



12 February 2024

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

**ACN 135 024 412**

**(Brite Advisors)**

**Update and Second FAQ**

As you will be aware, Linda Smith and Rob Kirman of McGrathNicol were appointed joint and several Receivers and Managers of the Property of Brite Advisors (as defined in the 13 December Orders) (**Property**) pursuant to the orders of the Federal Court of Australia (**Court**) made on 13 December 2023 (**13 December Orders**) in proceeding WAD 262 of 2023 (**First Receivership**).

On 6 February 2024, the First Receivership ceased and Linda Smith and Rob Kirman were appointed as:

- joint and several Liquidators of Brite Advisors (**Liquidators**), following an application to wind up Brite Advisors on just and equitable grounds; and
- joint and several Receivers and Managers of the property, assets and undertakings held on Trust (**Trust Assets**) by Brite Advisors (**Receivers**), with broader powers than the First Receivership,

pursuant to the orders of the Court made in proceeding WAD 13 of 2024 and WAD 262 of 2024 (**6 February Orders**). Copies of the 6 February Orders are enclosed. His Honour's Reasons for Judgment are located at the undernoted link.

[Australian Securities and Investments Commission v Brite Advisors Pty Ltd \[2024\] FCA 69 \(fedcourt.gov.au\)](https://www.fedcourt.gov.au)

The purpose of this document is to provide an update in relation to the Liquidators' and Receivers' appointment on 6 February 2024, and guidance in relation to frequently asked questions received from Corporate Trustees and beneficiaries.

The Liquidators are now responsible for winding up the affairs of Brite Advisors and the Receivers remain responsible for managing and dealing with the Client AuM and protecting the interests of underlying beneficiaries. The Asset Preservation Orders obtained by the Australian Securities and Investment Commission (**ASIC**), which restrict the extent to which the Trust Assets including the Client AuM can be dealt with, remain in place.

**Frequently asked questions**

**1 How can Beneficiaries and Corporate Trustees obtain copies of documents filed in the Proceedings?**

In accordance with the Court's Orders dated 8 February 2024, the Receivers and Liquidators are now authorised to make available to Corporate Trustees and Beneficiaries redacted versions of the documents filed in proceedings WAD 262 of 2023 and WAD 13 of 2024 (collectively, the **Proceedings**), excluding those documents subject to confidentiality orders.



The Receivers and Liquidators will make documents available on our website at the following link - <https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd>, once appropriate redactions have been approved by the Court for reasons including confidentiality.

**2      *Why has the variance not been resolved?***

As outlined in the Receivers' previous correspondence dated 1 February 2024 (enclosed), a US\$69.1 million (c10%) variance between the Client AuM reported on the Brite Advisor Salesforce platform and verified Client AuM has been identified as at 9 November 2023. To date, the Receivers have not been in a position to reconcile the variance at a beneficiary level due to the following:

- Beneficiary positions disclosed on Salesforce may not correctly reflect the underlying investments held by Brite Advisors or the amounts outstanding to Interactive Brokers Australia (**IBA**), in respect of which the Client AuM has been used as security.
- The Directors have failed to provide the Receivers with information relating to certain assets of Brite Advisors, including Client AuM not held by IBA.
- The Corporate Trustees have not been able to advise the Receivers of amounts owing to the underlying beneficiaries. A fulsome reconciliation at a Beneficiary level will be required to verify each Beneficiaries' position. This has not been able to occur to date, given the Receivers have incomplete contact details for Beneficiaries.
- The Receivers' access to data systems has been constrained to date. The Receivers are yet to regain access to the Salesforce system, however, are in the final stages of negotiating arrangements with Salesforce and expect to obtain that access shortly. These constraints have hampered the Receivers' ability to undertake the required detailed investigations and reconciliations.
- The Receivers' investigations into the Client AuM transferred to Hong Kong and the funds returned to Australia are ongoing, including (i) which Beneficiaries' funds were transferred to Hong Kong, and (ii) a full account for the funds while in Hong Kong, to establish the reason for the circa AU\$13 million variance in funds returned to Australia.

Resolving the above matters is a complex matter. The Receivers will continue to keep the Corporate Trustees and Beneficiaries updated.

**3      *What does Liquidation mean for the Client AuM?***

The Client AuM, as a Trust Asset, is subject to the Receivers' appointment while the assets subject to the Liquidators' appointment will include any assets beneficially held by Brite Advisors. The Asset preservation orders obtained by ASIC remain in place, and these restrict any dealings with the Client AuM save as provided for by the Court orders.

