



BBY

Liquidators' annual report

9 September 2016

BBY Holdings Pty Limited (receivers and managers appointed) ACN 075 187 432

BBY Limited (receivers and managers appointed) ACN 006 707 777

BBY Advisory Services Pty Ltd (receivers and managers appointed) ACN 102 761 008

Broker Services Australia Pty Ltd ACN 074 976 364

(all in liquidation)

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Joint and Several
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Executive summary

BBY Limited was Australia and New Zealand's leading independent stock broker by market share, as well as a corporate advisory and asset management firm. The collapse of BBY represents the largest failure of an Australian stockbroking firm since the global financial crisis.

The liquidation of the company has proven to be one of the most complex since landmark financial services insolvencies such as Lehman Brothers in 2008 and MF Global in 2011. Our forensic investigation into the mismanagement and failure of BBY, and the consequent shortfall in client monies, has involved interrogation of over 10 terabytes of company electronic data, over 155,000 transactions across over 100 bank accounts, 15.8 million internal emails, 2,500 boxes of records and approximately 30,000 subpoenaed documents.

During year-long investigations we undertook a painstaking tracing analysis to uncover and collate convoluted funds flows dating back to 2011 and investigate the circumstances behind these unusual transactions. Our findings indicate that BBYL was insolvent from as early as 2011. Whilst external factors impacted the business, we consider that the underlying contributors to the demise of BBYL, within control of the directors, were its poor management at a senior executive level, a lack of financial discipline, deficient internal controls and gross shortcomings in corporate governance.

We concluded that BBYL did not maintain adequate financial and client records and we identified transactions outside of the ordinary course of business that may have led to the depletion of client monies and shortfalls against client obligations.

As Liquidator, our role is to maximise returns for clients and creditors, and to do so in as timely a manner as permissible. There are no material assets available for liquidation outside of assets held in trust for clients. Therefore the only source of recoveries for creditors will be from a variety of claims that may be pursued by the Liquidators. The next milestone in our recovery strategy commences on 12 September 2016, with public examinations of former BBY officers and other parties to assist in gathering further information about the affairs of BBYL.

Purpose of this report

This is the first annual report by the Liquidators to the former clients and other creditors of BBYL and associated companies including BBY Holdings Pty Ltd, BBY Advisory Services Pty Ltd and Broker Services Australia Pty Ltd.

Each year during the winding up of a company liquidators are required to either convene an annual meeting of creditors or lodge an annual report with ASIC, providing notice to creditors. Given the lack of funds in the liquidations to meet costs of holding a meeting for so many clients and creditors, we have elected to lodge this report with ASIC and publish a copy on the BBY creditor information website at www.kpmg.com/AU/bby. We have sent notification by email to approximately 30,000 former clients of BBY and by post to 400 possible creditors.

Appointment details

Stephen Vaughan and Ian Hall of KPMG were appointed as joint and several Administrators of ten BBY Companies on Sunday 17 May 2015.

On 22 June 2015 four BBY companies including BBYH, BBYL, BBYAS and BSA were placed into liquidation. Creditors of two companies, STL and BBYHT approved a pooled deed of company arrangement. On 8 October 2015 BBYN was placed into liquidation. The administrations of BBYPN, TN and OR concluded when a quorum was not available to attend any meetings of creditors for those companies.

Clients

There were over 30,000 former clients of BBYL, approximately 6,000 of which have potential claims totalling \$61 million to client monies held by BBYL. Our initial investigations identified an overall shortfall between available client funds and client claims of over \$23 million.

Given the nature of our findings about how BBYL managed client accounts and the transactions we identified that may have led to the depletion of client monies, the legal entitlement of each client is not clear and there is uncertainty about how client entitlements should be treated. We applied for Court directions in August 2015. Representative defendants were appointed by the Court to represent the respective interests of the different classes of BBYL clients. Those proceedings have been ongoing throughout 2016 and a final hearing is scheduled for 31 January 2017.

In the meantime we are pursuing recovery of various client monies and assets held with a range of counterparties.

Orders of the Court are required before claims can be formally adjudicated by the Liquidators and client monies distributions can be made to clients. The first distributions are unlikely to occur before late 2017.

Creditors

Total creditor claims in the liquidation of BBYH, BBYL, BBYAS and BSA could total in excess of \$40 million. These claims include secured creditor shortfalls, trade creditors, employees and clients in respect of shortfalls. This excludes intercompany liabilities, which are discussed in more detail later in this report.

Overview of liquidation process

Set out in this report is a summary of key phases of work completed, in progress and remaining to be addressed in the winding up of the affairs of BBYL and steps towards the ultimate distributions to clients and creditors. Completion of the liquidations of the other three companies, BBYH, BBYAS and BSA will occur in conjunction with BBYL.

Investigations to date

We investigated how BBY managed and dealt with client monies and we filed two reports in the directions proceedings, dated 22 December 2015 and 15 June 2016 (both published on our website). With the benefit of litigation funding (discussed below), we subsequently subpoenaed information from a number of parties, some of whom will be examined in September, and commenced our analysis of when we believe BBYL first became insolvent (which is necessary to support certain recovery actions). We are obliged to report to ASIC regarding possible offences in relation to BBY. We have lodged confidential reports and continue to liaise with ASIC.

Recovery initiatives

Whilst clients will recover a portion of their trust entitlements, there is no prospect of any return to creditors generally, except from recoveries that may result from potential causes of action that may be commenced by the Liquidators once investigations are complete.

We have formed the view that there may likely be a number of viable causes of action available which could result in recoveries and provide a material improvement in the liquidation outcome for clients and other creditors. We consider there may be grounds for a claim against the BBYL directors in respect to losses caused by insolvent trading. A liquidator also has statutory rights to set aside or void, for the benefit of creditors, certain types of transactions including unfair preferences, uncommercial and unfair loans, unreasonable director related transactions and other transactions for the purpose of interfering with the rights of creditors.

In considering the merits of proceeding with any recovery action, a liquidator must have regard to the relative costs and benefits together with the prospects of success and the financial ability of defendants to meet claims. Recovery actions are often expensive and can involve lengthy delays if court proceedings are required.

There are no funds available in the liquidation (outside the client monies) to meet costs of recovery actions. Therefore, in April 2016, the Liquidators secured funding from a litigation funder, IMF Bentham Limited to meet costs of carrying out further investigations that may support recovery actions, including public examinations of former BBY officers and other parties, scheduled to be held over 10 days in the NSW Supreme Court between 12 and 23 September 2016. The liquidators anticipate pursuing a number of possible recovery actions after completion of the examinations that have the potential to result in material returns for the insolvent estate.

Next steps

Forthcoming milestones in the liquidations include:

- 12 to 23 September 2016 – public examinations (NSW Supreme Court)
- October / November 2016 – Commencement of recovery process against various parties based on conclusion of investigations
- 9 November 2016 – pre-trial hearing in the client monies directions proceedings
- 31 January 2017 – Client monies court directions final hearing
- Early / mid 2017 – Court directions orders in relation to client monies
- Mid / late 2017 – complete recovery of counterparty funds, adjudication of client claims, initial client distributions, progress / finalise recovery actions
- Early 2018 – if successful recoveries and sufficient funds, possible creditor dividends

Estimated returns

The estimated outcomes for BBYL clients as opposed to other creditors in the liquidations of BBYH, BBYL, BBYAS and BSA will differ given the different treatment of claims to client trust monies and general liquidation realisations.

Given uncertainty around future orders of the Court in relation to BBYL client monies and the final outcome from client related recoveries it is not yet possible to provide any meaningful estimate of returns to clients. An analysis of the position of client monies by product line is set out in appendix A of this report.

It remains too early to estimate the prospects of material liquidator recoveries or whether sufficient funds will become available for general dividends to creditors.

More information

Further details of the BBY external administrations can be found on the creditor information website at www.kpmg.com/AU/bby. The website also contains key court documents, answers to frequently asked questions and other material. The website is updated on a periodic basis for material developments of interest to clients and creditors.

Clients and creditors can also email inquiries to AU-FMBBY@kpmg.com.au.

Glossary

ACN	Australian Company Number
Act	Corporations Act 2001 (Commonwealth)
AIMS	AIMS Financial Group
Ashurst	Ashurst Australia, lawyers assisting the Liquidators
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
BBY	The business operated by BBYL and the wider BBY Group
BBYAS	BBY Advisory Services Pty Ltd (Receivers and Managers Appointed) (In Liquidation)
BBYL	BBY Limited (Receivers and Managers Appointed) (In Liquidation)
BBYH	BBY Holdings Pty Ltd (Receivers and Managers Appointed) (In Liquidation)
BBYHT	BBY HomeTrader Pty Ltd (Subject to Deed of Company Arrangement)
BBYN	BBY Nominees Pty Ltd (In Liquidation)
BSA	Broker Services Australia Pty Ltd (In Liquidation) (the employment company)
Committee	Committee of Inspection
Court	Supreme Court of New South Wales
CSA	Client Segregated Account
Directors	Glenn Rosewall, Ken Rosewall, David Perkins
DOCA	Deed of Company Arrangement
ETO	Exchange traded options
FEG	Fair Entitlements Guarantee
FX	Foreign exchange
GST	Goods and services tax
IMF	IMF Bentham Limited
IB	Interactive Brokers LLC
Liquidators	Stephen Vaughan and Ian Hall of KPMG
NAB	National Australia Bank
Receivers	Receivers & Managers of BBYH, BBYL, BBYAS, S Parbery and B Lord of PPB Advisory
Saxo	Saxo Capital Markets
St George	St George Bank, a secured creditor which appointed the Receivers

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Introduction

This annual report

This is the first annual report to creditors (including former clients) in the liquidations of:

- BBY Holdings Pty Ltd (in liquidation) (receivers and managers appointed)
- BBY Limited (in liquidation) (receivers and managers appointed) (*main BBY trading entity*)
- BBY Advisory Services Pty Ltd (in liquidation) (receivers and managers appointed)
- Broker Services Australia Pty Ltd (in liquidation) (*the employment company*)

BBYH, BBYL, BBYAS and BAS were part of a wider group of BBY companies that comprised the BBY business. The affairs of these companies are interrelated, as explained later in this report. For convenience, this is a combined report covering the four companies, although we also address the affairs of each company individually.

This report covers the first 12 months of the winding up of each company from 22 June 2015 to 21 June 2016, as well as more recent developments in the following two months. Further background details, findings from our investigations and related information can be found in previous published material on our website at www.kpmg.com/AU/bby including:

- BBYL administrators report to creditors (section 439A report) 12 June 2015
- Client monies investigation report 22 December 2015
- Supplementary client monies investigation report 15 June 2016
- Other notices and material on the BBY creditor information website.

Decision not to convene meetings of creditors

When the winding up of an insolvent company in liquidation continues for more than 1 year, the Corporations Act (section 508) stipulates that a liquidator must either convene a meeting of creditors or prepare a report that is lodged with ASIC, setting out the conduct of the winding up during that first year and providing an estimate of when the winding up is likely to be completed.

We have decided not to convene meetings of creditors of each of BBYH, BBYL, BBYAS and BAS but rather lodge this report with ASIC. Our decision not to convene meetings took into account the large number of creditors and former clients, the associated costs of convening meetings and the lack of funding to meet those costs.

Creditors may request a copy of this report free of charge. The report is also available on our BBY creditor information website at www.kpmg.com/AU/bby.

Other external administrations not included in this report

This report does not cover the conduct of other BBY external administrations including:

- BBY Nominees Pty Ltd (In liquidation)
- SmarTrader Limited and BBY HomeTrader Pty Ltd (both subject to a pooled deed of company arrangement)
- The concluded administrations of BBY Protection Nominees Pty Ltd, Options Research Pty Ltd and Tilbia Nominees Pty Ltd.

Voluntary administrations

Stephen Vaughan and Ian Hall of KPMG were appointed as Administrators of 10 companies within the BBY corporate group on 17 May 2015 including BBYH, BBYL, BBYAS, BSA, STL, BBYHT, BBYN, BBYPR, OR and TN.

On 12 June 2015, the Administrators of the 4 BBY nominee companies, BBYN, BBYPN, OR and TN obtained orders from the Supreme Court of New South Wales to extend the convening period for a statutory second meeting of creditors to allow time to carry out further investigations into the assets and liabilities and to assess a proposal received for a Deed of Company Arrangement.

On 22 June 2015 statutory second meetings of creditors were held in respect of BBYH, BBYL, BBYAS, BSA, STL and BBYHT. Creditors resolved to place BBYH, BBYL, BBYAS and BSA into liquidation and approved a pooled Deed of Company Arrangement in respect of STL and BBYHT.

On 8 October 2015 BBYN was placed into liquidation. Meetings of creditors in respect of BBYPN, OR and TN were adjourned due to a lack of quorums and the administrations of these three companies were concluded on 15 October 2015.

The relevant dates of the various external administrations are summarised below.

BBY external administration appointments				
BBY Company	Administration	Liquidation	DOCA	Administration Ended
BBY Holdings Pty Ltd	17-May-15	22-Jun-15		
BBY Limited	17-May-15	22-Jun-15		
BBY Advisory Services Pty Ltd	17-May-15	22-Jun-15		
Broker Services Australia Pty Ltd	17-May-15	22-Jun-15		
BBY Nominees Pty Ltd	17-May-15	08-Oct-15		
BBY Protection Nominees Pty Ltd	17-May-15			15-Oct-15
Options Research Pty Ltd	17-May-15			15-Oct-15
Tilbia Nominees Pty Ltd	17-May-15			15-Oct-15
Smartrader Limited	17-May-15		22-Jun-15	
BBY Hometrader Pty Ltd	17-May-15		22-Jun-15	

Appointment of Receivers

On 18 May 2015 a secured creditor, St George, appointed Stephen Parbery and Brett Lord of PPB Advisory as Receivers & Managers over 4 BBY companies including BBYH, BBYL, BBYAS and BSA and they assumed control of the BBY business. The Receivers subsequently retired from BSA, the employment company on 20 May 2015.

The Receivers' primary role is to collect and sell enough of a company's charged assets to repay the debt owed to a secured creditor, St George.

The Receivers also took control of all client monies accounts held at St George and there were a number of transactions within these accounts post their appointment. Further details of post appointment transactions are set out in section 4.4 (page 50) our client monies investigation report dated 22 December 2015.

St George did not release custody of these client monies accounts to the Liquidators until April 2016.

Response of ASX and ASIC

BBYL was a market participant of Australian Stock Exchange (ASX), Chi-X Australia and Sydney Stock Exchange (SSX) (formerly the Asia Pacific Stock Exchange), and a clearing and settlement participant of the ASX.

BBYL was also an Australian financial services licensee and was authorised by Australian Securities and Investments Commission under its AFSL to issue and make a market in derivatives and FX.

ASX Clear, the ASX clearing house for all shares, structured products, warrants and ASX Equity Derivatives, declared an event of default and suspended BBYL's participation in the ASX market, ASX Clear and Austraclear (the settlement facility used by BBYL for cash settlements).

On 28 May 2015 ASIC suspended the AFSL held by BBYL, BBYAS and STL.

As a consequence, BBY effectively ceased trading shortly after the Receivers' appointment.

On 3 July 2015, BBYL's participation in the ASX settlement facility was suspended by ASX Settlement Pty Limited.

After BBYL entered administration, ASX Clear allowed certain clients who had already started to transfer open derivatives positions and cover to a new ASX Clear participant to complete that process by a deadline of 1.30pm on the 18 May 2015.

ASX Clear closed out of all net open derivatives positions and net unsettled cash market transactions registered in BBYL's accounts with ASX Clear, other than for open derivatives positions which were either transferred to another participant or proceeded to expiry.

Where clients had not transferred open derivatives positions to a new ASX participant by the ASX deadline, ASX Clear managed its exposure to BBYL by trading out of options and, where there was insufficient cash cover, selling client's shares held as collateral for BBYL's margin obligations to ASX Clear to recover the options close out costs.

On 4 August 2015 the ASX paid \$3.4 million in respect of remaining cash margin after options close outs to the Liquidators, which is held in a segregated account pending conclusion of court directions proceedings. Refer to section 4.5.4 of our client monies investigation report dated 22 December 2015 for further details.

Liquidations

BBYH, BBYL, BBYAS and BSA were placed into liquidation on 22 June 2015 and we became the Liquidators.

Role of the Liquidators

The purpose of liquidation of an insolvent company is to have an independent and qualified person (the liquidator) take control of the company so that its affairs can be wound up in an orderly and fair way for the benefit of all creditors. The liquidator's role is to:

- Collect, protect and realise the company's assets
- Investigate and report to creditors about the company's affairs, including any unfair preferences which may be recoverable, any uncommercial transactions which may be set aside, and any possible claims against the company's officers

- Enquire into the failure of the company and possible offences by people involved with the company and report to ASIC
- After payment of the costs of the liquidation, and subject to the rights of any secured creditor, distribute the proceeds of realisation—first to priority creditors, including employees, and then to unsecured creditors, and
- Apply for deregistration of the company on completion of the liquidation.¹

In the case of BBYL the Liquidators have an additional role as trustees of the BBYL client funds to deal with those in accordance with the law. The Corporations Regulations direct that following the appointment of an administrator or the winding up of a financial services licensee, all moneys in a client segregated account must be paid to each person who is entitled to be paid money from the account. Where there is a deficiency, the money in the account must be paid in proportion to the amount of each person's entitlement. As discussed later, we have applied to the Supreme Court of NSW for guidance as to how the amounts in the CSAs and other recoveries should be dealt with and funds ultimately distributed.

Declaration of independence

Enclosed with our circular to creditors, dated 20 May 2015, was the Administrators' Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) pursuant to section 436DA of the Act and the ARITA Code of Professional Practice covering the 10 BBY companies in administration.

An updated DIRRI was provided on 27 May 2015 to creditors at the first meetings of the 10 BBY companies in administration (there being no quorums for the 4 nominee companies) which disclosed dealings with AIMS, an audit client of KPMG. We updated our DIRRI on 29 September 2015 and again on 14 December 2015 reflecting changed circumstances that arose during the external administration of BBYN in respect to Linc Energy Limited ("LE"). KPMG was the auditor of LE, a listed oil and gas company. LE was a former client of BBYN, which held shares in a nominee capacity on LE's behalf through a London based counterparty, Jeffries International (Nominees) Limited. BBYN also acted in a nominee capacity for approximately 380 clients holding shares in LE, including LE employees. These shares are held in a sub-custodian arrangement through ABN AMRO Clearing Bank N.V. in Singapore. LE is not a party to those arrangements. LE was placed into administration on 16 April 2016 and into liquidation on 23 May 2016.

