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

**ACN 135 024 412**

**(Brite Advisors)**

**FAQ – Explanatory Memorandum**

The Receivers have prepared this FAQ to address some common questions that have emerged from the feedback received on the Explanatory Memorandum.

All feedback on the Receivers' proposed distribution methodology is being considered by the Receivers and will be responded to in the supplementary explanatory memorandum, to be lodged with the Courts on 25 March 2025. That document will also explain any changes that the Receivers have made to the proposed distribution methodology as a result of that feedback or their further work since the Receivers and Managers' Explanatory Memorandum dated 4 December 2024 (**Explanatory Memorandum**) was published.

**1 Why does the Explanatory Memorandum propose a distribution based on my Valuation Notice as at 13 December 2023? Why aren't the Receivers extrapolating the Valuations to the time of any distribution?**

The Valuation Notice amount and the amount that will be distributed in respect of the Beneficiary are two different amounts.

The Court approved the 13 December 2023 date for the Receivers to value Beneficiary's entitlements or claims in the receivership. The 13 December 2023 date was the date of the Receivers' appointment. The use of the appointment date for the purposes of valuing entitlements is consistent with trust law generally as well as insolvency law.

Section 4.2.7 of the Explanatory Memorandum sets out the formula that is proposed to calculate the distribution amount for Beneficiaries who are entitled to participate in the Deficient Mixed Fund (which is the majority of Beneficiaries).

**2 Will Beneficiaries with bespoke investments (which are outperforming the Model Portfolio Investments) receive the upside of their specific investments since 13 December 2023?**

Reference to bespoke asset holdings in a Valuation Notice does not mean that Brite Advisors in fact holds those assets on behalf of a Beneficiary. The Valuation Notice sets out what investments and cash *should* have been held by Brite Advisors on behalf of a Beneficiary. All bespoke assets (except the Excluded Moventum Assets – see section 2.1.7



of the Explanatory Memorandum) will form part of the Deficient Mixed Fund. The growth in the assets that comprise the Deficient Mixed Fund, including bespoke assets, will be shared rateably between those Beneficiaries who are entitled to participate in the fund.

As set out at section 2.2.4 of the Explanatory Memorandum, the Receivers consider it is extremely difficult (in many cases impossible) and likely cost prohibitive to attribute the remaining securities and/or cash to specific Beneficiaries. In any event, and as noted at section 2.2.4(e) of the Explanatory Memorandum, the remaining securities and/or cash are exposed to the Deficient Mixed Fund and would be subject to competing claims by other Beneficiaries.

**3 What are the reasons for the variance in the Client AuM as at 13 December 2023?**

The shortfall can be attributed to (i) unauthorised withdrawals from the Client AuM to pay related parties of Brite Advisors, (ii) unauthorised drawdowns by Brite Advisors on the margin loan facility with Interactive Brokers Pty Ltd to generate cash to fund unauthorised withdrawals, and (iii) liquidating assets or diverting client deposits (without approval) to repay the margin loan and fund further unauthorised withdrawals from the Client AuM.

The Receivers do not consider there is any value or benefit to stakeholders in incurring further costs to identify each specific unauthorised drawdown which makes up the variance identified.

Please refer to section 6 of the Receivers' Fourth Report dated 9 August 2024 for further details in this regard.

**4 Why have the Receivers determined that the purported segregation of certain Client AuM relating to US and UK Beneficiaries is ineffective?**

Please refer to section 6.3 of the Receivers' Fourth Report dated 9 August 2024 and sections 5.4 and 6.7 of the Explanatory Memorandum dated 4 December 2024.

The Receivers have concluded that the separation of funds into different IBA Accounts does not constitute an effective segregation of Beneficiaries' interests in a legal sense, nor did it give rise to a ringfencing of assets to protect certain accounts from the shortfall or other mixing events.