**4      *What status do Beneficiaries and Corporate Trustees have in the winding-up?***

The Trust Assets are subject to the Receivers' appointment and are not available for distribution to the general (i.e. non-trust) creditors of Brite Advisors.

The liquidation or winding up of Brite Advisors will only deal with the assets and liabilities that Brite Advisors holds, or owes in its own right, and not in any trustee capacity. That is, the Client AuM cannot be used to satisfy any non-trust creditors.



In terms of where Corporate Trustees and Beneficiaries sit in the 'waterfall' of creditors of the receivership, this is a complex legal issue which will be dependent on the extent of trust creditors and characterisation of the Beneficiaries and cannot be confirmed at this stage.

5 *How are gains/losses on the Client AuM since October 2023 going to be treated and reconciled?*

The Receivers are not in a position to advise on this issue at this stage and the Receivers have engaged an experienced fund manager to assist with various matters relating to the management of the Client AuM. The Receivers, in conjunction with their advisors, continue to consider options for management of the Client AuM in order to maximise any return to creditors and Beneficiaries.

The Receivers will provide an update when the position changes.

6 *Will investment valuations statements be made available to Beneficiaries (and/or Corporate Trustees) during the Receivership and Liquidation?*

As set out in the Receivers' previous correspondence dated 1 February 2024 (enclosed), the Receivers are unable to provide investment valuation statements at this time (for the reasons set out in that correspondence). Any investment valuation statements issued to Beneficiaries have not been authorised by the Receivers.

7 *How will interest accruals on cash balances and distributions on securities be attributed to Beneficiaries?*

The Receivers are not in a position to advise at this stage and the Receivers have engaged an experienced fund manager to assist with various matters relating to Client AuM. The above is complicated by the identified US\$69m variance and variance with the returned Hong Kong funds (refer to Question 2) both of which has not been able to be reconciled at a Beneficiary level.

Resolving the above matters is complex. The Receivers and Liquidators will provide updates to Corporate Trustees and Beneficiaries when available and appropriate to do so.

8 *How do the Receivers intend to deal with the margin loans?*

The Receivers understand that Brite Advisors granted security over the Client AuM to secure its obligation to repay the margin loans to IBA.

Further investigations are required to understand the margin loan movements and the validity of the margin securities. The Receivers have sought legal advice in this regard.

9 *Have any investor groups been segregated?*

As set out in the Receivers' recent correspondence dated 1 February 2024 (enclosed), the Receivers' investigations to date indicate that the IBA accounts were held in the name of Brite Advisors in an omnibus structure meaning there was no legal segregation of funds within each IBA account. Brite Advisors granted security to IBA over all the IBA accounts. The Receivers are considering the validity of that security.

As such, the Receivers' investigations indicate that the US\$69m variance (refer Question 2) is not attributable to any particular group of Beneficiaries (for example, those located in any particular jurisdiction).

10 *Are investment advisory fees being paid to any of the Brite Group entities from the Client AuM?*

The Receivers are not aware of any contractual relationship between Brite Advisors and advisors in the Brite Group. The Receivers therefore do not currently consider there is a basis for advisors to seek to be paid



advisory fees from Brite Advisors and, at this stage, do not intend to pay any investment advisory fees from the Client AuM unless ordered to do so by the Court.

**11 *What are the Receivers and Liquidators doing about the related party Corporate Trustees?***

The appointment of Corporate Trustees is a matter for the Beneficiaries. Brite Advisors has no power to appoint alternate Corporate Trustees on behalf of the Beneficiaries.

**12 *How does the Brite SA transaction impact Beneficiaries?***

The Receivers are aware of the recent transaction involving Brite SA and 1.618 Financial Services. The Receivers are not appointed to, and have no control over, Brite SA and Brite SA is not a subsidiary of Brite Advisors. Further, the Receivers are not aware of any contractual arrangements directly between Brite Advisors and Brite SA.

In respect of any Beneficiaries under the former management of Brite SA, the identity of your financial advisor (if any) is a matter for you.

The transaction does not impact the Client AuM, which is held in the name of Brite Advisors remaining under the control of the Receivers, and which is subject to the asset preservation orders.