A copy of our DIRRI is included with this report at appendix C.

Committee of inspection

At the creditors meetings of BBYL and BSA on 22 June 2015 creditors formed two Committees of Inspection.

BBYL was the main trading entity and also managed client monies. BSA was an employment company which provided employment services to other group entities but did not otherwise trade.

¹ Australian Securities & Investments Commission, Liquidation: a guide for creditors information sheet 45

Role of committee

Committee members are regarded as holding fiduciary positions and must have regard to the interests of the wider body of creditors and members rather than just their own interests. A Committee can provide specialist knowledge, advice and assistance to a liquidator and oversee the conduct of the liquidator's administration. Committee meetings are a good forum to share information as well as make decisions. Matters discussed may be commercially sensitive, especially if relating to issues such as the liquidation strategy, and recovery actions against particular parties. We often have legal advisors present at Committee meetings to assist and certain information may be provided to the Committees in confidence or subject to legal privilege in the interests of creditors.

A Committee can provide a more workable body than a general meeting for the liquidator to communicate with, and meetings may be convened more frequently and at less cost to the liquidation. The frequency of Committee meetings are generally governed by the nature of the liquidation and the extent to which important issues require collaboration between the Liquidators and the Committee.

Committee members

The current Committee memberships are set out below.

BBYL and BSA Committees of Inspection			
Member	Representative	Type	Claim
BBYL			
Richard Howes Pty Ltd	Richard Howes	Client	Futures
LL Phoenix Pty Ltd & Denant Pty Ltd	Long Vo-Phuoc	Client	Futures
Derivative Management & Consulting Pty Ltd	Clive Riseam	Client	Futures
Derrick Sutton	Derrick Sutton	Client	Futures
Culbrook Super Fund	Heather Cullen	Client	International Brokers
Alchemy Trading Pty Ltd	Julian Peters	Client	Options
Agility Applications Pty Ltd	Paul Biggs	Creditor	Supplier
Hamilton Capital Pty Ltd	Enzo Pirillo	Creditor	Asset sale
Spectrum Live Pty Ltd	Craig Morris	Creditor	Commission
BSA			
Indexys Pty Ltd	Andrew Harrington	Creditor	Commission
Trent Mackie	Trent Mackie	Employee	Commission
Gavin Long	Gavin Long	Employee	Commission
Drew Metcalfe	Drew Metcalfe	Employee	Commission

Meetings

The following meetings of the Committees for BBYL and BSA have been held:

BBYL and BSA Committees of Inspection		
Date	BBYL	BSA
29 July 2015	✓	✓
08 September 2015	✓	✓
22 December 2015	✓	✓
06 April 2016	✓	X
08 September 2016	✓	X

The first 3 meetings of BBYL and BSA were held on a concurrent basis. We have not held subsequent meetings of BSA as there is relatively little activity in this liquidation pending developments in the BBYL liquidation.

Meetings of the BBYL Committee have been held separately since 6 April 2016 as the agendas included confidential material that was subject to legal professional privilege.

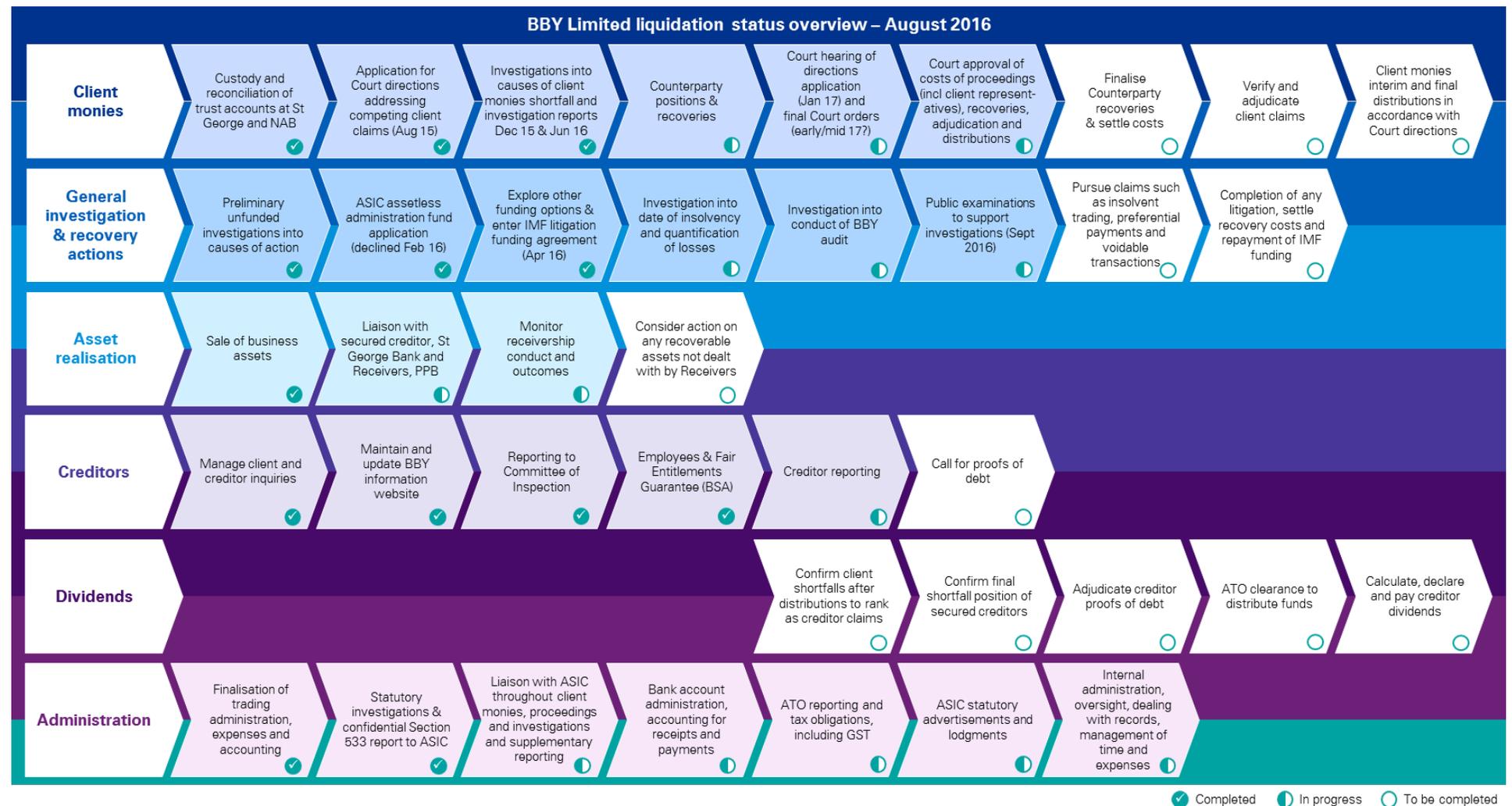
In addition we report formally to the Committees and provide regular email updates.

Overview of liquidation process

BBYL

An overview of the status of the BBYL liquidation process is set out on the next page including a summary of key phases of work completed, in progress and remaining to be addressed in the winding up of the affairs of BBYL and steps towards the ultimate distributions to clients and creditors.

BBYL liquidation overview



BSA

BSA was the employment company within the BBY business which dealt with most employee and contractors. BSA held no assets.

Where a staff member's employment has been terminated as a consequence of an insolvency their employee entitlements are afforded a statutory priority under the Act out of any available funds. These include any outstanding wages, pay in lieu of notice, superannuation, annual leave, long service leave and redundancy. There are certain caps in relation to 'excluded employees' including directors.

Former employees are eligible to lodge a claim for entitlements with FEG, the Fair Entitlements Guarantee scheme including for wages, annual leave, long service leave, payment in lieu of notice and redundancy pay.

We provided FEG with information regarding employee entitlements as at 17 May 2015 as they appear in the Company records and assisted FEG in its assessment of claims within statutory caps on entitlements that are met under the scheme.

Where FEG meets a claim it has a subrogated right in the liquidation in respect of any recoveries. Employees also have a further entitlement in the liquidation to the extent of the Liquidators may admit a claim although it is not paid in full by FEG.

To date we have processed 12 distributions on behalf of FEG to 80 former employees for a gross amount of \$1.8 million.

Since 1 July 2016, the Department of Employment has made a change to this process, with all claims approved by FEG being paid directly by the Department of Employment into the individual employees' nominated bank account. The liquidators are currently assisting FEG with remaining claims, which are expected to be completed before the end of 2016.

We prepared and issued PAYG Payment Summaries to employees as follows:

- Period ended 17 May 2015 – issued to employees on 30 July 2015
- 21 May 2015 to 26 May 2015 – issued to employees on 7 August 2015

Separation certificates have also been distributed to those employees who were, according to Company records, employed at the date of appointment.

We have identified a number of potential avenues for recovery in the BSA liquidation that we are examining further with a view to potential action. These are discussed in more detail in a later section of this report.

BBYH

BBYH was the parent entity of BBYL, BSA and BBYAS. This entity was head of the tax consolidated group of BBY, with GST being remitted by this company. The assets of this company mainly comprised of intercompany receivables with BSA, which are unlikely to be recoverable given BSA has no assets. There were a number of loan agreements signed between related parties of the directors and BBYH, as well as external sources. We discuss in more detail later in this report the liabilities of BBYH.

BBYAS

BBYAS was predominantly part of the corporate finance business, although the majority of transactions were operated through BBYL. BBYAS had no assets other than intercompany receivables and sundry debtors, which are unlikely to be recoverable. We discuss in more detail later in this report the liabilities of BBYAS.

Background to BBY

The BBY Group was an independent financial services group and stockbroking firm established in 1987 and majority owned by interests associated with non-executive director, Ken Rosewall and executive chairman, Glenn Rosewall.

Officers

At the date of the administration, the three directors of BBYL, the main operating company, were Glenn Rosewall, Ken Rosewall and David Perkins. They held other directorships of the companies in external administration as follows:

BBY Company Directorships		
Company	Director	Date appointed
BBY Holdings Pty Limited	Ken Rosewall	17 March 2008
	Glenn Rosewall	17 November 2004
	David Perkins	30 March 2006
BBY Limited	Ken Rosewall	17 March 2008
	Glenn Rosewall	22 December 2004
	David Perkins	30 March 2006
Broker Services Australia Pty Ltd	Glenn Rosewall	17 November 2004
	David Perkins	08 August 2006
BBY Advisory Services Pty Ltd	Ken Rosewall	21 December 2005
	Glenn Rosewall	08 November 2002
BBY Nominees Pty Ltd	Glenn Rosewall	22 December 2004
BBY Protection Nominees Pty Ltd	Glenn Rosewall	22 December 2004
Options Research Pty Ltd	Glenn Rosewall	22 December 2004
Tilbia Nominees Pty Ltd	Glenn Rosewall	22 December 2004
BBY Hometrader Pty Ltd	Glenn Rosewall	23 August 2011
SmarTrader Limited	Ken Rosewall	21 April 2015
	Glenn Rosewall	23 August 2011
	David Perkins	24 March 2015

Source: ASIC Company Searches

Glenn Rosewall joined BBYL in 2004 as Managing Director, CEO and a major shareholder. In February 2012, he was appointed Executive Chairman of BBYL. He was also Head of Institutional Sales, Head of Research and Head of Corporate. Mr Rosewall is a Chartered Accountant, a Master Stockbroker (Stockbrokers Association of Australia) and a member of the ASIC Markets Disciplinary Panel.

Ken Rosewall, Glenn's father and a former world top ranking amateur and professional tennis player, was a non-executive director and major shareholder.

David Perkins was non-executive director. He is also the principal of Perkins Solicitors and had an office in the BBYL premises in Sydney. Mr Perkins acted as chair of the ARCC. Mr. Perkins subsequently became Company Secretary of BBYL.

Arun Maharaj, who had acted as the CFO and company secretary since 2005, was promoted to CEO in January 2012. In February 2015, Mr Maharaj resigned from BBY and officially ceased his role on 20 March 2015.

Shareholders

The shareholders of BBYH in effect controlled the BBY firm given all of the companies are wholly owned subsidiaries. BBYH is owned by entities associated with Glenn and Ken Roswell. These interests were acquired in 2006.

Trading history

BBY, formerly known as Burdett Buckering Young Limited, was established in 1987. Glenn Rosewall joined BBYL as the CEO and managing director in 2004 expanding the focus of the business from institutional, corporate and high net worth clients to a broader retail strategy.

In the period between June 2011 and March 2013, BBY embarked upon a period of expansion where it acquired the business and assets of the StoneBridge Group (2011), Cameron Stockbroking (2012) and a 51% share in a New Zealand stock broking firm trading as Edge Capital (2013) which was subsequently rebranded as BBY NZ. Each acquisition was structured so that BBY would pay the purchase price in instalments often with a bonus payment payable if the business acquired reached agreed revenue targets within 12 months of acquisition. In our view, rather than improving BBY's financial position, these transactions may have contributed to the failure of the business.

BBY grew in size, complexity and client product offerings with these acquisitions, taking on a large number of employees and independent contractors (particularly from StoneBridge) and opening new offices. BBY operated from six offices in Australia located in Sydney (Head office), Melbourne, Brisbane, Gold Coast, Adelaide and Perth and four offices overseas in Auckland, Wellington, New York and London. At the time of the administration there were approximately 180 staff and contractors.

Group companies

BBY operated as an integrated corporate group. The role of the 10 companies that were placed into external administration were as follows.

- BBY Holdings Pty Ltd (receivers & managers appointed) (in liquidation) was the holding company and head of the corporate group.
- BBY Limited (receivers & managers appointed) (in liquidation) held an Australian Financial Services License and acted as the main operating entity through which the firm conducted its financial services business. The majority of the firm's clients and creditors dealt with BBYL which held the most assets and the most significant liabilities.
- BBY Advisory Services Pty Ltd (receivers & managers appointed) (in liquidation) conducted BBY's corporate finance business. As part of this business, BBYAS would advise corporate clients in relation to capital raisings, listing on the ASX, mergers or acquisitions and debt instruments.

- Broker Services Australia Pty Ltd (in liquidation) acted as the main employment company in that most of the BBY employees and contractors were retained by BSA notwithstanding that they often worked for other entities within BBY;
- BBY Nominees Pty Ltd (in liquidation) acted as a bare trustee and nominated custodian for approximately 600 clients of the BBY business providing nominee services in respect of domestic and international securities and other financial products. It also holds securities on behalf of other group companies and possibly in its own right.
- SmarTrader Ltd (subject to a deed of company arrangement) was formerly known as Australian Financial Market Services Limited and was acquired by BBYL as part of the acquisition of the Stonebridge business. We understand that at one time SmarTrader offered trading software.
- BBY HomeTrader Pty Ltd (subject to a deed of company arrangement) offered educational services relating to trading.
- BBY Protection Nominees Pty Ltd, Tilbia Nominees Pty Ltd and Options Research Pty Ltd were also apparently used as trustee companies however at the time of the external administration they were apparently dormant, held no assets and had no client obligations.

There were a number of other companies in the BBYH group that were not subject to external administrations including Jaguar Asset Management Ltd (Bermuda), BBY (Dubai) Limited and BSA Executives Pty Ltd.

Reasons for failure

This circumstances leading to the failure of BBY are complex and there are a number of key milestones over the period from 2009 to 2015 leading to our appointment as administrators. Some high level observations and conclusions are set out below.

In our section 439A report to creditors dated 12 June 2015 we concluded that the BBY companies in administration may have been insolvent from June 2014. We set out our preliminary view as to the factors contributing to the failure of the BBY business and we noted that, in our view, the issues relating to the failure began well before they were placed into administration and include a systemic failure on behalf of the Board and senior management to address a myriad of issues facing BBY Companies over the past few years. In particular, we noted the following factors attributed to the failure of the business:

- Continued pressure on margins and significant competition in the marketplace
- Lack of adequate corporate governance
- Lack of independent directors at the Board level
- Inadequate risk management frameworks which exposed the business to large losses
- Poor management
- Trading activity in excess of funding capacity (effectively overtrading beyond available working capital)
- Poor management information systems within the business
- Inadequate financial records

- Possible short comings in audit processes
- The financial impact of the Aquila Resources transaction in June 2014
- Termination of the Saxo relationship with BBY in December 2014
- Closure of the ASX Options clearing business in May 2015.

We have since conducted intensive investigations into a wide range of matters since our appointment, including the quality of management and governance, financial performance, how client monies were managed, critical events and key transactions entered into by BBY.

Further examination of the 2009 underwriting of \$25 million in undersubscribed convertible notes in Firestone Energy Limited (a coal exploration company listed on the ASX and Johannesburg Stock Exchange in South Africa) confirmed our preliminary view that this was a disastrous transaction for BBY that led to depletion of essential capital reserves. This was compounded by the poor performance of Firestone and interest not being paid on the notes, leading to BBYL converting notes to shares in Firestone in an unsuccessful strategy to salvage future value if Firestone's financial performance improved. This did not eventuate and this non-core transaction overshadowed the viability of the BBY business until its collapse in 2015.

It also arguably meant that BBYL did not have sufficient capital reserves to support its expansion including the acquisition of the Stonebridge business and its decision to become an ASX self-clearing participant in mid-2011. In December 2011 it appears that \$9.5 million in ASX options margin requirements were funded indirectly by utilising Saxo client trust funds (ex Stonebridge), in the first of a number of Saxo related transactions we identified as outside of the ordinary course of business.

There were a number of subsequent critical events between 2011 and 2015 impacting the future of BBY and the losses eventually to be suffered by clients and creditors. Many of these are discussed in our two client monies investigation reports, including the contractual changes to and eventual termination of the Saxo relationship and the Aquila transaction in June 2014. We have also examined other circumstances including allegations in 2011 of oppressive conduct by minority shareholder, Jefferies & Co Ltd and its demands for repayment of a subordinated loan, the acquisitions of Cameron Stockbrokers Ltd and Edge Capital Markets Ltd, the secured facilities provided by St George, mounting tax debts and difficulties meeting other obligations, the use of client funds to meet overheads, attempts to raise capital, resignations of key staff, increasing scrutiny by the ASX and ASIC and imposition of penalties, the closure of the options business in May 2015 and the final unsuccessful efforts to source a rescue investor.

Our subsequent investigations have led us to conclude that the business may have been insolvent from as early as 2011. Whilst these transactions and other external factors impacted the business, we consider that the underlying contributors to the demise of the BBY business, within control of the directors, were its poor management at a senior executive level, a lack of financial discipline, deficient internal controls and gross shortcomings in corporate governance.

