as that term is defined in the orders made in this matter on 5 June 2024), IBA's contractual arrangements with the Defendant or the Receivers or otherwise relating to or arising out of or in connection with its relationship with Brite Advisors, including



without limitation any security interest or set-off rights it has over any assets affected by these orders; or

- (ii) amounts to a concession or agreement by IBA that it is not entitled to interest and dividend amounts earned on the Brite Assets whilst any short cash balance remains on any of the IB Accounts, nor does it constitute any waiver of any such entitlement, and the Receivers will not make any argument to the contrary; and
- (b) IBA agrees and undertakes to the Court that nothing in these orders:
- (i) has the effect of in any way prejudicing any of the rights of the Defendant or the Receivers with respect to the Margin Loan, the contractual arrangements with IBA, or otherwise relating to or arising out of or in connection with the relationship with IBA;
 - (ii) amounts to a concession or agreement by the Defendant or the Receivers that it is not entitled to challenge the right of IBA to interest and dividend amounts earned on the Brite Assets, and IBA will not make any argument to the contrary; and
- (c) the Receivers agree and undertake to the Court that they will not transfer or cause to be transferred *in specie* assets held in the IB Accounts from IBA's trading platform to a third party trading platform without giving 14 days' notice to IBA.

Retention of Funds

20. The Receivers must deduct from the Final Total Value, referred to above in order 3, an amount to be determined and approved by the Court. These funds are to be deducted prior to the Valuation Date and retained by the Receivers **(Retained Funds)**.
21. The quantum of the Retained Fund is to be comprised of the following amounts, each to be specified on application to the Court and supported with evidence:
- (a) An amount reflecting a conservative estimate of the potential tax liabilities



of the Receivers, Brite Advisors or of Corporate Trustees / Beneficiaries to be satisfied from the Client AuM, including any interest or penalties, where there are unresolved tax issues at the time of determining the amount of any distribution;

- (b) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in investigating and pursuing claims against third parties;
 - (c) An amount reflecting the Receivers' reasonable remuneration, costs and expenses to resolve any other outstanding matter and a conservative estimate of any other potential liability identified at the time of determining the amount of any distribution, including without limitation, any potential adverse costs order that may be made against the Receivers or Brite Advisors; and
 - (d) An amount reflecting the Receivers' reasonable remuneration, costs and expenses in managing the Retained Funds for the anticipated remaining length of the Receivership.
22. The Retained Funds are to be managed by the Interim Funds Manager and are to remain held on trust for the Beneficiaries who receive a distribution from the Deficient Mixed Fund pursuant to these orders in proportion to their Beneficiary Entitlement – Loans (as defined in order 3 above).
23. The Retained Funds remain subject to prior orders of this Court relating to Trust Assets, including orders 9 and 10 of the orders made in this matter on 6 February 2024 (as amended).
24. Following any distribution in accordance with orders 25 to 31 and retention of the Retained Funds, the Receivers are to:
- (a) retain the Retained Funds until further order of the Court; and
 - (b) before any further distribution but no later than four months from the completion of the interim distribution contemplated by these orders, report to the Court on the progress of the outstanding matters and on any



proposed further distribution.

Interim Distribution

24A. Any application for an interim distribution is to be supported by evidence relating to:

- (a) the value of the interim distribution;
- (b) the timing of the liquidation; and
- (c) the timing of the distribution.

Final Distribution Payment

25. Once the Retained Funds have been determined and approved by the Court in accordance with orders 20 and 21 above, the Receivers can, with the assistance of the Interim Funds Manager, liquidate the assets in the IB Accounts (except the IB Margin Loan Security Assets) over such period as is necessary in their opinion to achieve a fair price for those assets.
26. The proceeds of this liquidation, less the Retained Funds, will be available for distribution (**Distributable Amount**).
27. The Distributable Amount will be valued for the purposes of a distribution on a single date to be set by the Receivers (**Valuation Date**) and in US dollars, applying the prevailing exchange rates on that date as identified by the Receivers to the extent any cash is held in another currency. The total amount of pension withdrawals (or the USD equivalent calculated as at the date of each payment) paid to Beneficiaries after 13 December 2023 will be added to this value (**Final Total Value**).
28. The distribution owing to each Beneficiary will be calculated by reference to the formula in order 3 applied to the Final Total Value at the Valuation Date.
 - (a) Where a Beneficiary has received a pension withdrawal, this will be deducted from the amount to be distributed to them or to their Corporate Trustee.