**13 *Will the pension withdrawal protocol be amended?***

At this stage, the pension withdrawal protocol remains as set out in the Receivers' Fact Sheet B dated 22 December 2023 and our previous correspondence dated 1 February 2024 (enclosed).

If any variations are made to the protocol (with Court approval), the Receivers will update Corporate Trustees and Beneficiaries in due course.

**14 *What happens next?***

The Receivers and Liquidators will proceed to progress the following:

- Considering and implementing (with appropriate Court approval) a strategy with the objective of efficiently and effectively returning the Client AuM to the Beneficiaries. We do not expect this will be straightforward, given the inherent complexities including the US\$69m variance.
- The Receivers and Liquidators will progress their investigations and assess possible available recovery actions with a view to recovering assets. Any recovery action will be evaluated to ascertain whether it would be commercially viable (i.e. produce a benefit for the Beneficiaries, having regard to factors such as cost of proceedings, prospects of recovery, etc).

The Receivers and Liquidators will provide updates to Corporate Trustees and Beneficiaries regarding the above matters and any other relevant matters when available and appropriate to do so.

**Ongoing updates**

The Receivers and Liquidators will continue to keep Corporate Trustees and Beneficiaries apprised of the conduct of the Receivership and Liquidation and issue further correspondence when there are material developments and in accordance with the Liquidators' statutory obligations. Correspondence issued to Corporate Trustees and Beneficiaries can be downloaded from our website at the following link - <https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd>.



Any further enquiries may be directed to the Receivers and Liquidators at [briteadvisors@mcgrathnicol.com](mailto:briteadvisors@mcgrathnicol.com).

Yours faithfully

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

Linda Smith  
*Liquidator*  
*Receiver and Manager*

Enclosures:

- 1 2x Court Orders dated 6 February 2024
- 2 Update and FAQ to Trustees and Beneficiaries dated 1 February 2024



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412**

Defendant

**ORDER**

**JUDGE:** JUSTICE O'SULLIVAN

**DATE OF ORDER:** 06 February 2024

**WHERE MADE:** Adelaide

**THE COURT ORDERS THAT:**

1. Leave be granted to the plaintiff, who is released from the implied undertaking to the extent necessary, to rely on all of the documents filed in related proceedings, WAD 262/2023, save for:
  - (a) the confidential affidavit affirmed by Linda Methven Smith on 20 December 2023; and
  - (b) any affidavit or report filed by Ms Smith marked confidential.
2. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Corporations Act**), the defendant is wound up on just and equitable grounds.
3. Pursuant to s 472(1) of the Corporations Act, Linda Smith and Robert Kirman of McGrathNicol are appointed joint and several liquidators of the defendant (**Liquidators**).
4. The defendant is to pay the plaintiff's cost of the proceedings, and such costs as taxed or agreed be reimbursed out of the property of the defendant in accordance with s 466(2) of the Corporations Act.
5. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Linda Smith and Robert Kirman of McGrathNicol are appointed, jointly and severally, as receivers and managers (**Receivers**) over the property, assets and undertakings held by the Defendant on trust for another (**Trust Assets**).
6. The need for the Receivers to file a guarantee under rr 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) is dispensed with.
7. The Receivers are authorised to take possession of, preserve, maintain and sell the Trust Assets.



8. The Receivers have the power:

- (a) to do all things (including, but not limited to, the signing of any documents) for the realisation of the Trust Assets;
- (b) provided by s 420 of the Corporations Act as if the reference therein to 'the corporation' were to the trust on which the Trust Assets are held, together with the powers that a liquidator has in respect of property of a company (in its role as legal owner and trustee) pursuant to s 477(2) of the Corporations Act;
- (c) without limiting the powers granted pursuant to paragraphs 8(a) and (b), and subject to paragraph 11, to do all things necessary to attend to the following identified tasks:
  - (i) the identification of the Trust Assets and the trust liabilities;
  - (ii) the identification of trust creditors and distinguishing them from non-trust creditors (if any);
  - (iii) the ascertaining of the state of the accounts between the beneficiaries and the trustee;
  - (iv) assessing any request of a client of the Defendant for a superannuation or pension withdrawal and if deemed appropriate by the Receivers processing the withdrawal;
  - (v) the recovering of, or attempting to recover, the Trust Assets, including debts due to the trust(s);
  - (vi) the taking of possession of, collecting and protecting the Trust Assets;
  - (vii) the carrying on of any business of the trust on which the Trust Assets are held;
  - (viii) the realisation, or attempted realisation, of the Trust Assets;
  - (ix) the distribution of any proceeds of realisation to meet the claims of the creditors or persons whose debts were incurred in relation to the trust(s); and
  - (x) any matter in the administration of the trust(s) which is ancillary to the above to the extent to which it had to be undertaken for the purposes of the identified tasks.