In addition our client monies investigation reports of 22 December 2015 and 15 June 2016 highlighted client monies 'transactions of interest', including transfers to the business, dating back to 2011 which we considered were outside the ordinary course of business and may have led to the depletion of client monies and shortfalls against client obligations.

Client monies

BBYL dealt in financial products which can broadly be categorised as either:

- exchanged-traded financial products, being products traded on an Australian or foreign exchange, where BBYL as agent for the client would pass orders to the relevant exchange (sometimes via another intermediary); or
- "over-the-counter" (OTC) financial products, being products not traded on an exchange, which were entered into directly by BBYL with its clients.

In the course of its business, BBYL advised clients on investment strategies and provided advice regarding the financial products in which its clients should invest in order to maximise their wealth; executed orders on behalf of its clients to acquire or sell exchange-traded financial products traded on an exchange of which BBYL was a participant (mainly the ASX); offered and sold OTC financial products directly to its clients; communicated (or facilitated the communication of) orders placed by its clients to other brokers for execution on exchanges (including Australian and foreign exchanges) of which BBYL was not a participant; and held monies on behalf of its clients in accounts maintained for the purposes of section 981B of the Act (client segregated accounts or CSAs) in order to facilitate those trading activities.

BBYL organised its financial products into separate business lines (product lines) as follows:

- Equities and ETOs – cash equities (e.g. listed shares and units) and exchange traded options
- Futures – futures contracts and futures options
- FX – foreign exchange contracts
- Saxo – a variety of products, including FX contracts of difference and international products offered by Saxo Capital Markets
- IB – a variety of products offered via the Interactive Brokers platform including stocks, options, FX and futures.
- Other – Carbon trading

How client monies are meant to be managed

Section 981A and 981B of the Act provide that money received by an Australian financial services licence holder such as BBY must be placed into a CSA. Associated provisions provide that money held in a CSA is to be held by the AFSL holder on trust for clients and the money may only be paid out of a CSA in certain specified circumstances, for example to execute trades on behalf of a client or to pay monies back to clients.

The Act does not require that there be a separate CSA for each individual client. Rather, AFSL holders such as BBYL commonly operate CSAs, into which money of a number of clients is deposited into one bank account.

Results of our preliminary investigations

BBYL did not maintain comprehensive records that show the client or clients who are entitled to the balance of any particular CSA. We identified transactions between CSAs within and across different product lines and between CSAs and 'House' accounts that we consider to be outside of the ordinary course of business and may have led to the depletion of CSAs and shortfalls against client obligations.

The poor state of financial and client records and the way the business had been managed created challenges in identifying the full extent of client claims and associated client assets.

Preliminary investigations conducted during the administration of BBYL indicated there would likely be a significant overall shortfall between available client funds and client claims. This crystallised the necessity to conduct a more thorough investigation, discussed further below, which ultimately proved highly challenging and complex, requiring specialist forensic support.

Client profile

There are approximately 6,000 clients with claims. Approximately 67% (3,973) of clients have claims of less than \$1,000. There are 1,758 clients (30%) with claims between \$1,000 and \$50,000 and 187 clients, spread across the various product lines, with claims of more than \$50,000.

BBYL - client claims profile by product line												
No. of clients Value of claims (\$'000)	Equity / ETO		Futures		FX		Saxo		Interactive Brokers		Total	
	No.	Value	No.	Value	No.	Value	No.	Value	No.	Value	No.	Value
\$0 - \$25	148	2	172	2	312	2	459	4	150	1	1,241	11
\$25 - \$100	354	14	263	14	113	6	491	28	76	4	1,297	67
\$101 - \$1,000	262	143	258	98	117	35	692	257	106	46	1,435	580
\$1,001 - \$5,000	242	632	122	308	41	91	333	832	151	457	889	2,321
\$5,001 - \$10,000	63	462	44	331	16	113	75	547	112	801	310	2,255
\$10,001 - \$50,000	128	2,960	99	2,064	20	367	108	2,235	204	4,943	559	12,570
\$50,001 - \$100,000	26	1,764	11	725	5	386	17	1,144	44	3,026	103	7,046
\$100,001 - \$500,000	12	2,050	19	3,832	7	1,333	8	1,656	27	5,335	73	14,207
\$500,001+	1	562	7	6,107	1	503	1	800	1	3,671	11	11,642
Total	1,236	8,589	995	13,482	632	2,836	2,184	7,505	871	18,286	5,918	50,698

Client claims and assets

Included at page 68 in our supplementary investigation report is a table, prepared as at 29 April 2016, setting out surplus / shortfall calculations comparing client claims to estimated available cash and counterparty stock and options for each product line. The table is reproduced at appendix A.

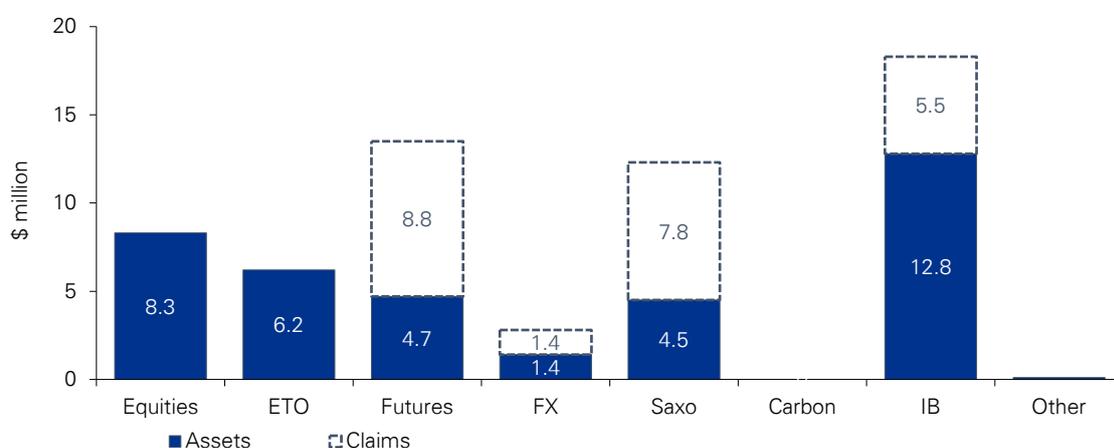
The table included an updated calculation of total client claims, being \$61.3 million and an estimated shortfall before costs, of \$23.2 million, as summarised below.

BBYL – estimated surplus/shortfall calculation by product line as at 29 April 2016										
Product line	Equities	ETO	Futures	FX	Saxo	Carbon	IB	Other		Pooled basis
Total cash, stock and options	8.3	6.2	4.7	1.4	4.5	-	12.8	0.1		38.0
Total client claims	(8.2)	(6.2)	(13.5)	(2.8)	(12.3)	(0.0)	(18.3)	-		(61.3)
Surplus/shortfall before costs	0.1	-	(8.7)	(1.4)	(7.9)	(0.0)	(5.5)	0.1		(23.3)
Cents in the dollar before costs	1.00	1.00	0.35	0.51	0.36	0.00	0.70	1.00		0.62

Note - Surplus/(shortfall) calculations are before costs of the proceedings, realisation, adjudication and distribution

This is presented graphically below highlighting the large shortfalls in the Futures, Saxo, FX and IB product lines.

BBYL client position by product at 29 April 2016



The value of client assets, including foreign currencies and counterparty holdings fluctuates over time. These have not changed materially from the April 2016 figures presented in the supplementary report.

Client trust accounts

At the time of the supplementary investigation report there was approximately \$13.6 million (net of a claim by the Receivers to \$700,000) in 47 CSAs in various currencies across the product lines holdings funds on behalf of nearly 6,000 clients.

Counterparty holdings

Counterparty holdings, totalled approximately \$24.5 million, at the time of the supplementary report, included cash of \$15 million and stock and options of \$9 million. The value of stock and options moves daily in line with market movements. The status regarding counterparties was included in the table on page 49 of the client monies investigation report.

Counterparties include the ASX, Interactive Brokers, Halifax, ABN AMRO, Saxo, ADM and CMC Markets. We have been working through a process to realise and recover remaining client money from counterparties. This process was frustrated to various extents by the fact that three of the main counterparties, ADM, Saxo and IB, still held stock and open derivative positions relating to 1,365 clients, including 2 ADM clients, 543 Saxo clients and 820 IB clients.

The ASX \$3.4 million in respect of remaining cash margin after options close outs is held in a segregated trust account under the control of the Liquidators. The Liquidators received \$0.2 million from Saxo in December 2015, representing cash held by Saxo, which is now held in a segregated trust account.

The Receivers hold \$0.5 million received from Halifax and to date have not complied with our requests to hand these funds across. ABN AMRO also require the Receivers' consent to release approximately \$2 million in funds to the Liquidators.

ADM continue to hold approximately \$1.5 million in cash pending a Court determination of how to address foreign currency shortfalls and conversion of other currencies.

We filed a Court application seeking directions that we are entitled to close out certain open derivative positions, sell securities and convert foreign currencies in order to liquidate these holdings. Part of that application (relating to derivative positions held with IB) was heard on 23 March 2016 and judgment was reserved (discussed below). The Court has not yet delivered its judgement on these issues.

Challenges in dealing with client monies

As an Australian Financial Services Licensee, obligations are imposed upon BBYL (and in turn upon the Liquidators) under Part 7.8 of the Corporations Act and associated regulations as to how monies in client segregated accounts can be dealt with following the insolvency.

The Corporations Regulations provide that if an AFSL holder becomes insolvent under an administration or is being wound up (as is the case with BBYL), then client money held in a CSA is to be paid to each client in accordance with their "entitlement", and if there are insufficient funds then in proportion to their entitlement.

Given our preliminary findings mentioned above, the legal entitlement of each client to money in the CSAs is not currently clear and there is uncertainty about how client entitlements should be treated in the liquidation of BBYL.

Client monies investigations

Report 22 December 2015

In support of the directions proceedings (discussed below), we prepared a report detailing the findings of our investigations into the operation of the CSAs maintained by BBYL and its dealings with client monies including its dealings with counterparties.

A key focus of our investigations, in light of the apparent shortfalls and concerning preliminary findings set out in our section 439A report dated 12 June 2015, was to examine the reasons for the shortfalls in various product lines and whether and how client monies had been mixed between CSAs and 'house' accounts, with implications for how particular client claims should be treated.

On 22 December 2015, our 114 page investigation report was filed in the Proceedings, served on other parties and published on the KPMG BBY creditor information web site.

On 23 December 2015 we lodged a 73 page supporting affidavit, which was also published on the web site. This included 138 appendices including company records reviewed during the investigation.

There were a further 111 exhibits which were not published on the web site as they were considered confidential, including information such as client names and bank account details. Only parties to the court proceedings have access to those exhibits.

Our investigation was by nature very much a post-mortem examination as the business had ceased trading, systems were generally not readily accessible, the 180 employees and contractors had left and there were limited resources available to guide us and assist in our inquiries as we, essentially, worked to reconstruct and understand events and transactions from a variety of sources.

Given the volume of information a complete reconstruction and analysis of 100% of relevant records was never going to be a viable option. Such an exercise, even if all the information was available and reconciled, would, not surprisingly, take many months of intense work and probably be prohibitively expensive.

The primary focus of our investigation related to the period from the beginning of 2014 to May 2015. At the time of this investigation we did not have access to much bank data prior to this date. We utilised forensically trained investigators from the KPMG forensics team and applied KPMG global investigation methodologies, data analytics techniques and fund tracing methodologies using specialist forensic databases and software tools to analyse over 56,000 transactions from over 100 bank accounts (including previously closed accounts) using *transaction matching* (described in our report as Method A) and *generic reference and key word searching* (Method B) in order to identify funds movements which did not appear to have been in the ordinary course of business, and other transactions of interest.

As part of our transaction matching process we identified over 10,000 potential internal funds transfers between BBYL accounts (both house and client accounts), across four levels of match quality, totalling approximately \$8 billion gross. This included over 2,000 transfers, totalling \$292 million that were categorised as 'High' quality matches within our funds transfer matrix. In order to identify transactions of interest within our funds transfer matrix, we identified and tested certain patterns and transaction descriptions in order to identify non-business as usual transactions.

This analysis was incorporated with the information obtained through the various investigation processes undertaken, including key word searching over email data (as outlined in section 5.2 of our investigation report).

The resulting findings from our analysis of the bank transactions, and other investigation processes, were set out in section 6 of our investigation report. These findings represent the majority, in both number and value, of all transactions identified within the populations of data resulting from our investigation processes.

The investigation report also included commentary on the broader affairs of BBYL that provided context and which we considered relevant to BBYL's dealings with client monies and the issues that arise in the directions proceedings.

The findings in our report included examples of the following types of transactions:

- Vertical (within) and Horizontal (across) funds movements across CSAs within product lines that;
 - Appear to be business as usual
 - Appear to be corrected (restored to a CSA with a matching amount)
 - Represent other transactions of interest (not BAU or corrected)

- CSA to House / House to CSA including BAU, corrected and transactions of interest.

This included transactions where it appeared that House accounts were effectively used as intermediaries in movements from one CSA to another.

The findings are important in the proceedings and to clients of respective product lines in that:

- Vertical CSA movements could be relevant to the question before the Court regarding whether there should be pooling within a product line.
- Horizontal CSA movements could be relevant to the pooling question across product lines.

After filing our report in December 2015 we continued supplementary lines of inquiry relating to the CSAs and we shared details of further investigations with the representative defendants in the client monies directions Proceedings.

Supplementary report 15 June 2016

On 15 June 2016 the Liquidators' published a supplementary client monies investigation report. The supplementary report sets out findings from investigations conducted by the Liquidators since publishing our initial report in December, with a view to providing further information to the Court and for the benefit of representative defendants in the proceeding.

Key focus areas in the supplementary report included the following:

- The primary focus of the December report was transactions from January 2014. The supplementary report included analysis of prior events and transactions dating back to 2011 leading up to and post the acquisition of the Stonebridge business and admission of BBYL as an ASX self-clearing participant.
- Circumstances surrounding the drawdown of funds from Saxo Bank in 2011 and subsequent transactions.
- Equities and ETO funding transactions.
- Operation of accounts in relation to the Interactive Brokers online trading platform.
- The BBY business in New Zealand and operation of related accounts.

The supplementary report also documented material that had been prepared in response to questions and requests for further analysis from a number of the parties to the proceeding following publication of our initial report and included an updated summary of client claims and assets.

The supplementary report drew out important findings relating to the use of client monies dating back to 2011 that also relate to the issue of the solvency of the business.

Court directions

The unusual circumstances uncovered during our investigations and associated legal questions that arise means the matter of how clients entitlements are dealt with is extremely complex. The outcome for clients within various product pools will be heavily influenced by the manner in which the legal position is resolved. The Liquidators decided that it was necessary to seek guidance of the Court as to how the client monies in the CSAs and other client related recoveries should be dealt with and ultimately distributed. Examples of issues where we sought a determination by the Court include:

- Whether or not CSAs should be grouped or pooled, and if so, how.

- Whether foreign currency held in the CSAs should be converted into Australian Dollars to facilitate distribution.
- How amounts recovered by BBYL since 17 May 2015, when the company went into administration, and amounts that may be recovered by the Liquidators in the future, are to be treated.
- Whether positive client positions should be set-off against negative client positions, including across different product lines in respect of the same client.
- Whether approximately 2,500 small client entitlements of less than \$100 can be disregarded (on the basis that the administrative costs of recovery and distribution would exceed the claims).
- Whether amounts deposited by clients after 17 May 2015, when the company went into administration, should be returned to clients, or treated as a deposit to the relevant CSA.
- Whether interest earned on the CSAs is owned beneficially by BBYL or is held on trust for clients.
- How the liquidators' remuneration, costs and expenses should be paid out of trust property.

There are thousands of BBYL clients who potentially have an interest in the CSAs and recoveries. The aim of the Court process was to resolve these issues in one set of proceedings and avoid unnecessary time and cost of dealing with various separate legal challenges by clients, creditors or other interested parties. The rules of Court allow for a representative to be appointed to represent members of a class where it is expedient for the purpose of saving expense (having regard to all of the circumstances, including the amount at stake and the degree of difficulty of the issue or issues to be determined). The Liquidators proposed that representative defendants be appointed to represent the respective interests of the different classes of BBYL clients. This would ensure that arguments are presented for and against each position.

On 13 August 2015 the Liquidators commenced proceedings in the Supreme Court of New South Wales seeking the Court's guidance as to how the amounts in the CSAs and other recoveries should be dealt with and funds ultimately distributed. The case number is 2015/00237028.

The Liquidators are the 'plaintiffs' in the directions proceedings and the defendants include the following:

1. J Mazzetti Pty Ltd as trustee for J Mazzetti Pty Ltd Staff Superannuation Fund - representing ETOs clients with open positions as at 15 May 2015, lawyers - Partners Legal
2. Peter & Bronwen Haywood as trustees for the Haywood Superannuation Fund - representing Equities clients and ETO clients without open positions as at 15 May 2015, lawyers - Mills Oakley
3. Clive Riseam - representing Futures, FX, Saxo and Other Products clients (Shortfall clients), lawyers - Corrs Chambers Westgarth
4. Securities Exchanges Guarantee Corp Ltd - trustee of the ASX National Guarantee Fund, lawyers - Clayton Utz (non-representative defendant)
5. David Nadin - representing Interactive Brokers clients, lawyers - Arnold Bloch Leibler

Directions proceedings

Chronology 13 August 2015 to 31 August 2016

A detailed chronology of the proceedings from commencement on 13 August 2015 to 31 August 2016 is set out at appendix B.

7 March 2016

At a directions hearing on 7 March 2016 the timetable was considered by the Court. We had anticipated that the outcome of the hearing would be some minor procedural directions in the lead up to the hearing scheduled for 22 March. Given the position of the other parties we proposed an alternate, slightly extended, timetable however agreement could not be reached among the parties. There was then consideration as to whether there would be any benefit in terms of court efficiency and the possibility of an earlier resolution of any issues that could reasonably be carved out in hearing only the matters raised by the 1st defendants. Justice Brereton expressed his view that the 'erroneous withdrawals and 'returned collateral' issues (described in the chronology) could be carved out and dealt utilising the time set aside for 22 and 23 March 2016. All parties present, other than the 1st defendants opposed this indicating they would prefer to deal with all issues at the same time (which has always been our preferred course).

