



McGrathNicol

16 October 2024

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Dear Sir/Madam

**URGENT**

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

I refer to:

- the appointment of Rob Kirman and I as Liquidators of Brite Advisors (**Liquidators**);
- the appointment of Rob Kirman and I as Receivers of the property, assets and undertakings held on Trust (**Trust Assets**) by Brite Advisors (**Receivers**) pursuant to the orders (**Court Orders**) of the Federal Court of Australia (**Court**) made in proceeding WAD 13 of 2024 (**Second Proceedings**); and
- my previous correspondence to you on 5 July 2024 attaching the Trustee Survey.

We note that you did not take steps to complete the initial Trustee Survey which is also attached to this letter. It is important that the Receivers obtain your feedback which will assist in formulating our distribution methodology and the Receivers again request that this is completed and returned to our office as soon as possible.

As you will be aware, the Receivers have been investigating various methods by which the Client Assets under Management (**Client AuM**) might be distributed to Beneficiaries in the most efficient and cost-effective manner. The Receivers' view remains that liquidation of the Client AuM by sell down of the portfolio held, and distribution of the proceeds of that sale to Trustees will be the most appropriate way of returning funds to Beneficiaries.

The Receivers are further considering the legal implications and practical steps involved in the distribution of the Client AuM and seek further feedback from you in relation to what steps you would take if the Client AuM was distributed to you (**Additional Survey**) attached to this letter. We appreciate that you may have answered some of these queries to a certain extent already, however, we seek a more detailed response.

The Receivers will utilise responses to the Additional Survey to inform the process that we recommend to the Court for distribution of the Client AuM.



The Additional Survey is set out at Annexure A. The Receivers request that your response to the survey be submitted to the Receivers by **Friday, 25 October 2024**.

If you have any questions, please contact Amber Kirkbright at [akirkbright@mcgrathnicol.com](mailto:akirkbright@mcgrathnicol.com) or on 08 6363 7600.

Yours faithfully

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

Linda Smith

*Receiver and Manager*

Enclosure:

October 2024 Additional Survey

Initial Trustee Survey



## **Annexure A – iPensions Group Limited - Trustee Survey**

### **CONFIDENTIAL**

#### **Section 1: Intended approach in relation to distribution of funds to Beneficiaries**

##### Question 1A

If the Receivers distribute the funds to you as Trustee, please outline your intended approach in respect of the distribution of funds to Beneficiaries. In particular:

- a) Will Beneficiaries be provided with options as to how their funds will be treated?
  - i. If yes, will those options include, (i) transfer of funds to a new Trustee, or (ii) reinvestment of funds with an alternative fund manager, or (iii) no preference, or (iv) some other option?
  - ii. If not, why will the Beneficiaries not be provided with options? How will the funds be treated?
- b) Will the options presented to the Beneficiaries be different depending on their personal circumstances, or will all the options be the same?
- c) Where relevant, will the alternative fund manager be selected by you, or will the decision be at the discretion of the Beneficiaries? If the decision is at the discretion of the Beneficiaries, is that discretion limited by a panel of fund managers selected by you?
- d) In the event an alternative fund manager or panel of options for an alternative fund manager is to be selected by you, please explain:
  - i. If this has already been done, which fund manager(s) have been selected?
  - ii. What due diligence has been done to select an appropriate fund manager / fund managers?

##### Question 1B

What infrastructure, expertise and personnel do you have in place to attend to selection and reinvestment of funds with an alternative fund manager (if applicable).

##### Question 1C

If you are proposing to provide an option to Beneficiaries, how will you:

- a) Request Beneficiaries' preferred option? Please detail in your response:
  - i. The method by which you will contact the Beneficiaries.
  - ii. The information the Beneficiaries will receive.
  - iii. When you propose to seek the views of Beneficiaries.
  - iv. The expected timeframe for this process.
- b) Deal with Beneficiaries having different preferences (i.e. requesting various alternative fund managers).

##### Question 1D

How can a Beneficiary elect to replace you as pension administrator and Trustee?

##### Question 1E

If a Beneficiary does elect to replace you as pension administrator and Trustee:

- a) What steps will you require the Beneficiary undertake to complete this?



- b) What fees or charges will be imposed on the Beneficiary?
- c) How long will this process take?
- d) Will the above change depending on who the Beneficiary elects to be the replacement Trustee?
- e) Do you consider that you have any discretion (legally or procedurally) to refuse the request? If so, please explain this with reference to supporting documentation.