9. In the period up to 5:00pm (ACDT) on 4 March 2024, the Receivers would be acting properly and are justified in, for the purposes of exercising their powers under paragraph 8 of these orders:

- (a) subject to sub-paragraphs 9(b) to 9(f), assessing and processing only regular superannuation and pension withdrawals that were in place as at 9 November 2023;
- (b) declining to assess or process any request for a superannuation or pension withdrawal to the extent that processing the requested withdrawal would result in the total withdrawals processed for an



individual beneficiary on and from 9 November 2023 to exceed 30% of the value of the beneficiary's investment recorded in Salesforce as at 9 November 2023;

- (c) directing any beneficiary that makes a request of the Receivers for a superannuation or pension withdrawal to submit that request to the relevant Corporate Trustee for that Corporate Trustee to make to the Receivers on the beneficiary's behalf;
- (d) declining to assess or process any request for a superannuation or pension withdrawal received directly from a beneficiary, unless the beneficiary is unrepresented by a Corporate Trustee;
- (e) requiring any request for a superannuation or pension withdrawal by a Corporate Trustee to be accompanied by such other information as the Receivers consider, in their sole discretion, is necessary to demonstrate to the satisfaction of the that it is appropriate for the requested withdrawal be processed by the Receivers under Order 8(c)(iv); and
- (f) paying any superannuation or pension withdrawal that the Receivers deem appropriate to process in accordance with Order 8(c)(iv), from Trust Assets.

10. In the period up to 5:00pm (ACDT) on 4 March 2024, the Receivers are acting properly and are justified in paying from the Trust Assets:

- (a) trading expenses incurred by the defendant on and from 9 November 2023;
- (b) trading expenses incurred by the defendant prior to 9 November 2023 but which the Receivers consider necessary to pay in order to continue to carry on the business of the defendant; and
- (c) trading expenses incurred by any entity that is an 'associated entity' (as that term is defined in the Corporations Act) of the defendant which the Receivers and consider necessary to pay in order to perform and continue to perform their duties arising in or otherwise in connection with their appointment,

to the extent that the cash held in the defendant's Westpac Operating Accounts is insufficient to meet those expenses.

11. Save for as permitted by these orders (including the orders and directions that apply in these proceedings by virtue of paragraph 9 above), the Receivers are justified and would be acting properly in not distributing any Trust Assets, or any part of them, to or for the benefit of any person asserting a claim to the Trust Assets (including the underlying individual beneficiaries) until further direction or order of the Court.

12. Subject to further order of the Court, WAD262/2023 and WAD13/2024 be case managed together.



*Remuneration, costs and expenses*

13. The Liquidators shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Liquidators to a Registrar (in such form as the Registrar directs and at no more than 14 day intervals), together with all costs and expenses, to be paid from the property of the defendant.
14. The Receivers shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Receivers to a Registrar (in such form as the Registrar directs and at no more than 14 day intervals), together with all costs and expenses, to be paid from Trust Assets.
15. There be liberty to any party to apply to the Court on 48 hours' notice.
16. There be liberty to the Liquidators and Receivers to apply to the Court on 48 hours' notice.

Date that entry is stamped: 6 February 2024

*Sia Lagos*  
Registrar



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD262/2023

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

**BRITE ADVISORS PTY LTD ACN 135 024 412**

Defendant

### **ORDER**

**JUDGE:** JUSTICE O'SULLIVAN

**DATE OF ORDER:** 06 February 2024

**WHERE MADE:** Adelaide

### **THE COURT ORDERS THAT:**

1. Paragraph 1 of the orders made on 13 December 2023 is vacated.
2. Paragraph 6 of the orders made on 13 December 2023 shall not prevent Linda Smith and Robert Kirman of McGrath Nicol, the Liquidators and the Receivers and Managers appointed in related proceeding WAD 13/2024 (**Liquidators and Receivers**), from doing any of those things referred to in that paragraph.
3. Paragraph 7 of the orders made on 13 December 2023 be amended by deleting subparagraph (b) in its entirety.
4. Paragraph 5 of the orders made on 21 December 2023 be amended by deleting the words "*In the period up to 5:00pm (ACDT) on 6 February 2024*".
5. The defendant pay ASIC's costs to be agreed or taxed.
6. There be liberty to any party to apply to the Court on 48 hours' notice.
7. There be liberty to the Liquidators and Receivers to apply to the Court on 48 hours' notice.