**5 Can the Receivers provide Beneficiaries with a breakdown of their costs and fees incurred to date?**

Due to the nature of the Court receivership, the Court has complete oversight of approval and payment of the Receivers' remuneration, costs, and expenses. Prior to payment of any of the Receivers' remuneration, costs and expenses, a Registrar of the Court reviews the Receivers' detailed remuneration, costs and expenses reports, provides a determination and, for those amounts that the Registrar is satisfied relate to work that was necessary and properly performed for the purposes of the Receivership, makes orders authorising payment of that amount. Corporate Trustees are provided with the Receivers' remuneration, costs and expenses reports on a strictly confidential basis once they have been submitted to the Court for determination.

This is addressed in the Receivers' Fourth Report at section 3.3.3.



**6     What is the current status of the Receivers' review of the potential taxation implications of the Proposed Distribution Methodology?**

The Receivers continue to progress the taxation issues identified in the Explanatory Memorandum (including seeking expert advice from specialist taxation Counsel, engaging directly with the Australian Taxation Office and seeking expert accounting advice from specialist tax accountants including in Australia and the US).

The Receivers will continue to provide updates to the Court (and publish those materials, where authorised by the Court). The Receivers will address these issues further in the supplementary explanatory memorandum.

**7     Why are the Receivers not proposing to charge exit fees to Beneficiaries?**

Please refer to section 3.2 of the Explanatory Memorandum for information relating to the application of fees against Beneficiaries' assets.

The Receivers do not consider that exit fees are triggered by the appointment of the Receivers or the distribution of the Client AuM, and accordingly, have not proposed to charge exit fees to any Beneficiary.

**8     Will I be able to receive my distribution in a different currency to the currency reported in my Valuation Notice?**

The Receivers will establish a process where a Beneficiary can request to be paid their distribution in a currency other than the currency in which their account is denominated. Please refer to section 4.2 of the Explanatory Memorandum for further information.

**9     Will I be able to change my Trustee prior to distribution or elect to have my distribution paid to me directly?**

Section 4.3 of the Explanatory Memorandum explains that the Receivers propose to allow Beneficiaries time to change their Corporate Trustee before any distribution is made. Corporate Trustees and Beneficiaries have provided feedback on the approach to facilitating a change of Corporate Trustee set out in the Explanatory Memorandum. The Receivers are considering that feedback and will address this issue further in the supplementary explanatory memorandum.

As outlined in the Explanatory Memorandum, the Receivers consider the relationship between Beneficiaries and Corporate Trustees is a matter for them, and that Beneficiaries who have concerns about their Corporate Trustee should seek their own independent advice and take steps to address that concern as appropriate.

The Receivers are unable to provide Beneficiaries with any advice in relation to their pension arrangement and encourage Beneficiaries to seek their own independent legal and financial advice.



**10     What is the current status of the Receivers' investigations into potential claims against third parties for the purposes of returning funds misappropriated to Beneficiaries?**

The Receivers are currently progressing their investigations into potential claims against third parties. To avoid compromising any recovery actions, the Receivers are unable to disclose any further information as to the nature of potential claims at this stage.

The Receivers will address this issue further in the supplementary explanatory memorandum.

**11     What are the reasons for the Receivers proposing to retain Client AuM following initial distribution to Beneficiaries?**

As set out at section 4.2.16 of the Explanatory Memorandum, the Receivers propose to retain a portion of the Client AuM in the IBA Accounts and not distribute these funds as part of the initial distribution from the Deficient Mixed Fund (**Retained Fund**).

The Retained Fund will be for the purposes of providing for:

- any estimated taxation liabilities of Brite Advisors or the Receivers (see section 4.5 of the Explanatory Memorandum);
- security for the repayment of the IBA margin loan facility in accordance with Court Orders;
- any historic liabilities relating to the period of the Receivers' appointment (including operational liabilities);
- costs of maintaining the Retained Fund; and
- future costs and expenses of the Receivership (including the costs of pursuing any further recoveries).

At the conclusion of the Receivership, a further distribution will be made of the balance of the Retained Funds (including any proceeds of further recovery actions).