Ultimately the Court ordered that the 'erroneous withdrawals and 'returned collateral' issues be heard on 22 March and that further directions for the remainder of the proceedings could be set on that day. As a consequence of Court orders made on 7 March the proceedings were effectively split into two sets of hearings.

22 March 2016

On 22 March there was a hearing in relation to the "separate question" which was initially:

"Whether the first defendants (Mazzetti - ETOs clients with open positions) are entitled to the returned collateral (\$3.4 million) and the erroneous withdrawals (\$2.4 million) in priority to any other claims on those funds other than liquidator's charge and costs", regardless of various matters which may be contentious at the final hearing.

Judgement was reserved to be handed down at a later date.

A directions hearing scheduled for 22 June 2016, to set out a timetable for further hearings, was adjourned to 20 July 2016 at the request of the second defendants (Haywood - representing Equities clients and ETO clients without open positions) in order for them to have more time to consider the Liquidators supplementary investigation report before committing to a further timetable. The Receivers also sought an additional 2 weeks to file and serve further affidavit evidence in relation to their application, which was also adjourned to 20 July 2016.

20 July 2016

The hearing on 20 July 2016 was pivotal in terms of the timing for achieving a resolution for clients. It crystallised further delay in reaching a substantive hearing of the matters before the Court. There was extensive discussion regarding setting of a final hearing date and how many days would be required. The Liquidators proposed a timetable that would facilitate a hearing later this year and our barrister reiterated our previously stated position that we seek a court hearing date as soon as possible. Our intention was to minimise costs of the proceedings and allow the Liquidators to commence adjudication of claims and ultimately distribute trust funds to former clients.

Counsel for the 2nd defendants proposed to put on 'expert evidence' from an independent third party in relation to various matters discussed in our supplementary report. They sought until 12 October to submit this evidence. There was debate and discussion around the merits of this exercise, associated costs and consequent delay. The 2nd defendants had also previously proposed a mediation between the parties however it was generally acknowledged, during the hearing, that this was not workable and may be misconceived given the representative nature of the proceedings and the nature of the directions sought. There would arguably also be unnecessary additional cost and delay. The parties also sought that the Liquidators model further scenarios of returns to clients in various pools under particular conditions. There was discussion around a possible hearing date in December, before the normal end of year court recess. Justice Brereton indicated that there were availability issues for the Court during December.

Justice Brereton then made the following procedural orders:

1. By 3 August 2016, each party file and serve on the other a summary of its contentions setting out the basis or alternative bases upon which that party says distribution shall be made.
2. By 17 August 2016, the Liquidators model to the extent that they have not already done so, and to the extent that they are able to do so, each of those scenarios and provide to the parties with the distributions under them.
3. By 31 August 2016, each party lodge a consolidated response to the other parties' summary of contentions.
4. This proceeding 2016/77316 (Receivers' application to access approximately \$700,000 in debtor proceeds from the Equities / ETO CSA) and proceeding 2015/237028 (Liquidators' directions application) be heard together, with evidence in one be evidence in the other.
5. The defendants not be entitled to rely in the hearing without the leave of the court on any affidavit evidence, including expert evidence, which has not been served by 12 October 2016.
6. Any party who wishes to rely on evidence in reply to evidence served by 12 October 2016 not be entitled to rely on such evidence unless served by 9 November 2016.
7. Proceedings be adjourned to 16 November 2016 for pre-trial directions (subsequently rescheduled to 9 November 2016).
8. Proceedings be fixed for hearing commencing 31 January 2017 with a four day estimate on the basis that the estimate and time reserved will be reviewed at the pre-trial directions hearing.

Justice Brereton also noted that, at the pre-trial hearing on 9 November, he would likely set a timetable for 'submissions in chief' around the end of November and replies by mid-December.

The substantive hearing of the client monies issues will now not be held until the end of January 2017. It is also likely, given the complexity of the issues, that a further period of time will be required for the Court to make a final determination and hand down orders in relation to how client monies in the CSAs and other client related recoveries should be dealt with and ultimately distributed.

Summary of contentions

The orders made on 20 July 2016 required that "each party file and serve on the other a summary of its contentions setting out the basis or alternative bases upon which that party says distribution shall be made". This step effectively draws out, at a high level, the positions of each of the representative defendants and the National Guarantee Fund.

The contentions have been published on the KPMG BBY website. Key points from the contentions are summarised below.

Liquidators (Plaintiff)

In formulating our contentions we considered the relevant legislation, the existing contractual arrangements entered into by BBYL, counterparties and clients, the nature of our investigation findings and key legal precedents.

Consistent with our role, we adopted a neutral approach to controversial issues in the proceedings, such as whether or not there should be pooling of CSAs across product lines.

In relation to other issues in the proceedings we commented upon the positions that may be taken by parties and practical difficulties that may accompany particular approaches. These included:

- *Foreign currency conversion* – we set out considerations in support of conversion to Australian dollars.
- *Recoveries* - we discussed the two kinds of counterparties – those in respect of 'exchange traded' products, where BBYL acted as an agent for clients (ASX, ABN AMRO, ADM and possibly IB) and, and those in respect of 'over the counter' products, where BBYL acted as principal (Halifax, CMC, Saxo and possibly IB), and how each of those Recoveries might be dealt with.
- *Basis for calculation of client entitlements* –we contended that the most practical basis is a 'contractual' approach having regard to the gross liquidation value of client positions as determined under contractual terms. This is in contrast to other approaches such as a 'claims' based approach (essentially based on the amount that BBYL should have actually segregated in its CSAs) and a 'contributions' based approach (essentially based on the amount BBYL actually segregated for each client).
- *Date for valuing client entitlements* – we set out the limitations of information available to the liquidators and practical considerations relating to the various dates that might be used to value client entitlements.
- *Set off positive and negative balances* - we set out the possible approaches and the factors that might be relevant to those approaches.
- *Claims below \$100* – we contended that these should be disregarded given that the cost of administering small claims would exceed the value of the claim (approximately 2,500 clients with claims of \$78,000).
- *Interest* – we contended that interest earned on CSAs is held on trust for clients until their entitlements are satisfied, notwithstanding that in the normal course, the BBYL business would be entitled to interest on client funds.

First Defendant – Mazzetti – representing ETOs clients with open positions as at 15 May 2015

The first defendant did not submit a summary of contentions. We presume this is because the 'Separate Question' relating to their claim to \$5.8 million in the 'returned collateral' and 'erroneous withdrawals' was heard on 22 March 2016 and judgement has been reserved in that matter.

Second Defendant – Haywood – representing Equities clients and ETO clients without open positions as at 15 May 2015, lawyers - Mills Oakley

The second defendant contended that there **should** be pooling of CSAs within and between the Equities and Exchange Traded Options product lines **but not** between those CSAs and any other product lines (Futures, FX, Saxo and IB).

Third Defendant – Riseam – representing Futures, FX, Saxo and Other Products clients, lawyers - Corrs Chambers Westgarth

The third defendant contended that there has been mixing of trust funds to the extent that the accounts in question can no longer be the subject of a cash tracing exercise and funds in trust accounts have been applied to meet obligations of other trusts, leading to a conclusion that there **should** be pooling between the CSAs in the Equities, ETOs, Futures, FX and Saxo product lines.

The third defendant contended that first defendant **should not** be entitled to recover the \$5.8 million in the 'returned collateral' and 'erroneous withdrawals' and rather partake in a distribution with other clients.

The third defendant contentions are silent in relation to the IB product line.

The third defendant supported the position that counterparty recoveries and interest on CSAs should be treated as being held on trust for clients, the 'contractual' basis for calculating FX, Futures and Saxo claims (as reflected in our CSA Report), the conversion of foreign currencies and exclusion of small client balances, but reserved its position in relation to set off.

Fourth Defendant – SEGC – ASX National Guarantee Fund, lawyers - Clayton Utz

The fourth defendant contended there **should** be pooling between the CSAs within the Equities and ETO product lines **but not** between these and any other product lines.

Similarly, it contended there **should not** be any pooling between IB and other product lines.

It otherwise **did not take a position** on whether or not there should be pooling between Futures, FX and Saxo product lines.

Fifth Defendant – Nadin - representing Interactive Brokers clients, lawyers - Arnold Bloch Leibler

The fifth defendant contends that IB **should not** be pooled with other product lines. The fifth defendant contends that IB clients should be afforded the opportunity to prove a **tracing claim** in respect of cash, stock and options within the IB product line in their respective sub-accounts on the IB platform and where a claim is proven the funds or assets should be distributed to that respective client. Otherwise the fifth defendant contends that IB clients should receive a rateable distribution from the IB assets.

The fifth defendant supports exclusion of the small account balances and treatment of interest as being held on trust for clients.

Receivers

The Receivers did not file any additional contentions and stated that they relied on their contentions previously filed in the proceeding commenced by them.

Summary of party positions on pooling

In summary, in relation to the central question of whether or not there should be pooling:

- The first defendant is silent (no contention submitted) however has previously argued that the \$5.8 million in 'returned collateral' and 'erroneous withdrawals should not be pooled with other product lines (or made available to any clients other than those represented by the first defendants) and should be treated as separate from the 'pooling' issue.
- The second (Haywood) and fourth defendants (NGF) support pooling within and between Equities and ETOs but not with other product lines.
- The third defendant (Riseam) contends in favour of pooling across all product lines other than IB (in respect of which it is silent).
- The fourth (NGF) and fifth defendants (Nadin) contend that IB should not be pooled with other product lines.

It is apparent there is a large degree of disparity between the positions of the parties. The second defendant has indicated that it will submit expert evidence supporting its position and the Court has indicated that all parties will have an opportunity to put on more detailed submissions in November or December.

Consolidated responses to other parties' contentions

The orders made on 20 July 2016 included that, by 31 August 2016, each party should file a reply to the other parties' summary of contentions.

We filed our reply contentions on 30 August 2016. A copy is available on our website. There were a number of requests by the other parties for a two week extension to lodge their replies. This should not affect the wider court timetable.

Next steps

Set out below are the next steps in the proceedings:

- Each party must lodge any reply to the other parties' summary of contentions by 14 September 2016 (subject to an order of the Court)
- Any evidence for the defendants must be filed by 12 October and any evidence in reply must be filed by 9 November.
- The next hearing is set for 9 November for pre-trial directions (rescheduled from 16 November).
- A timetable for 'submissions in chief' and replies is to be set at the pre-trial directions hearing on 9 November.
- The substantive hearing is set down for 31 January 2017.

Costs of proceedings

On 19 October 2015, the Court made orders in relation to the payment of costs and expenses to the effect that:

- The Liquidators' remuneration, costs and expenses of the proceeding and of administering the CSAs be paid out of the CSAs rateably.
- The Liquidators' remuneration, costs and expenses attributable to particular Recoveries be paid from those Recoveries.
- The representative defendants' legal costs (including the fifth defendant's costs, pursuant to subsequent orders) be paid out of the CSAs and Recoveries (other than the 'erroneous withdrawals' and the 'returned collateral', which total \$5.8 million referable to the ETO product line) rateably.
- The legal costs of the first representative defendant (Mazzetti) be paid out of the 'erroneous withdrawals' and the 'returned collateral'.
- The legal costs of each of the representative defendants, and the legal costs, expenses and remuneration of the Liquidators will be examined and approved by a Registrar of the Court before they are paid.

Process for payment from CSAs

In order to be reimbursed for costs, each party in the proceedings must make an application to the Supreme Court for an order approving costs. Each application is to be supported by an affidavit and supporting material providing sufficient detail to satisfy the Court Registrar. In the case of legal costs, applications are usually supported by a report from an independent 'costs assessor' that specialises in this field and is acceptable to the Court. Other parties have an opportunity to be heard.

There is no equivalent specialist assessor for liquidators' remuneration and costs and therefore our applications include a very high degree of detail to assist the Registrar. (The large amount of (unpaid) itemisation, analysis and 'line by line' verification involved creates a reporting lag in relation to our client related costs). This includes detailed information as to costs of administering the CSAs, conducting the legal proceedings and recovery work supported by itemised schedules of personnel, tasks performed, hours and rates. We also made a decision not to submit applications for any costs that have not already been included in our remuneration reports and the general remuneration approvals by the Committee.

Having regard to the nature of the Court orders and the large number of domestic and foreign currency accounts, the process of making a payment from the CSAs against approved costs is quite complex and time consuming. Certain costs must be apportioned pro rata across all CSA accounts, some apportioned equally across all recovery accounts (holding recoveries), some must be apportioned to a specific recovery account and some must be apportioned pro rata across recovery accounts. This necessitated building a complex model to assist in the calculation of the apportionment of costs between the 47 CSAs held with St George and National Australia Banks.

It is also necessary, in respect of each costs payment, to collate, at the time of apportionment calculation, 13 foreign exchange conversion rates into Australian dollar equivalent and process multiple online funds transfers to a Liquidators' account for accumulation before making a remittance to the respective party. Payments are made gross of GST and, in due course, it is intended that input tax credits in respect of GST paid will be reimbursed to the CSAs. We have sought advice of the Australian Taxation Office in relation to treatment of GST on costs and are awaiting its response.

Costs to date

The majority of evidence in the proceedings is contained in the two client monies investigation reports we produced and other material and analysis we provided to assist the Court and Representative Defendants. We had anticipated that the substantive hearing would be on 22 March 2016 however at that point the proceedings were split into the 'Separate Question' and remaining issues. There have been 5 court appearances since that date and 14 court appearances in total since 13 August 2015.

Costs of the directions proceedings that we are aware of, to July 2016 are in the order of \$5.6 million (excluding GST). The 1st defendant have not yet made an application to Court for costs.

Set out below is a summary of costs that have been approved by the Registrar to date as well as applications presently before the Court for consideration and other accrued costs (where we have been advised) that are not yet the subject of an approval application. The summary also includes a forecast of Liquidators' fees to 31 July 2016.

BBYL - CSA costs approved, lodged & advised to 31 July 2016				
\$'000	Approved	Pending	Forecast	Total
Liquidators' fees	658	912	1,337	2,907
Liquidators' solicitor & counsel fees	1,136	549	-	1,685
Second defendant	199	364	-	563
Third defendant	-	219	-	219
Fifth defendant	-	227	-	227
Total	1,993	2,271	1,337	5,601

Note: costs exclude GST. We have requested guidance from the ATO as to treatment of GST. Our intention is that any input tax credits relating to costs of the proceedings will be returned to the client accounts for the benefit of clients.

Management of future proceedings costs

Future costs of the proceedings cannot be accurately estimated given the number of parties involved, complexity of the arguments, the unknown extent of further 'expert evidence' of the 2nd defendants (to be served by 12 October), uncertainty regarding future orders that may be made and the length and conduct of the final hearing.

We advocated for a timetable that would allow the matter to be heard over 2 days before the end of this year, applying a 'stopwatch' trial method where set blocks of time are allocated to aspects of the hearing. However the matter will now be heard at the end of January 2017 with 4 days currently set aside. The parties have not agreed to the stopwatch approach.

We are in discussions with other parties regarding future conduct and costs of the proceedings.

Adjudication and distribution of client entitlements

The Court will provide guidance in relation to calculation and dealing with competing claims of clients however prior to distribution of funds an adjudication process will still ultimately be required which is likely to include a process for the resolution of any disputed claims.

Assuming that Court orders are delivered in early to mid-2017, the earliest date for an initial distribution is likely to be in mid to late 2017.

At a later stage in the liquidation, assuming there have been sufficient general (non-client trust related) recoveries, there could also be a wider creditor related process for submission and adjudication of claims. Clients would be entitled to participate to claim as general creditors in relation to shortfalls in return of client funds. They would not need to prove debts again in respect of shortfalls and they would participate equally with other creditors in any additional general creditor dividends.

Reports as to affairs

In accordance with the Corporations Act, directors were required to submit a Report as to Affairs in relation to each company providing details of the business, property, affairs and financial circumstances.

The RATA presents a snapshot of the asset and liability position of the companies on a going concern and forced asset realisation basis, as prepared by the directors. The table below provides a comparison of book values and estimated realisable amounts.

Set out below is a summary of reports as to affairs lodged by the directors in respect to each of the four companies along with comparisons between the book value and estimated realisable value presented by the directors in each of those companies; BBYH, BBYL, BBYAS and BSA.

BBYH

BBY Holdings Pty Ltd						
\$'000	Glenn Rosewall		Ken Rosewall		David Perkins	
	Book value	ERV	Book value	ERV	Book value	ERV
Assets						
Interests in land	N/A	Nil	N/A	N/A	Nil	Nil
Debtors	2,975	Unknown	2,975	Unknown	Nil	Nil
Cash at bank	80	Unknown	80	Nil	(2,731)	Nil
Stock	504	Unknown	N/A	N/A	N/A	Nil
Property, plant & equipment	N/A	Nil	N/A	N/A	N/A	Nil
Other assets - Deposits (bonds)	N/A	Nil	N/A	N/A	2,722	253
Total Assets	3,560	0	3,055	0	(8)	253
Liabilities						
Amounts owing to secured creditor	Nil	Nil	Unknown	Unknown	Nil	Nil
Amounts owing for employees	Nil	Nil	Nil	Nil	Nil	Nil
Preferential creditors	Nil	Nil	Nil	Nil	Nil	Nil
Partly secured creditors	Nil	Nil	Nil	Nil	Nil	Nil
Creditors	(3,748)	Unknown	(3,748)	Unknown	(267)	(267)
Contingent liabilities	Unknown	Nil	Unknown	Nil	Nil	Nil
Total Liabilities	(3,748)	0	(3,748)	0	(267)	(267)
Estimated surplus/ (deficiency)	(189)	0	(693)	0	(275)	(14)

We comment on book value and estimated realisable values included in the RATA for BBYH:

- Interests in Land – all directors indicated there was zero value for land. This agreed with the trial balance and our investigations.