Date that entry is stamped: 6 February 2024

*Sia Lagoz*  
Registrar



## Schedule

No: WAD262/2023

Federal Court of Australia

District Registry: Western Australia

Division: General

Interested Person                    ROBERT MICHAEL KIRMAN

Interested Person                    LINDA METHVEN SMITH



1 February 2024

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

**ACN 135 024 412**

**(Brite Advisors)**

**Update and FAQ**

As you will be aware, Linda Smith and Rob Kirman of McGrathNicol were appointed joint and several Receivers and Managers (**Receivers**) of the Property of Brite Advisors (as defined in the Court Orders) (**Property**) pursuant to the orders of the Federal Court of Australia (**Court**) made on 13 December 2023 (**Court Orders**) in proceeding WAD 262 of 2023 (**Proceedings**).

The purpose of this document is to provide an update in relation to the Receivers' appointment and guidance in relation to frequently asked questions received from Corporate Trustees and beneficiaries.

**Receivership report update**

In accordance with the Court Orders, the Receivers submitted a report to the Court on 24 January 2024, in respect of various matters as required by the Court Orders (**Report**). The Report included the Receivers' opinion in respect of suspected contraventions of the Corporations Act 2001 by Brite Advisors and/or any of its directors and officers, as required to be reported to the Court under 1(h) and 1(i) of the Court Orders.

If you would like a copy of the Report, you may make an access request to the Court. A step-by-step guide is available on the Court's website at the following address: <https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents/how-to-apply>

**Update on the Receivers' investigations**

A summary of the Receivers' findings with respect to key matters the subject of their ongoing investigations as they relate to the client assets under management (**Client AuM**) is set out below:

- **Client AuM variance** – The Receivers' initial report to the Court (in their former capacity as Investigative Accountants) dated 8 December 2023, 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, which equates to a circa 10% variance (from records available at the time). As a result of the comingled nature of the four Interactive Brokers Australia (**IBA**) accounts, the Receivers' investigations indicate that the variance is not attributable to any particular group of Beneficiaries (for example, those located in any particular jurisdiction). All IBA accounts were held in the name of Brite Advisors in an omnibus structure meaning there was no segregation within each IBA account.

All Client AuM is subject to ASIC's Asset Preservation Orders made by the Court on 25 October 2023.

- **Return of Client AuM in Interactive Brokers Hong Kong (IBHK) accounts** - During the period June 2023 to November 2023, Client AuM totalling circa AU\$129 million was divested from Brite Advisors' IBA accounts into cash and transferred to an HSBC account in Hong Kong held in the name of Brite Hong Kong Limited (**Brite HK**).



The Court made orders on 24 November 2023, requiring those funds to be returned to Brite Advisors' IBA accounts. Funds totalling AU\$115.8 million were returned to Brite Advisors' accounts in December 2023. These funds remain divested in accounts under the control of the Receivers. The Directors have not provided a full accounting for the Client AuM while in the custody of Brite HK which continues to be investigated by the Receivers. The Directors have confirmed that the transfer of Client AuM to Brite HK was undertaken without consent from Beneficiaries and Corporate Trustees and have not provided records of which Beneficiaries' funds were transferred.

- **Related party transactions** - The Receivers' investigations indicate net funds of circa \$91.4 million have been advanced to multiple related parties of Brite Advisors since FY16. The Receivers investigations in respect of the transactions are ongoing. In respect of the transactions reviewed to date, the transactions appear to have been made by Brite Advisors transferring funds from the IBA accounts to Brite Advisors' Westpac operating accounts, and disbursed to related parties from there. These transactions primarily relate to the payment of expenses and liabilities of related entities and transfers of cash that were recorded through a related party loan account.

The nature of the payments made to related entities is the subject of further investigation by the Receivers, including as to whether the recipient related entities had any entitlement to the payments or whether the payments funded acquisitions of subsidiaries by related entities within the Brite group. The Receivers do not consider they have been provided with an adequate explanation for these transactions.