## **Section 2: Proposed structure of fees proposed to be passed on to Beneficiaries**

### Question 2A

If the Receivers distribute the funds to you, what is the proposed structure of your fees and how you would propose your Trustee fees be paid (with reference to the relevant contractual arrangements) for the following:

- To pay a distribution to Beneficiaries; and/or
- Transfer a Beneficiaries' fund to a new Trustee; and/or
- Reinvestment of the fund and appoint alternative fund manager.

### Question 2B

Please advise if:

- a) There are current and valid contractual arrangements in place between you and each of your Beneficiaries? If there is, please provide examples of these documents.
- b) There are clear contractual arrangements in place that stipulates your entitlement to deduct or claim fees from each Beneficiary (if that is different to what you already provided above) and, if so, please reference the relevant clauses or provisions of those contractual arrangements.
- c) The contractual arrangements in place vary between Beneficiaries or if they are all the same? If they vary, please outline the variations by reference to supporting documentation.
- d) The contractual arrangements in place vary over time, or if they have remained consistent? If they vary, please outline the variations by reference to supporting documentation, including an explanation as to how you have satisfied yourself that any such variation is binding and enforceable as against Beneficiary.
- e) There are any terms and conditions outside the documents provided which apply to the arrangement between you and the Beneficiaries? For example, general terms and conditions, amendments to conditions etc. If there is, please provide copies of these documents and explain how these additional terms and conditions are incorporated into the contractual arrangements between you and the Beneficiaries.

### Question 2C

If the Receivers distribute funds to you, will you deduct a fee from the funds returned to you in respect of arrears (with reference to relevant contractual arrangements)? If so, what is the total quantum of fees owed to you to date?

\*\*\*\*\*END OF SURVEY\*\*\*\*\*



McGrathNicol

5 July 2024

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- the Receivers' Update to Beneficiaries and Trustees dated 20 May 2024 (**Update**).

As set out in the Update, the Receivers have been investigating various methods by which the Client Assets under Management (**Client AuM**) might be distributed to Beneficiaries in the most efficient and cost-effective manner. The Receivers' present view is that liquidation of the Client AuM by sell down of the portfolio held on the Interactive Brokers trading platform, and distribution of the proceeds of that sale to Trustees will be the most appropriate way of returning funds to Beneficiaries.

The Receivers are considering the legal implications and practical steps involved in the Distribution of the Client AuM prior to seeking distribution orders from the Federal Court of Australia. As foreshadowed in the Update, we intend to seek feedback from you on a number of matters relating to the proposed distribution (**Trustee Survey**).

The Receivers will utilise responses to the Trustee Survey to inform the process that we recommend to the Court for distribution of the Client AuM.

The Trustee Survey is set out at Annexure A. The Receivers request that your response to the survey be submitted to the Receivers by **Wednesday, 17 July 2024**.



If you have any questions, please contact Amber Kirkbright at [akirkbright@mcgrathnicol.com](mailto:akirkbright@mcgrathnicol.com) or on 08 6363 7600.

Yours faithfully

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

Linda Smith

*Receiver and Manager*

Enclosure:

Trustee Survey



## Annexure A – iPensions Group Limited – Trustee Survey

CONFIDENTIAL

### Section 1: Trustee contact details

Please confirm your address, the relevant contact person, email address and phone number.

### Section 2: Trustee details

#### Question 2A - Relationships

Are you a related and/or associated party of the below:

- Brite Advisors.
- Any entity in the broader Brite Group, including The Aurom Group Limited (UK), Relay Group Limited (BVI), Brite Advisory Group Limited (HK).
- Mr Mark Donnelly or Mr John Lymer.

For the avoidance of doubt, the definition a related party is set out at Section 9 of the *Corporations Act 2001* and includes (i) directors or members (of the company, or of a related party), and (ii) relatives and spouses of the persons listed above. Associated parties refer to parties that have a relationship or connection, often in terms of ownership or control.

#### Question 2B - Jurisdiction

In respect of the Brite Advisors' Beneficiaries for whom you act as Trustee, what legal jurisdiction/s do you operate in?

#### Question 2C - Regulators

Please advise which jurisdiction(s) your business is registered in and operates from.

Please provide details of the Regulator(s) which provide oversight of your compliance with applicable legal and regulatory obligations.

Please advise of any obligations imposed on you which you consider ought to be brought to our attention in the context of our consideration of methods by which the Client AuM might be distributed to Beneficiaries.



#### Question 2D - Compliance

In your role as Trustee, have you complied with the laws and regulations applicable in the jurisdictions in which you operate at all times?

Have you been sanctioned by any Regulator?

Are you under investigation by any Regulator?

Please provide a copy of your most recent set of audited financial statements.