- b) Debtors – directors stated recoverability of debtors is unknown. The book values of \$3.0 million for Glenn and Ken Rosewall relate to intercompany receivables of \$3.3 million from Broker Services and \$0.6 million payable to BBY for intercompany recharges within the BBY Group. It also included sundry debtors of \$0.3 million, with no supporting documentation provided in relation to the sundry debtors. David Perkins did not provide an amount for debtors.
- c) Cash at bank held in cheque and operating accounts by NAB – all directors indicated there would be nil or unknown recoverability for cash at bank. David Perkins book value of (negative) \$2.7 million varies to the other two directors who have the book value being \$80,000. This variance is due to Mr Perkins classifying a negative balance of \$2.8 million with NAB within cash at bank, whereas both Glenn and Ken Rosewall classified this as an unsecured creditor. Based on our investigations, there was no cash at bank at the date of appointment.
- d) Stock – both Ken Rosewall and David Perkins indicated this was not applicable. Glenn Rosewall provided a book value of \$0.5 million in relation to Firestone Energy convertible notes which he considered to be inventory, rather than categorised as “other asset” as detailed in the RATA. Glenn Rosewall estimated the recoverability as unknown.
- e) Property, plant & equipment – all three directors stated there were no fixed assets held within this company. This is confirmed by the trial balance and the records we have reviewed.
- f) Other assets – both Glenn and Ken Rosewall stated the balance as not applicable. David Perkins included a recoverable amount of \$0.3 million for sundry debtors. No detail was provided on the nature of this asset.
- g) Amounts owing to secured creditor – the directors recorded ERV and book value as being nil or unknown. It should be noted the charge held by the secured creditor, STG, included BBYH.
- h) Amounts owing for employees – not applicable as there were no employment contracts in BBYH.
- i) Preferential creditors – the directors recorded ERV and book values of nil.
- j) Partly secured creditors – the directors recorded ERV and book values of nil.
- k) Creditors – relates to domestic trade creditors. Both Glenn and Ken Rosewall recorded book values of \$3.7 million and ERV of unknown. Mr Perkins included an ERV of \$0.3 million for domestic vendors, with no detail provided on the breakdown of these creditors.
- l) Contingent liabilities – the directors recorded ERV and book values of nil.

BBYL

BBY Limited						
\$'000	Glenn Rosewall		Ken Rosewall		David Perkins	
	Book value	ERV	Book value	ERV	Book value	ERV
Assets						
Interests in land	Nil	Nil	Nil	Nil	Nil	Nil
Debtors	Sch D	Unknown	Nil	Nil	5,209	4,500
Cash at bank	Sch D	Unknown	25,504	Unknown	(655)	3
Stock	N/A	N/A	N/A	N/A	N/A	Nil
Property, plant & equipment	Nil	Nil	N/A	N/A	N/A	N/A
Other assets - Deposits (bonds)	Nil	Nil	N/A	N/A	66,931	57,215
Total Assets	25,504	0	25,504	0	71,485	61,718
Liabilities						
Amounts owing to secured creditor	(5,178)	Unknown	(5,178)	Unknown	(5,178)	(5,178)
Amounts owing for employees	Nil	Nil	Nil	Nil	(38,370)	(38,370)
Preferential creditors	Nil	Unknown	Nil	Nil	Nil	Nil
Partly secured creditors	Nil	Nil	Nil	Nil	Nil	Nil
Creditors	(49,444)	Unknown	(49,444)	Unknown	(4,295)	(4,295)
Contingent liabilities	Unknown	Nil	Unknown	Nil	Nil	(33)
Total Liabilities	(54,623)	0	(54,623)	0	(47,843)	(47,876)
Estimated surplus/ (deficiency)	(29,119)	0	(29,119)	0	23,642	13,842

We comment on book value and estimated realisable values included in the RATA for BBYL:

- Interests in Land – all directors indicated there is zero value for land. This agrees with the trial balance and the records which we have reviewed.
- Debtors – both Glenn and Ken Rosewall have stated recoverability of debtors is nil or unknown. Glenn Rosewall provided a schedule for debtors which included trade debtors, sundry debtors, prepayments and clearing receivables. The total book value for the debtors schedule was \$24.3 million. David Perkins estimated an ERV of \$4.5 million for debtors which included corporate debtors, sundry debtors and non-corporate receivables. There was no detail provided by Mr Perkins on which particular debtors he viewed as being recoverable. We noted there was a variance of \$0.6 million between the trial balance and the supporting schedule for trade debtors, with no explanations provided by Mr Perkins. The ERV of \$4.5 million for debtors may not be fully recoverable as there is a potential bad debt for \$1.9 million for one client relating to an exposure on the Swiss currency from January 2015.
- Cash at bank – relates to accounts with NAB, STG and Bank of New Zealand. This also includes a NAB Saxo buffer account. Both Glenn and Ken Rosewall indicated amounts as unknown, with David Perkins estimating \$3,242 for petty cash.
- Stock – not applicable as there is no inventory for BBY.
- Property, plant & equipment – all three directors stated there were no fixed assets held within this company. This is consistent with the trial balance.
- Other assets – both Glenn and Ken Rosewall indicated other assets as nil or not applicable. David Perkins stated the recoverability of \$57.2 million which included segregated bank assets, segregated client clearing accounts, self-clearing receivables and intercompany balance. This view would appear optimistic given our investigations to date.

- g) Amounts owing to secured creditor – the directors recorded a book value of \$5.2 million for the STG debt. Both Glenn and Ken Rosewall indicated the ERV as unknown, with Mr Perkins stating it would be \$5.2 million.
- h) Amounts owing for employees – both Glenn and Ken Rosewall recorded values of nil, given there were no employment contracts in BBY. Mr Perkins recorded both a book value and ERV of \$38.4 million comprising segregated accounts with counterparties. It would appear this section was incorrectly completed.
- i) Preferential creditors – the directors recorded ERV and book values of nil.
- j) Partly secured creditors – the directors recorded ERV and book values of nil.
- k) Creditors – both Glenn and Ken Rosewall recorded book values of \$49.4 million and ERV of unknown. This included amounts owed for domestic accounts payable, self-clearing payables and institutional clients. Mr Perkins included \$4.3 million in creditors for amounts owing to IT providers, statutory bodies and other overheads.
- l) Contingent liabilities – both Glenn and Ken Rosewall recorded book values of unknown with no amount completed for ERV. Mr Perkins indicated a minor amount of \$33,000 however there was no commentary provided on the nature of this contingent liability or how this amount was calculated.

BSA

Broker Services Australia Pty Ltd				
\$'000	Glenn Rosewall		David Perkins	
	Book value	ERV	Book value	ERV
Assets				
Interests in land	N/A	N/A	Nil	Nil
Debtors	N/A	N/A	Nil	Nil
Cash at bank	N/A	N/A	Nil	Nil
Stock	N/A	N/A	Nil	Nil
Property, plant & equipment	N/A	N/A	Nil	Nil
Other assets - Deposits (bonds)	N/A	N/A	Nil	Nil
Total Assets	463	317	0	317
Liabilities				
Amounts owing to secured creditor	Nil	Nil	Nil	Nil
Amounts owing for employees	(1,434)	(1,434)	(1,434)	(1,434)
Preferential creditors	Nil	Nil	Nil	Nil
Partly secured creditors	Nil	Nil	Nil	Nil
Creditors	(8,892)	Unknown	(3,600)	(3,600)
Contingent liabilities	Unknown	Nil	Nil	Nil
Total Liabilities	(10,326)	(1,434)	(5,034)	(5,034)
Estimated surplus/ (deficiency)	(9,863)	(1,117)	(5,034)	(4,717)

We comment on book value and estimated realisable values included in the RATA for BSA. Given BSA was the employment vehicle within the BBY companies, there were few assets in the general ledger:

- a) Assets – both Glenn Rosewall and David Perkins included book value and NRV of nil for each of the categories. Each director however provided an ERV of \$0.3 million for total assets in the RATA. The calculation of this was based on \$270,000 for sundry debtors and \$50,000 for fixed assets. We believe it is unlikely there will be any asset realisations in this company.

- b) Amounts owing for employees – this related to annual and long service leave entitlements for employees. Both directors recorded this amount as \$1.4 million and provided a supporting schedule.
- c) Creditors – this account relates to domestic trade creditors, withholding tax, broker and independent advisor liabilities and accruals. Glenn Rosewall recorded a book value of \$8.9 million and an ERV of unknown. Mr Perkins recorded a book value and ERV of \$3.6 million, which related to amounts owed to domestic trade creditors, brokers and independent advisors.
- d) Contingent liabilities – the directors recorded ERV and book values of nil or unknown.

BBYAS

BBY Advisory Services Pty Ltd				
\$'000	Glenn Rosewall		Ken Rosewall	
	Book value	ERV	Book value	ERV
Assets				
Interests in land	Nil	Nil	Nil	Nil
Debtors	668	Unknown	668	Unknown
Cash at bank	16	Nil	16	Nil
Stock	Nil	Unknown	Nil	Unknown
Property, plant & equipment	Nil	Nil	Nil	Nil
Other assets - Deposits (bonds)	Nil	Nil	Nil	Nil
Total Current Assets	684	0	684	0
Liabilities				
Amounts owing to secured creditor	Nil	Nil	Nil	Nil
Amounts owing for employees	Nil	Nil	Nil	Nil
Preferential creditors	Nil	Nil	Nil	Nil
Partly secured creditors	Nil	Nil	Nil	Nil
Creditors	(482)	Unknown	(482)	Unknown
Contingent liabilities	Unknown	Nil	Unknown	Nil
Total Liabilities	(482)	0	(482)	0
Estimated surplus/ (deficiency)	203	0	203	0

We comment on book value and estimated realisable values included in the RATA for BBYAS:

- a) Debtors – both Glenn and Ken Rosewall have stated book value of \$0.7 million. Both directors provided a schedule for debtors which included sundry debtors and deferred tax assets, with no supporting detail.
- b) Cash at bank – relates to accounts with NAB. Both Glenn and Ken Rosewall indicated book value of \$16k with an ERV of nil.
- c) Creditors – this account relates to intercompany creditors, GST and accruals. Both Glenn and Ken Rosewall recorded a book value of \$0.5 million and an ERV of unknown, given the intercompany balance predominantly related to companies which entered Administration. The accrued expenses did not have any supporting detail.

BBY Creditors

Total creditor claims in the liquidation of BBYH, BBYL, BSA and BBYAS could total in excess of \$40 million excluding intercompany liabilities.

BBYL Creditors

Total creditor claims in the liquidation of BBYL, including any shortfall in St George's secured recoveries, lease and trade creditor liabilities, as well as client shortfalls could exceed \$40 million.

Secured creditors

St George holds a security interest which attaches to all the present and after-acquired property of BBYL. It also held security over other group companies including BBYH, BSA, BBYAS, and BBYPN.

St George Bank was owed approximately \$13 million at the time of administration. On 18 May 2015, St George enforced its security interest by appointing Receivers to BBYL who took possession of assets. Our understanding is that St George is likely to suffer a shortfall of \$8-10 million after realisation of assets subject to security. To this extent it could rank along with unsecured creditors in respect of any recoveries from liquidator actions.

There were a number of other suppliers holding security interests registered on the Personal Property Securities Register relating to asset leases and other financial arrangements, including:

- ABN AMRO – security interest over collateral
- GBC / Fordigraph & Neopost Finance – Office equipment
- Konica Minolta – photocopiers
- Trustee for Oracle Commercial Trust – Property lease agreement including fit out
- Macquarie Leasing – motor vehicle lease
- Credit Suisse AG – margin under futures execution and clearing client agreement
- Stonebridge Securities Pty Ltd – vendor finance on June 2011 acquisition of the Stonebridge business

We expect claims for lease and other shortfalls in excess of \$1 million.

Priority creditors

As outlined in earlier sections of this report, BSA was the employment company within the BBY business which dealt with most employee and contractors. We do not believe any employee claims exist in BBYL.

Client claims as creditors

The position of BBY's clients is different to that of general creditors. Clients who have an entitlement to money held on trust in a CSA will have a direct claim to that entitlement. This is a claim as beneficiary of a trust, not as a creditor of BBY.

However, to the extent that there are not funds available in the relevant CSA to pay out a client's entitlement in full, affected clients may have a contractual claim against BBY's for the amount of any shortfall. This contractual claim would be an unsecured creditor claim.

We have previously reported estimated potential client shortfalls of \$23 million before costs.

Trade and other creditors

Based on a review of company records, proofs of debt and supporting invoices received to date, we estimate there are currently 115 trade creditors owed approximately \$4.5 million. This number is likely to increase once all claims are reviewed.

BBYH Creditors

Total creditor claims in the liquidation of BBYH, including any shortfall in unsecured director loans and tax liabilities could be in the order of \$3 million. These are discussed further below.

Unsecured director loans

Based on a proof of debt received by Ficema Pty Ltd, a related party of Ken Rosewall, there were \$2.5 million in unsecured loans which were not repaid. These related to a loan of \$2 million provided to BBYH on 16 November 2011 and \$0.5 million on 26 June 2013. We are still attempting to verify whether this loan is outstanding or not.

Tax liabilities

The Australian Taxation Office submitted a proof of debt claim for \$0.3 million, which was based on the outstanding running balance account deficit debt in respect of GST amounts incurred by BBY.

BBYAS Creditors

Based on review of books and records, BBYAS does not have any significant creditors which are not intercompany.

BSA Creditors

Total creditor claims in the liquidation of BSA, including any shortfall in employee entitlements, broker commissions and statutory liabilities could exceed \$9 million. These are discussed further below.

Employee entitlements

As outlined in earlier sections of this report, BSA was the employment company within the BBY business which dealt with most employee and contractors. Where FEG meets a claim it has a subrogated right in the liquidation in respect of any recoveries. Employees also have a further entitlement in the liquidation to the extent of the Liquidators may admit a claim although it is not paid in full by FEG. To date we have processed 12 distributions on behalf of FEG to 80 former employees for a gross amount of \$1.8 million. This number is likely to increase once all claims are processed and distributions made to employees.

Independent broker commissions

There were a number of stockbroker's who were owed commissions and payments for services they provided to BBY as independent contractors to the company. Based on a review of company records, proofs of debt and supporting invoices received, we estimate there are currently 48 brokers who may be owed approximately \$7 million. Further investigation and review is required to determine the quantum and validity of each claim.

Payroll tax liabilities

To date we have received proof of debt claims for \$0.3 million from Office of State Revenue bodies in the various states in which BBY operated, relating to estimates on unpaid payroll tax liabilities.

Intercompany Creditors

The records indicate there were substantial intercompany liabilities within each of BBYL, BBYH, BBYAS and BSA which could total \$25 million. Further investigation and review is required to determine the quantum and validity of these claims.

Adjudication of proofs of debt

If there are funds left over after payment of the costs of the liquidation, and payments to other priority creditors, including employees, the liquidator will pay these to unsecured creditors as a dividend where their claims have been admitted.

Claims are normally made in the form of a 'proof of debt'. The Liquidators undertake a formal process of adjudicating upon each proof before admitting creditor claims to participate in dividends.

The Liquidators are not calling for submission of proofs of debt at this time. We will notify creditors if there are likely to be funds available for distribution and, in that case, will call for formal proof of debt forms to be lodged.

Dividend process

Generally, the order in which funds are distributed is:

- costs and expenses of the liquidation including liquidators' fees
- outstanding employee wages and superannuation
- outstanding employee leave of absence (including annual leave, sick leave where applicable and long service leave)
- employee retrenchment pay, and
- unsecured creditors.

Each category is paid in full before the next category is paid. If there are insufficient funds to pay a category in full, the available funds are paid on a pro rata basis.

It is too soon to estimate whether there will be funds available for a dividend. Refer to estimated outcome statement section of this report for further information.

Asset realisation

Dealings with the Receivers

The Receivers assumed control of BBYL and the wider BBY business and assets on behalf of the secured creditor of BBYL, St George. The Receivers' primary role is to collect, sell and otherwise deal with all assets which are subject to the secured creditors' security to repay the debt owed to the secured creditor. The Receivers have no obligation to report to unsecured creditors about the receivership. However they are required to lodge various statutory accounts and they have also provided various information to the Liquidators in response to our requests.

The Receivers recovered approximately \$7 million in funds held by the ASX and are claiming approximately \$700,000 in debtor receipts held in the Equities / ETO CSAs as 'house' monies subject to the security interest in favour of St George. The Receivers have also been pursuing other debtors of the business.

During the first week of the receivership there were a number of CSA related transactions including margin calls and returns and other transfers relating particularly to the Equities and ETO clients. On 20 May 2015 the Receivers provided an undertaking to ASIC not to make any further disbursement of client monies from the CSAs. The Receivers provided us with an accounting of the post appointment transactions and a reconciliation in late 2015.

St George did not release custody of client monies accounts held with the Bank to the Liquidators until April 2016.

Sale of business during VA

On 26 May 2015, as Administrators, we sold specified BBY group assets, including various shareholdings in subsidiaries to BBY Asia Pacific Group Holdings Pty Ltd (an AIMS subsidiary) for \$625,000 (excluding GST) in an arrangement agreed with the Receivers and Managers. The proceeds were split with St George receiving \$425,000 and \$200,000 being paid to the Administrators to meet costs of the administration.

Recovery initiatives

A liquidator is normally entitled to realise the assets belonging to a company at the commencement of the winding up. In the case of BBYL the Receivers took possession of and will realise assets subject to the St George security. It is expected there will be a shortfall in asset recoveries by St George.

There are no material assets available in the liquidations. There is no prospect of any return to creditors except from possible recoveries resulting from potential causes of action available to the Liquidators.

A liquidator has various statutory rights to seek to set aside or void, for the benefit of creditors, certain types of transactions including unfair preferences, uncommercial and unfair loans, unreasonable director related transactions and other transactions for the purpose of interfering with the rights of creditors.

The time period involved can be from within 6 months up to 4 years and in some cases beyond this, from when the company was placed into administration or liquidation.

With some exceptions these recovery rights only arise if the company was insolvent at the relevant time and there are some limited available statutory defences.

There are also some statutory provisions that apply to company directors that give rise to civil and criminal offences for breaches of the Act and a basis for claims against them.

There are circumstances where directors can be held personally liable for losses incurred as a consequence for continuing to trade and incur debt at a time when a company was or was likely to become insolvent. There are, again, some limited available statutory defences.

In our section 439A report to creditors dated 12 June 2015 we commented on a number of matters potentially giving rise to a cause of action that could be pursued for the benefit of creditors.

We noted that:

- In considering the merits of proceeding with any recovery action, a liquidator must have regard to the relative costs and benefits together with the prospects of success and the financial ability of defendants to meet claims.
- Recovery actions are often expensive and can involve lengthy delays if court proceedings are required.
- There are no funds available in the liquidation (outside the client monies) to meet costs of recovery actions.

Notwithstanding, in the interests of progressing actions as quickly as possible, the Liquidators, with the assistance of Ashurst, our lawyers, have undertaken extensive investigations into possible causes of action whilst we continued to explore funding alternatives.