- **Interactive Brokers (IB) Credit Facility** - 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 (of which Brite Advisors is a Guarantor). The borrower of the IB Credit Facility is Brite Advisory Group Limited (**BAG**).

The Receivers have also identified that interest payments totalling US\$1.4 million in respect of the IB Credit Facility were paid from Brite Advisors' accounts.

- **Acquisition investigations** - The Receivers have identified several acquisitions made by members of the Brite Group since 2018. Based on the Receivers' investigations, in relation to at least 10 acquisitions, we suspect that payments were made or partly made from Client AuM, or funds borrowed using Client AuM as security. The Receivers are currently considering whether Brite Advisors and/or the underlying Beneficiaries have any claims in respect of the acquisitions.
- **Further investigations into Property** - The Receivers have located an additional 59 over the counter (OTC) assets listed in AutoRek, not held in IBA accounts. The Receivers are in the process of communicating with a number of third parties to determine what, if any, of these assets fall within the scope of their appointment.

#### **Frequently asked questions**

##### **1        *What protections are in place to protect client funds held by Brite Advisors?***

On 25 October 2023, the Court granted asset preservation orders to protect client funds under management of Brite Advisors. Those orders were restated on 27 October 2023 and 9 November 2023, and remain in place as at today's date.

This means that Brite Advisors, its servants, agents and employees, are restrained from dealing with the Property of Brite Advisors (as defined in the Court Orders and which includes the Client AuM) without further order of the Court. This order extends to property held by Brite Advisory Group Limited and Brite HK on behalf of or on account of Brite Advisors. Since the Receivers' appointment on 13 December 2023, the



Receivers are the only persons authorised to act on behalf of Brite Advisors and the Directors powers are suspended.

We note that the above orders do not prevent the Receivers from dealing with the Property as required to progress the Receivership and as authorised by the Court Orders.

**2      *Will investment valuations statements be made available to beneficiaries (and/or Corporate Trustees) during the Receivership period?***

The Receivers are unable to provide investment valuations at this time. As mentioned above, the Receivers have identified material variances between the quantum of Client AuM (both cash and investments) actually held and the Client AuM reported to Corporate Trustees and Beneficiaries in client valuation reports supplied to them. The variance totalling US\$69.1 million (as at 9 November 2023) remains unreconciled and is subject to (i) further investigation and recovery, and (ii) quantification at both a global and individual beneficiary level.

As a result of the identified variances, any generated valuations would be inaccurate and therefore, until the Receivers have conducted their investigations and reconciled the identified variances, the Receivers will not be able to provide any investment valuations to beneficiaries and/or Corporate Trustees.

It is important to note that any client valuation report provided to Corporate Trustees or Beneficiaries has **not** been authorised by the Receivers.

**3      *Will any full surrender or lump sum withdrawal request be considered by the Receivers?***

Court Orders made in the Proceedings permit the Receivers to assess and process only regular superannuation and pension withdrawals that were in place as at 9 November 2023, subject to the withdrawals meeting a number of criteria. As such, at this time, the Receivers are unable to consider (i) full withdrawal or surrender requests, and (ii) lump sum requests (i.e. one-off irregular payments other than PCLS payments).

Any requests of these types of withdrawals submitted to the Receivers will not be considered by the Receivers and accordingly, in order to make the processing of permitted withdrawal requests more efficient, we ask that the Corporate Trustees do not submit full or lump sum withdrawal requests to the Receivers.

The Receivers will continue to consider requests to meet Beneficiaries' regular pension withdrawals, including PCLS payments, that were in place as at 9 November 2023, in accordance with the process approved by the Court (subject to meeting the other criteria as approved by the Court).

**4      *Will regular pension withdrawal requests be approved if that would require disinvestment of shareholdings?***

Provided the withdrawal request meets the criteria of the pension withdrawal process approved by the Court, the Receivers will process payment of the withdrawal irrespective of the individual beneficiary's current investment portfolio.

As set out above, Client AuM totalling circa AU\$129 million was divested from a Brite Advisors' IBA account into cash and transferred to an HSBC account in Hong Kong held in the name of Brite HK. In accordance with orders made by the Court on 24 November 2023, funds totalling AU\$115.8 million were returned to Brite Advisors' accounts in December 2023. The majority of these funds (AU\$113.0 million) remain divested in a cash account in Interactive Brokers Australia, with the balance held in Brite Advisors' Westpac client accounts, all of which are under the control of the Receivers.