#### Question 2E - Brite Advisors' contractual arrangements

To the extent not already provided, please confirm if there is a written contract or agreement in place between you and Brite Advisors, and if so provide a copy.

If there is no written contract or agreement, please outline what you understand to be the arrangements between you and Brite Advisors. Please also cite any reasons why there is no written contract or agreement available.

#### Question 2F - Pensions schemes

What type of pension schemes do you administer for the Brite Advisors Beneficiaries (i.e. SIPP, QROPS, QNUPs or other)?

#### Question 2G - Fee arrangements with Brite Advisors

Please advise the contractual arrangements which are in place (if any) between you and Brite Advisors in respect of entitlement to Trustee fees.

### **Section 3: Beneficiary details**

#### Question 3A - Beneficiary details

To the extent not already provided, please provide a detailed list of the Beneficiaries for who you act as Trustee, including full name, address, jurisdiction, pension scheme/superannuation fund type, scheme or fund name, and investment value (per the latest set of data you have to hand).

#### Question 3B Beneficiary jurisdiction

Please provide a list of the jurisdictions/countries where your Beneficiaries reside.

#### Question 3C - Entitlement to act

Please provide details of the arrangements in place between you and each of the Beneficiaries demonstrating your entitlement to act on behalf of each Beneficiary with reference to the relevant written contracts or standard onboarding agreements. If there are no written contracts or agreements, please outline the reason why, and what you understand to be the arrangements between you and the relevant Beneficiaries.

#### Question 3D – Beneficiary identification process

Please provide details of what steps have been taken to identify the Beneficiaries as required in Question 3A and what Anti Money Laundering regulations you are obliged to follow relating to customer identification/verification both from an initial onboarding and ongoing perspective.





#### Question 3E - Trustee fees with beneficiaries

Please provide a summary of the arrangements (if any) between you and the Beneficiaries in respect of entitlement to Trustee fees.

#### Question 3F – Beneficiary communication

Please provide details of how you communicate with the Beneficiaries for who you act as Trustee (i.e. post, email, portal/app)?

### **Section 4: Distribution of funds**

#### Question 4A – Client AuM Distribution

Do you consider that the liquidation of the Client AuM (i.e. sale of all of the investments and conversion to cash) and return of that cash to you as Trustee would have any negative implications for Beneficiaries, as opposed to the Client AuM being transitioned to a new fund manager? For example, tax, regulatory or any other implications. Please include references to local laws and regulations (where relevant).

#### Question 4B - Distribution methodology

Do you have any views or comments in relation to two options for distribution being either (i) distribution of the funds to the Trustees, or (ii) distribution of the funds directly to the Beneficiaries and any implications you see from either option? For example, tax, regulatory or any other implications. Please include references to local laws and regulations (where relevant).

#### Question 4C - Intention of Trustee

If the Receivers distribute the funds to you, please outline your intended approach in respect of the funds. For example, will you distribute the funds to the Beneficiaries, seek to reinvest the funds with an alternative fund manager or take some other action?

#### Question 4D – Regulator approval

If the Receivers distribute the funds to you, please confirm that you have the necessary authority, including any appropriate approvals from your regulator(s), to undertake the work required to deal with the funds, whether that is by payment to Beneficiaries, reinvestment of the funds or any other action.

#### Question 4E - Trustee fees for distribution

If the Receivers distribute the funds to you, please advise the proposed structure of your fees and how you would propose your Trustee fees be paid (with reference to the relevant contractual arrangements) for arranging (i) to pay a distribution to Beneficiaries, (ii) reinvestment of the fund, or (iii) any other action.

#### Question 4F - Trustee ability to distribute funds

If the Receivers distribute the funds to you, do you currently have the capability, information, resources and appropriate systems in place to deal with the funds in a timely manner, whether by way of distribution to Beneficiaries, reinvestment or some other action. Your response should include details of your capabilities, relevant information held, available resources, systems used and estimated timeframes to deal with the funds.



Question 4G - Taxation implications for Beneficiaries

Do you consider there to be any possible taxation implications for your Beneficiaries resulting from either of the two options for distribution, being either (i) distribution of the funds to the Trustees, or (ii) distribution of the funds directly to the Beneficiaries.

Question 4H – Replacement Trustee

The Receivers have received requests from beneficiaries seeking to change their Trustee/pension scheme administrator.

If a Beneficiary wishes to replace you as their Trustee/pension scheme administrator, please confirm that you would consent to such a request or advise the terms on which you provide such consent. Please also advise of any difficulties you would consider would be encountered, including any applicable regulations.

**Section 5: Distribution of funds**

Question 5A – Other

Please outline any other comments or views you have in respect of the distribution of the Client AuM which have not been addressed above.