Funding of recovery actions

We considered funding options at length with the BBYL Committee of Inspection. There are various ways to fund investigations and recovery actions, such as:

- Contributions from clients / creditors towards costs.
- The ASIC Assetless Administration Fund which, whilst designed to fund enforcement assistance for ASIC rather than recoveries, can provide an ancillary benefit in terms of access to results of funded work carried out.
- Funding by an external financier that specialises in this form of funding, termed 'litigation funding'.

Assuming there were net recoveries after associated costs, the general liquidation expenses (other than those reimbursed from client monies) will need to be met before any returns from recoveries would be available to creditors.

Contributions by clients and creditors

It is possible for creditors, including clients to provide funding for liquidator actions. On balance, given the profile of client claims and diversity across the pool, our view was that we would be unlikely to obtain sufficient funding support from the client base alone. The process of communicating with the wider client and creditor base and exploring whether we could raise sufficient funding would, in itself, involve costs and would no doubt take some months to complete. Accordingly we did not consider this to be a viable alternative.

Assetless administration fund (AAF)

We applied to ASIC in August 2015 seeking funding from the Assetless Administration Fund. The fund is designed to finance preliminary investigations and reports by liquidators into the failure of companies with few or no assets, where it appears that enforcement action by ASIC may result. We saw potential benefit early in the liquidation in seeking funding from ASIC to facilitate investigations that, whilst meeting the needs of ASIC, may also provide benefits to clients and creditors in terms of the findings. We had anticipated conducting public examinations and carrying out other investigations in late 2015 supported by that funding prior to exploring options such as litigation funding. However, with the passage of time it became clear that the consideration of our funding application by ASIC would take some months. In these circumstances, we deemed it in creditors' interests to accelerate our discussions with a number of funders whilst awaiting the outcome of the application with ASIC. ASIC formally responded on 9 February 2016 advising that, after careful consideration and having regard to the information available to ASIC, it had decided not to offer funding to the Liquidators from the AAF. However, we have continued to liaise with ASIC throughout our investigation.

Litigation funding

Litigation funders will finance certain costs of commercial litigation in return for a share of the proceeds of a successful recovery action. If a claim is unsuccessful the funder does not have to be repaid (a 'no win, no fee' basis).

There are a number of financial institutions and professional funders that provide this service. Litigation funding is an expensive method of funding actions due to the high level of risks that the funder has to take on and the intensive nature of these actions. However litigation funding can provide a means of pursuing an action that may otherwise be unaffordable due to a lack of funds and therefore create value for creditors.

We approached a number of domestic and off shore general and specialist litigation funders and shortlisted certain parties that we considered had the financial and technical capabilities to support this matter. Because of the complexity of the matter and quantum of funding required we focussed on large established and credentialed funders. We briefed the shortlisted funders and requested that they provide indicative offers for finance. As part of that process we met each funder to discuss the available information and possible actions.

IMF Bentham Limited

In late December 2015 IMF Bentham Limited made an indicative offer that led to a more intensive negotiation process that continued through to early March 2016. On 14 March 2016 we entered into a formal funding agreement with IMF that was subject to and approval of the BBYL Committee. Having weighed up the alternatives for funding and considered funding offers, we considered the IMF funding arrangement represented the best alternative to fund further actions and we therefore recommended approval by the Committee.

On 6 April 2016 the BBYL Committee approved the litigation funding arrangement with IMF Bentham Limited. The key terms of the funding agreement were discussed at the meeting and the Committee was briefed on illustrative scenarios of possible recoveries utilising litigation funding. The terms of the IMF arrangement and discussion at the Committee meeting are confidential and subject to legal privilege.

Possible claims

Over the past 12 months we formed the view that there are likely to be a number of viable causes of action available which could result in recoveries and provide a material improvement in the liquidation outcome for clients and other creditors. Further investigation and analysis was required to fully assess, prioritise and potentially pursue possible claims. The nature of possible claims is discussed in more detail below.

Insolvent trading

We consider there may be grounds for a claim against the BBYL directors in respect to losses caused by insolvent trading. There are a number of factors that lead us to this conclusion including the poor financial performance and position of BBYL as well as other indicia of insolvency, not the least of which, includes the losses suffered by clients as a consequence of the shortfalls in client funds and the apparent causes of the shortfalls.

Directors have statutory duties under section 588G of the Corporations Act to prevent trading whilst insolvent. We previously reported to creditors that BBYL may have been insolvent since June 2014. Our subsequent investigations indicate that the relevant date may be a number of years earlier, possibly dating back to 2011, although further work is being undertaken to substantiate this view.

Liquidators have the ability to seek damages from directors who allow companies to trade whilst insolvent. In practice, the quantum of a liquidators' claim for damages will equate to the sum of all of the unsecured debts which were incurred by a company after it became insolvent that were not paid for by the company before it entered into external administration. The total of creditor claims could exceed \$40 million including a portion of the estimated shortfall on client entitlements, the possible shortfall to St George and other suppliers holding security interests registered on the Personal Property Securities Register and other trade and tax creditors.

Directors are afforded various statutory defences against a claim for insolvent trading including if it is proved that during the period in which a company traded whilst insolvent, that a director had reasonable grounds to suspect, and did expect, that the company was solvent or that the director relied on a competent and reliable person who was responsible for providing the director adequate information regarding the company's solvency; and based on the information provided by that person they expected that the company was solvent.

Beyond these defences, Courts have a general discretion under the Act to excuse directors from allowing companies they are appointed over to trade whilst insolvent if it can be shown that they have acted honestly and ought fairly to be excused. Each of these defences must of course be weighed against a director's duty (which applies also to non-executive directors) to be generally aware of and involved in the management of a company they are appointed over.

Other claims

A liquidator has various statutory rights to seek to set aside or void, for the benefit of creditors, certain types of transactions including:

- unfair preferences
- uncommercial transactions
- unreasonable director related transactions
- other transactions for the purpose of interfering with the rights of creditors.

In BBYL's case we expect there will also be a number of voidable transaction claims for material amounts that could result in recoveries. We have identified a number of matters that we are continuing to investigate in conjunction with the insolvency of BBYL.

Work completed in relation to the insolvency investigation would be utilised in establishing these claims. Whilst these may be relatively smaller claims, any recoveries would incrementally contribute to defraying costs of the liquidation and therefore potentially improve outcomes for creditors.

Possible investigations and recovery actions

Bearing in mind the complexities of BBYL's affairs, the state of records and the age of some transactions of interest, significant work and evidence was required to enable the Liquidators to form a basis to fully assess and prosecute claims and realise recoveries outside the client monies for clients and other creditors. Further investigations into the affairs of BBYL was required because:

- We had not been able to speak to certain key individuals.
- We had not been able to formally examine any directors or employees.
- We had not had access to various records that may be relevant.

- We had not completed our investigations into various transactions prior to 1 January 2014.
- We had not been provided with material which may be relevant to any defence the directors, officers or other parties may have to any of the recovery actions.
- We have not completed a solvency report.
- Most of the evidence gathered was not in a form which would be admissible in any subsequent proceedings.

We determined that the following were necessary investigation and possible recovery steps.

- Conducting public examinations to obtain further information regarding the affairs of BBYL
- Conducting an investigation to identify the date of insolvency and calculate the quantum of associated losses, and preparation of a formal solvency report
- Assessing the strength of any possible causes of action, including for insolvent trading, considering the likely strength of any defences and investigating the financial capacity of possible defendants to meet a claim
- If the investigations lead to recovery action, then preparing a statement of claim and various other steps to pursue recoveries
- Exploration of any possibility of a settlement of claims outside of litigation
- In the event that any claims cannot be settled out of Court, formal litigation, suing various parties for claims such as insolvent trading and voidable transactions.

Any claims, and estimated recovery, would have to be sufficiently large and with reasonable prospects to warrant this kind of investment.

Public examinations

As Liquidators, we have powers to conduct public examinations into the examinable affairs of BBYL and the BBY Group.

Public examinations have been scheduled to be held in the Supreme Court of New South Wales between 12 and 23 September 2016. The examinations will be held in open court and it is open to interested parties to attend.

Public examinations are an investigatory procedure available to assist a Liquidator to gather information to assist in the winding up of a company's affairs including enabling information to be obtained that may be used to support possible recovery actions. Examinees can include existing and former company officers including directors, the company secretary and other senior personnel.

Examinations are usually held in public in Court and examinees are entitled to legal representation. It is also possible to require production of books and records that relate to the examinable affairs.

Conducting public examinations has enabled us to, amongst other things summon directors, officers and former employees of BBYL to attend Court to be examined under oath; arrange for orders for production to be issued against directors, officers, employees as well as a number of relevant third parties; and to obtain information which could be used in subsequent recovery proceedings commenced by the Liquidators.

In June 2016 we served subpoenas on over 20 parties to produce documents in their possession and served summonses for examination on a number of these parties. We received approximately 30,000 subpoenaed documents which were collated and reviewed as part of the investigations.

Certain parties challenged the scope of our subpoenas. In each of these cases we have reached satisfactory outcomes.

We have briefed David Pritchard SC to conduct the examinations on our behalf. Mr Pritchard has been at the NSW Bar since 1991 and was appointed Senior Counsel in 2007.

Whilst our investigations indicated there is potentially a broad scope of issues to be examined, we will maintain a focus on certain key issues that will complement other investigations and best support likely recovery actions.

An examinee at a liquidator's public examination is entitled, at their own expense, to be represented by a solicitor or counsel. A person is not excused from answering a question on the grounds that the answer may be incriminating. However where a person claims privilege before answering a question, the answer is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty.

A transcript of each examination will be taken, which must be signed by the examinee. Once signed, this written record may be used in evidence in any civil proceedings against the person (subject to use of self-incriminating evidence in the case of a proceeding for the imposition of a civil penalty).

The Corporations Act stipulates that a transcript is open to inspection by officers and creditors. Other parties can apply to inspect transcripts on payment of a prescribed fee.

Solvency analysis

In order to pursue a claim for losses associated with insolvent trading (or to pursue recoveries in respect to voidable 'insolvent' transactions) it is necessary to establish that a company was insolvent and unable to pay debts as and when they fell due. There needs to be a 'civil' standard of proof as opposed to a more stringent standard that would apply in the case of a criminal prosecution. There are extensive legal precedents as to the nature of evidence required including a combination of financial analysis and examination of factual circumstances and evidence.

Over the last few months we have been preparing a formal 'solvency' report (which may not be made public) to support claims for insolvent trading claim and voidable transactions, providing detailed and contextual financial analysis, evidencing the date of insolvency and quantifying claims. This is a large complex task. In preparing the report we have reviewed and analysed financial information, company records and external material sourced from other parties. We have also undertaken a quantification of the losses sustained by creditors as a result of the insolvent trading which will be recoverable under section 588M. We have conducted further investigation into the BBY group's trading history, key events and transactions, transactions with related parties, arrangements with creditors and the underlying causes of the failure of the BBY business. We commenced this work in June and expect to complete the bulk of our analysis by the end of October, building on evidence which comes to light from the public examinations process.

Next steps

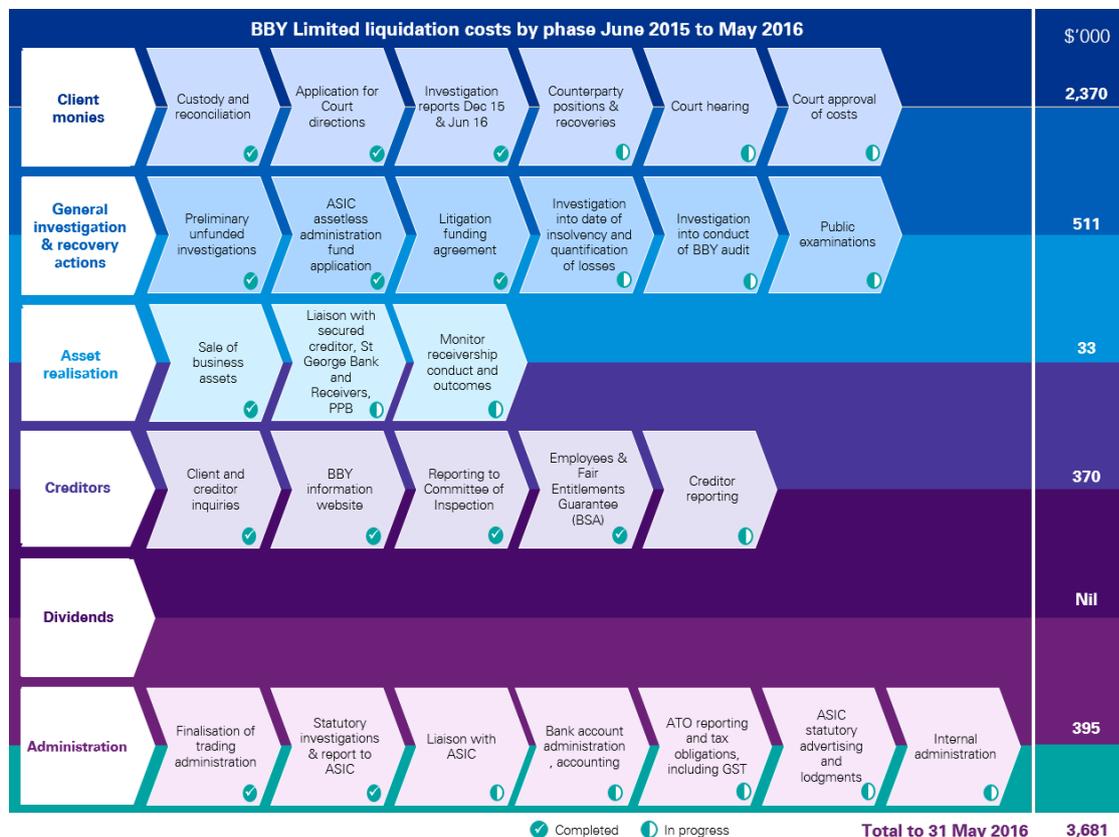
Statements of claim

Assuming that, upon completion of investigations including public examinations and a solvency report, we determined that there were viable causes of action that warranted pursuit, we would instruct our lawyers to prepare a Statement of Claim in respect to the insolvent trading claim and other claims we propose to prosecute. This would effectively be the first step in a formal litigation process.

Liquidation expenses

BBYL fees to May 2016 by work phase

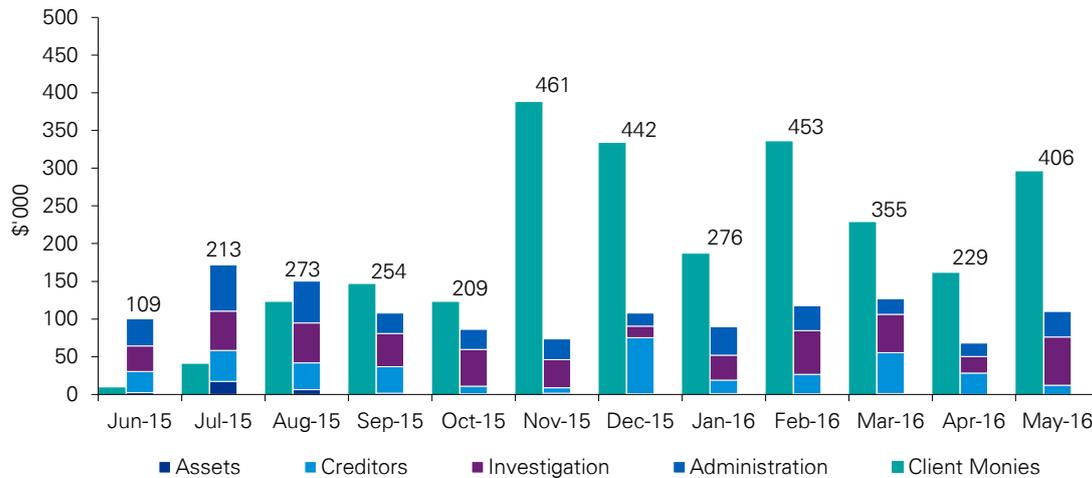
Set out below is a snapshot of total BBYL liquidation fees by phase of work across the client monies and general liquidation.



BBYL creditors and the Committee have approved \$2.28 million in Liquidators' remuneration for the 7 month period from 22 June 2015 to 31 January 2016, encompassing the early period of the liquidation, seeking funding for recoveries, commencement of the directions proceedings and our initial investigation and reporting in relation to client monies. The Committee approved \$1.44 million, largely focused around client issues, for the period from 1 February to 31 May 2016.

Set out below is an analysis by month showing where most effort had been applied during the last 12 months of the liquidation.

Monthly breakdown of Liquidators' fees incurred



BBYL June to July 2016 estimate

In the period from June to July 2016, the Liquidators carried out approximately \$0.8 million of work including in relation to client monies, IMF funded work and general unfunded work. The majority of this related to preparation for the public examinations (IMF funded).

We will complete a detailed review of costs including phase allocations before reporting to the Committee or seeking approval of fees for this period.

BBYL client monies related expenses to May 2016

Total time costs from 22 June 2015 to 31 May 2016 have been \$3.7 million, including \$2.4 million in respect of client monies and \$1.3 million in the general liquidation. The time costs in respect of client monies relates to securing and administering cash in client CSA's, and reporting to the Court in support of the client monies proceedings. The peak of client monies time was incurred in November and December of 2015 whilst preparing the client monies report dated 22 December and in May 2016 in preparing the supplementary report dated 15 June 2016.

An analysis of these costs by grade of staff is set out below for the period to May 2016.

BBYL Liquidators' CSA fees by position to May 2016		
Position	Hours	\$'000
Appointee	514	334
Partner	8	5
Director	-	-
Associate Director	1,016	559
Manager	1,538	769
Executive	522	183
Senior Analyst	63	16
Analyst	1,265	253
Administration & Other	1,797	252
Total	6,724	2,370

The Committee approved the Liquidators fees to May 2016, including of \$2.4 million of client monies related fees. Pursuant to the Court Order of 19 October 2015, the Liquidators remuneration in relation to client monies should be drawn from the CSA's subject to the approval of the Court. We have submitted 2 applications to the Court for our costs to 31 October 2015 and to 31 January 2016. The first application was approved and has been paid. The second fee application was lodged in August 2016 and has not yet been heard and we will submit a third application for the costs to 31 May 2016 in due course.

BBYL legal expenses to July 2016

Ashurst and counsel provide services in relation to a wide range of matters including the client monies proceedings, counterparty recoveries, recovery investigations including the public examinations and solvency review as well as general liquidator's recoveries.

Set out below is a summary of costs of Ashurst and counsel to July 2016.