The Receivers (i) have not been provided with a list of the Beneficiaries whose funds were moved to Brite HK (given the comingled way in which the Client AuM has been held in IBA accounts, it might not be possible to ascertain this), and (ii) have not been provided with a full account of the funds transferred to Hong Kong and the funds returned to Australia from the Directors. The Receivers are investigating both matters.

Due to the pooled nature of the Client AuM and the variance identified, the divested cash cannot be attributed to individual Beneficiaries. In accordance with the pension withdrawal process approved by the Court, the Receivers are utilising the significant cash balance held in Brite Advisors' IBA accounts to fund the withdrawal requests in priority to realising securities and bonds held in the IBA accounts.

The Receivers understand that this may result in some beneficiaries having a reported negative cash balance and there will be a reconciliation exercise undertaken in due course to reconcile the position at an individual beneficiary level.

5 *Will the Receivers consider investment or disinvestment instructions issued by the Corporate Trustees or Beneficiaries?*

The Receivers are unable to consider specific investment or disinvestment instructions from Corporate Trustees and Beneficiaries (and/or their advisors) at this time.

6 *Will the Corporate Trustees' outstanding and/or ongoing fees be paid?*

Each request will be considered by the Receivers on a case-by-case basis.

Please provide details of any outstanding fees and/or ongoing fees due to Corporate Trustees to the Receivers at [briteadvisors@mcgrathnicol.com](mailto:briteadvisors@mcgrathnicol.com).

As part of the above communication, if not already provided, please provide any supporting documentation, including copies of all documents which set out the terms of the relevant contractual arrangements between the Corporate Trustee and Brite Advisors, including the entitlement to fees.

7 *Why have there not been more regular and fulsome updates provided by the Receivers to Beneficiaries and/or Corporate Trustees?*

The Receivers have been appointed by the Court primarily for the purpose of the preparation of a report to the Court on the matters set out in sub-paragraphs 1(a) to 1(i) of the 13 December 2023 Court Orders, in order to assist the Court's consideration of the affairs of Brite Advisors in the proceedings commenced by the Australian Securities and Investments Commission.

The Receivers have provided updates on material developments when appropriate and able to do so however our primary obligation at this stage is to report to the Court for its benefit.

Any enquiries for additional information regarding the Receivership may be directed to the Receivers at [briteadvisors@mcgrathnicol.com](mailto:briteadvisors@mcgrathnicol.com).

Our main method of communication has been via the Corporate Trustees/Pension Scheme Administrators, due to the fact that the Directors have not provided the Receivers with contact details for all Beneficiaries.

8 *What should I do if I don't have a Corporate Trustee/Pension Scheme Administrator?*

Please contact [briteadvisors@mcgrathnicol.com](mailto:briteadvisors@mcgrathnicol.com) to let us know and we will issue communications and consider pension withdrawal requests directly from you.



## 9 *How will the Receivers' fees and costs be paid?*

In accordance with the Court Orders made on 21 December 2023 (**21 December Orders**), the Receivers' fees, costs and expenses (including those incurred during their former appointment as Investigative Accountant) are entitled to be paid from the Property (as defined in the Court Orders).

The Receivers' fees and costs (excluding trading expenses) are required to be reviewed and approved by the Court before payment and the Receivers are also required to provide notice to the Corporate Trustees.

### **Proceedings update**

As mentioned above, in accordance with the Court Orders, the Receivers' Report was filed with the Court on 24 January 2024.

Concurrently, on 22 January 2024, the Australian Securities and Investments Commission filed an application with the Court to wind-up Brite Advisors.

ASIC's winding-up application and the Proceedings have been listed for a hearing at 9am (AWST) on 6 February 2024. The hearing is open to the public and any interested parties to attend. We understand that the hearing will take place virtually and if you wish to attend you should contact the Federal Court of Australia Registry to request a link to the hearing.

### **Ongoing updates**

The Receivers will continue to keep Corporate Trustees and beneficiaries appraised of the conduct of the Receivership and issue further correspondence when there are material developments. Correspondence issued to Corporate Trustees and beneficiaries can be downloaded from our website at the following link - <https://www.mcgrathnicol.com/creditors/brite-advisors-pty-ltd>.

Any further enquiries may be directed to the Receivers at [briteadvisors@mcgrathnicol.com](mailto:briteadvisors@mcgrathnicol.com).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Linda Smith'.

Linda Smith  
*Receiver and Manager*