- (b) Where Brite Advisors is liable to pay any tax on behalf of a Corporate Trustee or Beneficiary or withhold an amount in respect of a Corporate Trustee or Beneficiary's tax liability, that amount will be deducted from the amount to be distributed.
29. Where a Corporate Trustee or Beneficiary is to be paid a distribution or part thereof in a currency other than US dollars, the Receivers will convert such funds to that currency as required on or shortly after the Valuation Date at the prevailing exchange rate where necessary.
30. A cash payment will be made to each Corporate Trustee or Beneficiary, the recipient to be determined by orders 31 to 35 below, in the currency or currencies nominated in accordance with a process to be established by the Receivers.
31. The Receivers are to make payment to any Beneficiary who does not have a Corporate Trustee and to the relevant trustee entities controlled by the following Corporate Trustees:
- (a) STM Malta Pension Services Limited - Company number C 51028;
 - (b) Corinthian Pension Trustees Limited (Administrators Appointed) - Company number 110658;
 - (c) Pantheon Pension Trustees Limited (Administrators Appointed) - Company number 112310;
 - (d) IFG Pensions Limited - Company number 04826217;
 - (e) The Pensioneer Trustee Company (Guernsey) Limited - Company number CMP27891;
 - (f) Pathlines Pensions UK Limited (formerly London & Colonial Services Limited) - Company number 2966313;
 - (g) Praxis Pes Malta Limited (formerly known as Trireme Pension Services (Malta) Limited) - Company number C 58492;
 - (h) Sovereign Trust (Guernsey) Limited - Company number CMP51015;



- (i) Sovereign Trust International Limited - Company number 44491;
- (j) Sovereign Pension Services Limited - Company number C 56627;
- (k) Concept Group Limited - Company number CMP41012;
- (l) Boal and Co (Pensions) Limited - Company number 104242C;
- (m) Mattioli Woods Limited - Company number 03140521; and
- (n) iPensions Group Limited - Company number 03683070.

32. Any amount of the Distributable Amount that is not distributed in accordance with order 31 because the Corporate Trustee is not listed in that order will continue to be held on trust.

Distribution Recipient

- 33. Where a Beneficiary has a Corporate Trustee in respect of an account with Brite Advisors in relation to which their entitlement arises, the Receivers are to make the distribution payment or transfer the asset, as applicable, to that Corporate Trustee or Substituted Corporate Trustee, subject to any notice received as contemplated in order 35 below, provided that Corporate Trustee or Substituted Corporate Trustee is listed in order 31 above.
- 34. Where a Beneficiary has an account with Brite Advisors without an intermediary Corporate Trustee, the Receivers are to make the distribution payment or transfer the asset, as applicable, to that Beneficiary.
- 35. Where a Beneficiary has changed their trustee, from a Corporate Trustee to a new trustee (the **Substituted Corporate Trustee**), and the Beneficiary, Corporate Trustee and Substituted Corporate Trustee have, in accordance with a procedure to be established by the Receivers, jointly advised the Receivers of this change and jointly instructed the Receivers that they wish for the payment of any distribution relating to that Beneficiary's entitlement to be made to the Substituted Corporate Trustee, the Receivers can make such payment to the Substituted Corporate Trustee, provided the Substituted Corporate Trustee is listed in order 31 above.



Pension Withdrawals

36. The Receivers may cease assessing and processing pension withdrawals if the Receivers anticipate making a distribution payment to that Beneficiary in accordance with the above orders within 60 calendar days.
37. Once the Receivers have made a distribution payment to a Beneficiary, even if the Receivers have retained Client AuM and anticipate making a further payment to that Beneficiary in future, the Receivers may cease assessing and processing withdrawal requests from that Beneficiary.

Future Recoveries

38. Any recoveries that Brite Advisors may obtain which are related to the losses incurred by the trust will form a part of the Deficient Mixed Fund and will be distributed in accordance with the formula in order 3 and the approach specified in orders 28 – 35 above.

Date orders authenticated: 16 September 2025


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

No: WAD13/2024

Federal Court of Australia

District Registry: Western Australia Registry

Division: General

Interested Person	LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR CAPACITY AS RECEIVERS AND MANAGERS OF BRITE ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Interested Person	ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN THEIR CAPACITIES AS JOINT ADMINISTRATORS OF RELAY ADMINISTRATION LIMITED, CORINTHIAN PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES LIMITED (ALL IN ADMINISTRATION)
Interested Person	INTERACTIVE BROKERS AUSTRALIA PTY LTD ACN 166 929 568