BBY Liquidation costs to July 2016									
\$m	Ashurst			Counsel			Total		
	Client	General	Total	Client	General	Total	Client	General	Total
General Liquidation									
Voluntary Administration	-	0.2	0.2	-	-	-	-	0.2	0.2
Liquidation	1.7	0.8	2.5	0.3	0.0	0.3	2.0	0.8	2.8
Total fees	1.7	1.0	2.7	0.3	0.0	0.3	2.0	1.0	3.0

Total legal costs to July 2016 are approximately \$3 million, including \$2 million relating to client monies.

BBYH

At the second meeting of creditors, the creditors approved the Liquidators fees up to \$50,000. For the period 22 June 2015 to 31 May 2016 the time and costs incurred have exceeded the cap approved by creditors, although the Liquidators have not drawn fees or costs as no funding is available to do so.

BBYAS

At the second meeting of creditors, the creditors approved the Liquidators fees up to \$50,000. For the period 22 June 2015 to 31 May 2016 the time costs incurred was \$22,000 although the Liquidators have not drawn fees or costs as no funding is available to do so.

BSA

At the second meeting of creditors, the creditors approved the Liquidators fees up to \$100,000. To date, no fees have been drawn, although \$30,000 of fees will be drawn in due course which was received from the FEG in relation to fees for the distribution of employee entitlements.

Receipts and payments

BBYL general liquidation

Liquidators normally maintain accounts and report to creditors and to ASIC on a cash receipts and payments basis.

Set out below is a summary of receipts and payments in the administration and liquidation for the 12 month reporting period from 22 June 2015 to 21 June 2016 for BBYL, BSA, BBYH and BBYAS.

This analysis excludes client monies accounts, which are discussed further below and have been separated for illustration purposes.

Liquidators' Receipts and Payments for the period 22 June 2015 to 21 June 2016					
\$'000	BBYL	BSA	BBYH	BBYAS	Total
Receipts					
Transfer from Administrators account	702	10	-	-	713
Transfer from client monies operating accounts	551	-	-	-	551
FEG advances for Liquidators fees	-	23	-	-	23
Advances from FEG for distribution	-	1,503	-	-	1,503
Insurance refund	-	1	-	-	1
Litigation funding - IMF Bentham Ltd	150	-	-	-	150
Subpoena costs reimbursements (various)	10	-	-	-	10
Total Receipts	1,413	1,537	-	-	2,950
Payments					
Court approved costs - client monies					
Liquidators	-	-	-	-	-
Legal fees - Ashurst and Counsel	(581)	-	-	-	(581)
Representative defendants	-	-	-	-	-
Voluntary Administrators' remuneration	(88)	-	-	-	(88)
Liquidators' remuneration	(160)	-	-	-	(160)
Legal fees - Ashurst & Counsel	(88)	-	-	-	(88)
Net FEG Distributions to employees	-	(1,149)	-	-	(1,149)
Link Market Services (inc printing & mailing costs)	(191)	-	-	-	(191)
Reimbursement of AIMS working capital funds	(100)	-	-	-	(100)
GST & PAYG taxes	(79)	(351)	-	-	(430)
Employees	(11)	-	-	-	(11)
Venue hire - creditors meetings	(12)	-	-	-	(12)
Other	(34)	(6)	-	-	(39)
Total payments	(1,344)	(1,506)	-	-	(2,850)
Funds on hand at 21 June 2016	69	31	-	-	100

BBYL client monies

The Liquidators have custody of 47 client trust accounts held with St George and NAB in a variety of currencies. We took custody of accounts at the NAB in May 2015. St George did not provide custody of client accounts until April 2016.

The client monies accounts earn interest and bank charges are applied to maintenance of the accounts.

Set out below is a summary of receipts and payments relating to the client segregated accounts from 22 June 2015 to 21 June 2016.

BBYL - CSA Receipts & Payments - 22 June 2015 to 21 June 2016	
\$'000 (AUD)	
Receipts	
Opening CSA cash balance	14,283
Post appointment client receipts	216
Interest income	65
Dividend income	21
Counterparty recoveries	3,612
Other	45
Total receipts	18,243
Payments	
Court approved costs	(551)
Bank charges	(1)
Foreign currency gain/(loss)	(295)
Total payments	(846)
Closing CSA cash balance at 21 June 2016	17,396

To date (including beyond the 12 month reporting period of 21 June 2016), in accordance with Court orders and Registrar approvals we have paid \$2.1 million (\$1.9 million excluding GST) in costs of the Liquidators (\$0.7 million), our legal costs (\$1.2 million) and the legal costs of the representative defendants (\$0.2 million) relating to the directions proceedings.

BBYL costs paid to 31 July 2016								
\$'000	Equity/ETO	Futures	FX	Saxo	Carbon	IB	Other	Total
Costs paid from CSAs & recovery accounts								
Liquidators' fees	588	58	47	18	-	0	7	717
Liquidators' Solicitor and Counsel fees	943	96	76	37	-	0	11	1,164
Second representative defendant costs	171	21	18	7	-	0	2	219
Total costs paid from CSAs & Recovery accounts	1,702	175	141	62	-	0	20	2,100

The apportionment between accounts has been calculated in accordance with the Court orders of 19 October 2015.

BBYH

There have been no receipts and payments in this company since the date of appointment.

BBYAS

There have been no receipts and payments in this company since the date of appointment.

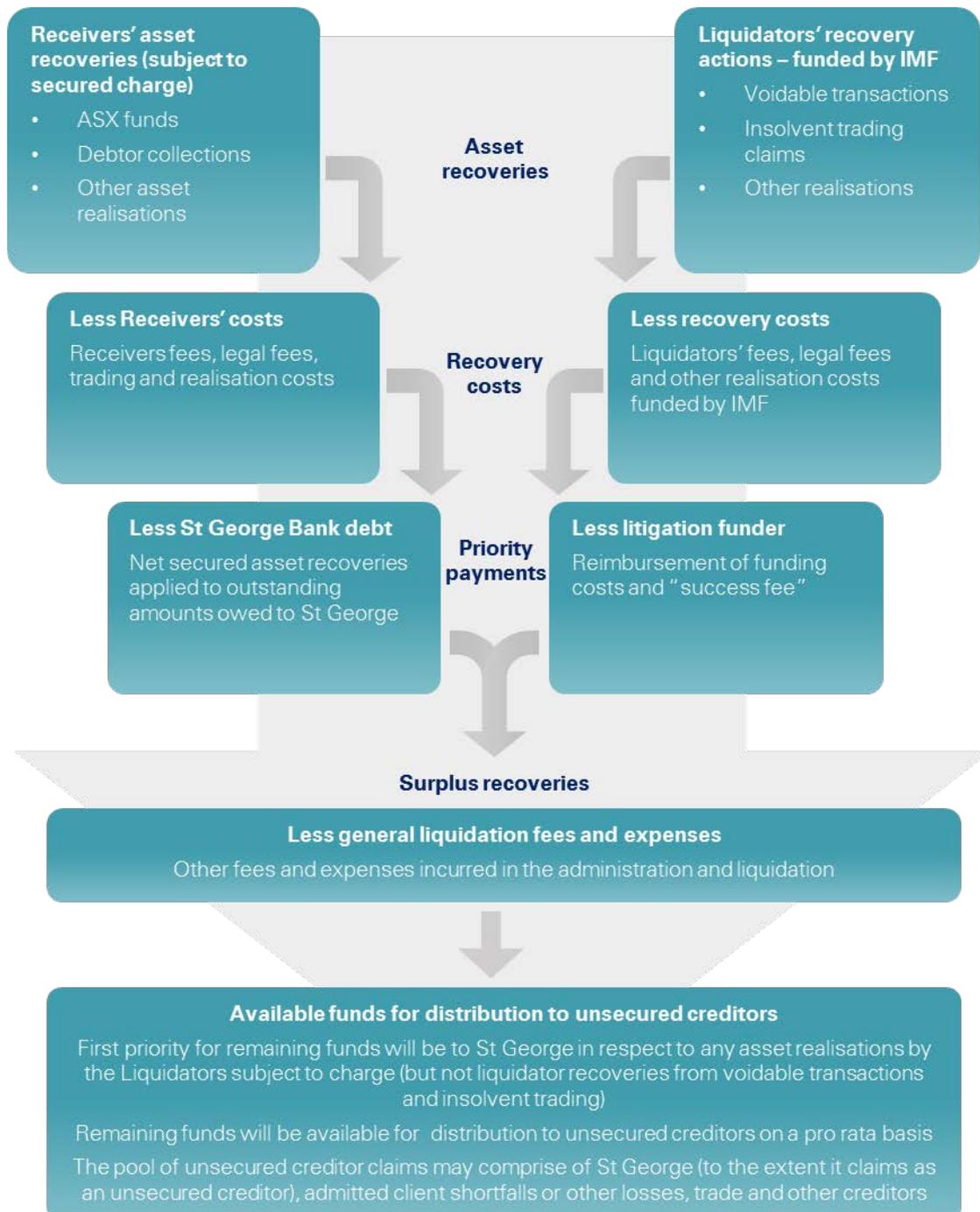
BSA

At the date of appointment there was \$10,300 in the BSA bank account, which has since been transferred into the liquidators account. We have received \$23,000 in receipts from FEG for services performed assisting with the employee claim process and transfer of monies to former employees. The majority of transactions in BSA during the 12 month reporting period to 21 June 2016 have related to advances received from FEG in order to make net distributions of \$1.1 million, and PAYG withholding tax remitted to the ATO of \$0.4 million.

Estimated outcome for creditors

The estimated outcomes for clients and other creditors in the liquidation will differ given the different treatment of claims to client monies and other liquidation realisations.

Given uncertainty around future orders of the Court in relation to client monies, the amount of possible client losses, the quantum of creditor claims and the amount of any recoveries from liquidator actions it is not yet possible to provide any meaningful estimate of returns to creditors from the liquidation. In the meantime we have set out below high level guidance as to the process for treatment of liquidation recoveries (excluding client monies), expenses and calculation of funds available for distribution to creditors.



At this stage, we do not estimate that funding will become available for a distribution to the unsecured creditors of BBYH, BSA and BBYAS.

Communications

Initial communications

During the administrations we utilised an external service provider, Link Market Services, to assist with mailing, receipt of proofs of debt and proxy forms, coordination of creditors meetings and a call centre to deal with inquiries.

Due to the lack of available funds in the administrations this became prohibitively expensive and we had no choice but to discontinue the service.

Information website

Upon our appointment we established an information website www.kpmg.com/AU/bby to facilitate communications with former clients and creditors. The website contains copies of notices and reports to creditors, our initial and supplementary client monies investigation reports, key court documents, answers to frequently asked questions and other material. The website is updated on a periodic basis for material developments of interest to clients and creditors.

During 15 months from May 2015 to August 2016 there have been over 22,000 page views and over 10,000 document downloads for viewing.

Monthly page views of KPMG's BBY Website



Email

We established a dedicated email hotline AU-FMBBY@kpmg.com.au to assist in responding to inquiries. During the 15 month period since the administrations commenced we have responded to over 2,000 email inquiries.

Statutory matters

Supplementary reporting to ASIC

External administrators have a range of obligations to report to, and lodge documents with, ASIC under the Act. This includes confidential reporting under Section 533 of the Act if it appears to the external administrator that a relevant person may have committed an offence in relation to the company, been negligent otherwise engaged in misconduct.

Subsequent to completion of the above investigations we anticipate that we may provide a further confidential report to ASIC pursuant to Section 533 of the Act, setting out any additional findings in relation to the affairs of BBYL and conduct of officers.

Lodgements

As part of our statutory obligations we are required to attend to various tasks during the period of appointment. In the 12 month reporting period from 22 June 2015 to 21 June 2016 we have completed the following:

- Lodged Minutes of concurrent second creditors meetings
- Lodged Form 505 with ASIC and advertised on appointment as Liquidators
- Lodged a Section 533 Report to ASIC
- Lodged a AAF funding submission with ASIC on 24 August 2015
- Lodged Form 524 with ASIC for the period of the Administration
- Lodged with ASIC minutes for the four meetings of the Committee of Inspection, held on 29 July 2015, 8 September 2015, 22 December 2015 and 6 April 2016
- Lodged Form 524 with ASIC for the period of the Liquidation from 22 June 2015 to 22 December 2015
- Lodged an account of our receipts and payments (Form 524) with ASIC for the 6 month period from 22 December 2015 to 21 June 2016
- Submitted BAS lodgements to the ATO

How to keep up to date

The most convenient way to keep up to date with developments in the liquidations is to periodically check the BBY creditor information website where we publish significant news.

This information can be obtained at www.kpmg.com/AU/bby

END OF REPORT

Appendices

Appendix A - Client Monies by product line 29 April 2016

Extract from Liquidators' supplementary client monies investigation report 15 June 2016

BBYL - Surplus/Shortfall Calculation by Product Line									
\$m	Equity	ETO	Futures	FX	Saxo ⁽⁷⁾	Carbon	IB	Other	Total
CSA Account Balances									
Client Segregated Account Balance as at 29 April 2016 ⁽¹⁾	11.4	0.3	1.2	1.0	0.2	-	0.0	0.1	14.3
less: Erroneous withdrawals	(2.4)	2.4	-	-	-	-	-	-	-
less: Receivers' Claim to Debtors held in CSA's ⁽²⁾	(0.7)	-	-	-	-	-	-	-	(0.7)
Total CSA Cash at 29 April 2016 (net of Receivers claim)	8.3	2.8	1.2	1.0	0.2	-	0.0	0.1	13.6
Cash held with counterparties									
ASX	-	-	-	-	-	-	-	-	-
Interactive Brokers	-	-	-	-	-	-	7.8	-	7.8
Halifax Investment Services	-	-	-	-	-	-	-	-	-
ABN AMRO	-	-	2.0	-	-	-	-	-	2.0
Saxo Capital Markets Australia	-	-	-	-	-	-	-	-	-
ADM Investor Services International	-	-	1.5	-	-	-	-	-	1.5
CMC Markets	-	-	-	-	-	-	-	-	-
Total cash held with counterparties	-	-	3.5	-	-	-	7.8	-	11.4
Cash paid by counterparties									
ASX	-	3.4	-	-	-	-	-	-	3.4
Interactive Brokers	-	-	-	-	-	-	-	-	-
Halifax Investment Services	-	-	-	0.5	-	-	-	-	0.5
ABN AMRO	-	-	-	-	-	-	-	-	-
Saxo Capital Markets Australia	-	-	-	-	0.2	-	-	-	0.2
ADM Investor Services International	-	-	-	-	-	-	-	-	-
CMC Markets	-	-	-	0.0	-	-	-	-	0.0
Total cash paid by counterparties	-	3.4	-	0.5	0.2	-	-	-	4.1
Total Counterparty Cash	-	3.4	3.5	0.5	0.2	-	7.8	-	15.4
Counterparty Stock and Options									
Interactive Brokers as at 29 April 2016	-	-	-	-	-	-	4.9	-	4.9
Saxo Capital Markets as at 29 April 2016	-	-	-	-	4.1	-	-	-	4.1
Total Counterparty Stock and Options	-	-	-	-	4.1	-	4.9	-	9.0
Total Counterparty Cash, Stock and Options	-	3.4	3.5	0.5	4.3	-	12.8	-	24.5
Total CSA Cash and Counterparty Cash, Stock and Options	8.3	6.2	4.7	1.4	4.5	-	12.8	0.1	38.0
Client Claims									
Client Cash Claims ⁽³⁾	(6.2)	(0.3)	(13.5)	(2.8)	(7.5)	(0.0)	(5.5)	-	(35.9)
Unpresented Cheques ⁽⁴⁾	(1.0)	-	-	-	-	-	-	-	(1.0)
Client position claims ⁽⁵⁾	-	-	-	-	(4.8)	-	(12.8)	-	(17.6)
Other client claims ⁽⁶⁾	(1.1)	(5.8)	-	-	-	-	-	-	(6.9)
Total Client Claims ⁽⁷⁾	(8.2)	(6.2)	(13.5)	(2.8)	(12.3)	(0.0)	(18.3)	-	(61.3)
Surplus/(Shortfall) ⁽⁸⁾	0.1	-	(8.7)	(1.4)	(7.9)	(0.0)	(5.5)	0.1	(23.3)

This table is for illustrative purposes only and includes calculation rounding.

Notes:

- (1) Client Segregated Account Balance includes funds held in the WLP Omnibus Account (AC 553619137) as at 29 April 2016.
- (2) The Receivers and Managers have filed an application to the Supreme Court of NSW for the payment of debtor receipts paid into the Equity/ETO trust account (AC 553452541). This claim has been deducted for illustrative purposes only, the Liquidators' do not express an opinion on the merit of this claim.
- (3) Client claims as at 15 May 2015 except for Equity/ETO that is presented as at 18 May 2015.
- (4) This balance represents unpresented cheques issued to clients as at 18 May 2015.
- (5) Market value of stock and open option positions as at 15 May 2015.
- (6) Other client related claims identified during our investigations that (for various reasons) do not appear in the client ledger reports.
- (7) Total client claims may differ from the CSA Report as certain house accounts identified by the Liquidators' have been excluded.
- (8) Surplus/(shortfall) calculations are before remuneration, costs and expenses of the Liquidators', BBYL and the representative defendants. Equity surplus represent interest income (\$47k) and other unreconciled items (\$31k).

Appendix B - Chronology of Court directions proceedings

Set out below is a chronology of the directions proceedings held in the Supreme Court of New South Wales. Refer to the website at www.kpmg.com/AU/bby for further details and copies of various court documents.

13 August 2015

On 13 August 2015 the Liquidators commenced proceedings in the Supreme Court of New South Wales seeking the Court's guidance as to how the amounts in the CSAs and other recoveries should be dealt with and funds ultimately distributed. The case number is 2015/00237028.

17 August 2015

On 17 August 2015 there was a directions hearing and the Liquidators sought that the Court approve an explanatory notice to clients. The matter was listed for further directions on 24 August 2015.

24 August 2015

On 24 August 2014 there was a further directions hearing and Justice Brereton of the Supreme Court made various orders including joining a group of former options clients, "Mazzetti & others" (who were seeking leave to take proceedings against BBYL and requiring a stay of proceedings pending a compulsory mediation with the Liquidators).

31 August 2015

On 31 August 2015 the Liquidators' draft client circular was reviewed by Justice Brereton who stood over orders in relation to the wording, to be considered further in chambers. The Court also stood the proceedings over two weeks, at the request of the Mazzetti & Ors group, until 14 September 2015 (this date was subsequently rescheduled to 18 September 2015).

18 September 2015

On 18 September 2015 the Court made a number of orders around emailing the proposed explanatory notice to clients and publishing this on the KPMG BBY web site along with extensive supporting material. The Court requested some amendments to the notice before the final version was to be approved and scheduled another directions hearing for 19 October 2015.

19 October 2015

On 19 October 2015, the Court adjourned the proceedings to 22 March 2016 (provisionally) for a full hearing to determine the client issues and made a number of procedural orders setting out a time table for further steps. The Court appointed three representative defendants for certain categories of clients as per the table below.

- J Mazzetti Pty Ltd ACN 006 705 602 as Trustee for J Mazzetti Pty Ltd Staff Superannuation Fund representing ETO clients with open positions as at 15 May 2015.
- Peter Brian Haywood and Bronwen Menai Haywood in Trust for the Haywood Superannuation Fund representing Equities clients and ETO clients without open positions as at 15 May 2015.
- Clive Riseam representing Futures, FX, Saxo and Other Products clients.

In addition the Court granted leave for a 'non representative' defendant to participate in the Proceedings – the Securities Exchange Guarantee Corp Ltd (the ASX fidelity fund) as trustee on behalf of the National Guarantee Fund (the fourth defendant).

Also, on 19 October 2015, the Court made orders in relation to the payment of costs and expenses to the effect that:

- the Liquidators' remuneration, costs and expenses, and the second (Haywood) and third (Riseam) representative defendants' legal costs be paid out of certain recovered amounts and the CSAs of BBYL other than an amount of \$5.8 million, made up of \$2.4 million in withdrawals by BBYL relating to margin calls and the \$3.4 million returned from the ASX, referrable to the ETO product line;
- the legal costs of the first representative defendant (Mazzetti) be paid out of the \$5.8 million; and
- the legal costs of each of the representative defendants, and the legal costs, expenses and remuneration of the Liquidators will be examined and approved by a Registrar of the Court before they are paid.

The Court ordered that the Liquidators file, serve and publish on the KPMG BBY website any affidavits on which they intend to rely by 27 November 2015. This referred to evidence that the Liquidators will put to Court to assist the Court in determination of issues in the proceedings.

6 November 2015

The Court authorised that the Liquidators circulate, in an approved form, an explanatory notice to clients and creditors of BBYL regarding the proceedings). The primary intention of the notice was to provide clients with information regarding the nature of the Proceedings and illustrative scenarios of possible returns to assist them to consider their own legal position based on information available at that time. It was not intended to provide a definitive estimate of overall returns to clients.

26 November 2015

On 26 November 2015, in response to a request by the Liquidators, and with consent of the representative defendants, the Supreme Court of New South Wales made orders extending the date for the Liquidators' filing of evidence in the Proceedings to 21 December 2015. This extension provided time for the Liquidators to pursue additional inquiries that are integral to the Liquidators' investigations and findings.

22 December 2015

The Liquidators filed a report dated 22 December 2015, along with supporting documents including an affidavit, detailing the findings of our investigations into the operation of the CSAs maintained by BBYL and its dealings with client monies. This report, dated 22 December 2015, can be found at BBY Client Monies Investigation Report and supporting documents.

23 February 2016

In February 2016 the Court appointed a fifth defendant, David Nadin to represent former BBY clients who utilised the online trading platform maintained by Interactive Brokers LLC ("IB").

7 March 2016

At a directions hearing on 7 March 2016, the Court ordered that certain of the matters in the directions proceedings issues be heard on 22 March before further directions for the remainder of the proceedings. The certain matters the Court outlined it would hear on 22 March included:

- matters in relation to \$2.4 million in post appointment margin receipts by the Receivers (termed the 'erroneous withdrawals'); and
- matters in relation to \$3.4 million in ASX surplus realisations from ETO margin collateral paid over by the ASX (termed 'returned collateral').

The Court ordered that the following question (the '*Separate Question*') be considered separately on 22 March 2016 in relation to the above: "*Whether the first defendants are entitled to the returned collateral and the erroneous withdrawals in priority to any other claims on those funds other than liquidator's charge and costs*".

22 March 2016

On 22 March 2016 the hearing of the Separate Question occurred. All parties were heard and the Court will deliver its judgement at a later date.

23 March 2016

On 23 March 2016 the Court heard two applications made by the Liquidators:

- For directions about the Liquidators' entitlement to close out open derivative positions (warrants, equity and index options, futures, options on futures and FX products) held with Interactive Brokers LLC after terminating the Online Account Terms with the corresponding clients. The Fifth Defendant, representing IB clients of BBYL, did not oppose the direction sought by the Liquidators.
- For directions about whether monies received on and from 18 May 2015 into BBYL's client segregated accounts from clients who paid without any obligation to pay should be returned in full to those clients in as amounts "paid into the account in error" within the meaning of the Corporations Regulations 2001 (Cth).

The Court will deliver its judgment on both applications at a later date. The directions proceedings were adjourned to 18 April 2016.

18 April 2016

On 18 April 2016, the Court made the following orders:

- The Representative Defendants to serve any final requests for information on the Liquidators (Plaintiffs) by 26 April 2016; and
- The Liquidators to file, serve and publish on the KPMG website any further affidavits (evidence) on which they intend to rely by 23 May 2016.

The proceedings were adjourned to 30 May 2016 for further directions.

In relation to an application by the Receivers for payment from the Equities/ETO client segregated account of approximately \$700,000 in debtor proceeds that had been deposited to that CSA the Court ordered that:

- by 2 May 2016, the Receivers file and serve a statement of facts and contentions regarding their position; and
- by 23 May 2016, the Liquidators and any Representative Defendant who wishes to oppose the Receivers' application file and serve a statement of facts and contentions.

The Receivers' application was also adjourned to 30 May 2016.

27 May 2016

On 27 May 2016 the Court ordered that the Liquidators file, serve and publish on the KPMG website any further affidavits on which they intend to rely by 14 June 2016 and that the proceeding be adjourned to 22 June 2016 for further directions.

30 May 2016

On 30 May 2016, in relation to the Receivers' application, the Court ordered that the proceeding be adjourned to 22 June 2016 and that the Receivers serve any further affidavit evidence by 15 June 2016.

15 June 2016

On 15 June 2016 the Liquidators' finalised a supplementary report to the Client Monies Investigations Report ("the CSA Report") that was published on 22 December 2015. The supplementary report provides findings from investigations conducted by the Liquidators since publishing the CSA Report in December, with a view to providing further information to the Court and for the benefit of representative defendants in the proceeding.

22 June 2016

The directions hearing scheduled for 22 June 2016, to set out a timetable for further hearings, was adjourned to 20 July 2016 at the request of a representative defendant to allow more time to consider the Liquidators supplementary investigation report. The Receivers also sought an additional 2 weeks to file and serve further affidavit evidence in relation to their application, which was also adjourned to 20 July 2016.

20 July 2016

At the directions hearing on 20 July 2016 Justice Brereton made the following procedural orders – Sealed orders (PDF 55KB).

1. By 3 August 2016, each party file and serve on the other a summary of its contentions setting out the basis or alternative bases upon which that party says distribution shall be made, such summary not to exceed five pages in length.
2. By 17 August 2016, the Liquidators model to the extent that they have not already done so, and to the extent that they are able to do so, each of those scenarios and provide to the parties with the distributions under them.
3. By 31 August 2016, each party lodge with my Associate and file and serve a consolidated response to the other parties' summary of contentions.
4. This proceeding 2016/77316 (Receivers' application) and proceeding 2015/237028 (Liquidators' directions application) be heard together, with evidence in one be evidence in the other.

5. The defendants not be entitled to rely in the hearing without the leave of the court on any affidavit evidence, including expert evidence, which has not been served by 12 October 2016 (Note there is an error in order 5 of the attached sealed orders – date should be 12 October not 12 August).
6. Any party who wishes to rely on evidence in reply to evidence served by 12 October 2016 not be entitled to rely on such evidence unless served by 9 November 2016.
7. Proceedings be adjourned to 16 November 2016 for pre-trial directions before me at 9:45. (*This hearing has been rescheduled to 9 November 2016*).
8. Proceedings be fixed for hearing commencing 31 January 2017 with a 4 day estimate on the basis that the estimate and time reserved will be reviewed at the pre-trial directions hearing.

Justice Brereton also noted that, at the pre-trial hearing on 16 November, he would likely set a timetable for 'submissions in chief' around the end of November and replies by mid-December.

3 August 2016

The Court orders made on 20 July 2016 required that each party file and serve on the other a summary of its contentions by 3 August 2016 setting out the basis or alternative bases upon which that party says distribution shall be made. The following Summary Contentions were filed:

- Liquidators
- Second Defendant
- Third Defendant
- Fourth Defendant
- Fifth Defendant

The First Defendant did not file any contentions.

31 August 2016

The Court Orders made on 20 July 2016 required that each party file and serve on the other by 31 August 2016 a summary of its contentions setting out the basis or alternative bases upon which that party says distribution shall be made. The Liquidators filed our reply on 30 August 2016. Other parties to the proceedings requested a 2 week extension to file their summary of contentions in reply.

Appendix C - Declaration of Independence, Relevant Relationships and Indemnities



**Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”)
Replacement DIRRI
Pursuant to Section 436DA(5) of the Corporations Act 2001 (the “Act”)**

14 December 2015

**BBY Holdings Pty Limited (Receivers and Managers Appointed) ACN 075 187 432 (“BBYH”)
BBY Limited (Receivers and Managers Appointed) ACN 006 707 777 (“BBYL”)
BBY Advisory Services Pty Ltd (Receivers and Managers Appointed) ACN 102 761 008 (“AS”)
Broker Services Australia Pty Ltd ACN 074 976 364 (“BSA”)
BBY Nominees Pty Ltd ACN 007 001 443 (“BBYN”)
(All in Liquidation)**

**SmarTrader Limited ACN 115 752 102
BBY HomeTrader Pty Ltd ACN 134 838 207
(Both subject to a pooled Deed of Company Arrangement)**

(the “Companies”)

We previously provided creditors with a DIRRI dated 20 May 2015 and a replacement DIRRI on 27 May 2015. This was updated when we issued our section 439A report to the creditors of BBY Nominees Pty Ltd (and three other nominee companies) on 29 September 2015. This DIRRI has been updated again in conjunction with issuing our report to the BBYL Committee of Inspection.

This Declaration, or any subsequently updated DIRRI, will be included in future reporting to former clients and creditors of the Companies and will be posted on KPMG’s dedicated BBY web page relating to the Companies at <http://www.kpmg.com/AU/bby>.

This document requires the Practitioners appointed to an insolvent entity to make declarations as to:

- A. their independence generally;
- B. relationships, including
 - i the circumstances of the appointment;
 - ii any relationships with the Insolvent and others within the previous 24 months;
 - iii any prior professional services for the Insolvent within the previous 24 months;
 - iv. that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, KPMG Australia partnership and related parties covered by the extended definition of firm.

A. Independence

We, Stephen Vaughan and Ian Hall, of the KPMG Australia partnership (“KPMG Australia”), care of KPMG, 10 Shelley Street, Sydney, NSW 2000, have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Joint and Several Administrators of the Companies in accordance with the law and applicable professional standards, in particular the Code of Professional Practice for Insolvency Practitioners published by the Australian Restructuring Insolvency and Turnaround Association, 3rd edition, effective 1 January 2014 (“the Code”).



This assessment identified no real or potential risks to our independence or any matter which results in our having a conflict of interest of duty. We are not aware of any reasons that would prevent us from accepting the appointments.

B. Declaration of Relationships

i) Circumstances of the Appointment

The above Companies are part of a wider corporate group (the “BBY Group”) including other entities that are not subject to external administration.

We and KPMG Australia had not had any prior involvement in this matter other than the following:

- In the week of 27 April 2015 members of KPMG’s audit practice met with BBYH Director, David Perkins and Managing Director, David Smith to discuss a forthcoming tender for the statutory audit of the BBY Group for the financial year of 2015.
- BBYH and BBYL issued a request, dated 4 May 2015, to a number of accounting firms for a proposal for provision of various audit and compliance services. On Thursday 7 May 2015 members of KPMG’s audit division met with Mr Perkins and discussed a possible secondment of an accounting resource to provide assistance in relation to certain internal accounting functions of the BBY Group for a period of one month. On Friday 8 May 2015, Mr Perkins emailed KPMG to confirm the secondment and it was agreed this should commence on 11 May 2015. As discussed further below, this secondment did not proceed and KPMG were not engaged as auditors.
- On Sunday 10 May 2015, a partner in KPMG’s audit division was contacted by Mr Smith advising that the business was in financial distress as a consequence of certain events in the preceding days, including a requirement to exit its Options clearing business, and that it may be placed into voluntary administration. The KPMG audit partner referred the matter to Carl Gunther a partner in KPMG’s Restructuring Services team.
- On Monday 11 May Carl Gunther and Stephen Vaughan of KPMG attended the BBY Group offices to ascertain further details and discussed the proposed scope of a solvency review. KPMG was engaged by BBYL, pursuant to an engagement letter dated 11 May 2015, to carry out the following scope of work:
 - A rapid high level assessment of the current and forecast financial position based on the records of the Companies and management’s short term cash flow forecast and assumptions;
 - An assessment of solvency of the Companies;
 - Providing commentary on the consequences of any possible insolvency and courses of action that may be available to the Companies in that event; and
 - Liaising with key stakeholders as necessary to gather information or confirm our role, including, among others, the Australian Stock Exchange, ASIC, the secured creditor, St. George Bank and its advisors, PPB Advisory.
- Our fee for this work was \$40,000 (plus GST), with funds paid into trust with Ashurst, on account of our future costs and expenses under our engagement with BBYL during the period to Friday 15 May 2015. Those funds have since been drawn in satisfaction of our fees and expenses. No issue arises under section 448C(1)(a) of the Act given that we are not and never have been a creditor of any of the Companies.

- During 5 days from Tuesday 12 May to Friday 15 May 2015 we worked to understand the nature and extent of issues facing the business and the financial implications. During our work we attended various meetings each day with staff, management and the external stakeholders mentioned above. We were also introduced to representatives of two parties who were understood to be interested in investing in the business, AIMS Financial Group (“AIMS”) and Bridge Global Capital Management Limited (HK) (“Bridge”) although we were not involved in negotiations.
- On the evening of Friday 15 May 2015, we understand that a memorandum of understanding was executed between BBYH and the two parties, AIMS and Bridge to take a controlling shareholding in BBYH and recapitalise the business with a planned initial contribution of \$3 million. This effectively brought our engagement to a conclusion.
- On the afternoon of Sunday, 17 May 2015 Stephen Vaughan received a call from Mr Smith advising that, following completion of some further due diligence during the weekend, AIMS and Bridge had requested amendments to the terms of the proposed investment and that negotiations were continuing. Mr Smith called Stephen Vaughan again on Sunday evening and advised that AIMS and Bridge had withdrawn from the proposed recapitalisation. Mr Smith advised that the Directors of the Companies planned to meet that evening to review solvency and consider the future of the Companies. He requested that Mr Vaughan attend the meeting.
- Concurrent meetings of the Companies were held at 11pm on 17 May 2015 at which time resolutions were passed appointing Stephen Vaughan and Ian Hall of KPMG as voluntary administrators of the Companies (**Administrators**).

These meetings and correspondence do not affect our independence for the following reasons:

- The need for potentially insolvent companies to seek prompt and appropriate advice about their financial position is emphasised by the law and by the Regulators. It is common for Practitioners to provide such advice or other information about the insolvency process and options available to a company prior to taking an Appointment. The work we carried out was over a relatively short period of 5 days and was confined to a specific scope of work which remained consistent with the preservation of our independence as prospective Administrators.
- The discussions were at all times factual in nature, focused on the historical and forecast financial position and performance of the Companies, the consequences of any possible insolvency and courses of action that may be available to the Companies in that event.
- The work undertaken during the solvency review engagement assisted us in developing an understanding of the business and its activities. Much of the investigatory work undertaken was work that we would have needed to undertake in order to be able to report to creditors under s439A of the Act. As such, this information will be made available to creditors when we report to them in due course.
- We did not provide any report to the Companies. We do not consider the nature of the work performed is such that it would be subject to review and challenge during the course of the Administrations. The engagement will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Administrations of the Companies in an objective and impartial manner.
- Neither KPMG nor the Administrators provided advice to directors of the Companies in their personal capacity. We understand the directors have sought their own legal advice.

ii) Relevant Relationships (excluding Professional Services to the Insolvent)

We, or a member of our Firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons why no conflict of interest or duty
Westpac Banking Corporation and St George Bank Australia (“Westpac”)	<p>Westpac has a registered security interest over the whole, or substantially whole, of the property of the following four entities in the group of Companies.</p> <ol style="list-style-type: none"> 1. BBY Holdings Pty Limited 2. Broker Services Australia Pty Ltd 3. BBY Limited 4. BBY Advisory Pty Limited <p>KPMG Australia has an ongoing business relationship with Westpac. KPMG has provided Tax, Advisory and other non-audit services to Westpac and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for Westpac is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the administrators have been, or will be, engaged by Westpac in relation to the affairs of the Companies. Westpac has appointed receivers and managers to three of the Companies, who represent Westpac’s interests.¹ Westpac will be treated as a secured creditor during the Administrations and we will continue to liaise with them during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
ABN Amro Clearing Sydney Pty Limited (“ABN”)	<p>ABN has a registered security interest over the assets in the following two entities in the group of Companies:</p> <ol style="list-style-type: none"> 1. BBY Limited 2. Jaguar Funds Management PL <p>KPMG Australia has an ongoing business relationship with ABN. KPMG has provided external financial audit services to ABN and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for ABN is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by ABN in relation to the affairs of the Companies. ABN will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>

¹ Mr Stephen Parbery and Mr Brett Lord of PPB Advisory were appointed as receivers and managers to BBYH, BBYL, AS and BSA on 18 May 2015. They retired from BSA on 20 May 2015 and remain appointed to the other three Companies as receivers and managers.

Name	Nature of relationship	Reasons why no conflict of interest or duty
<p>Konica Minolta Business Solutions Australia Pty Ltd (“Konica”)</p>	<p>Konica has a registered security interest over the assets of BBY Limited.</p> <p>KPMG Australia has an ongoing business relationship with Konica. KPMG has provided external financial audit services to Konica and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for Konica is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by Konica in relation to the affairs of the Companies. Konica will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
<p>Credit Suisse Holdings (Australia) Limited (“Credit Suisse”)</p>	<p>Credit Suisse has a registered security interest over the assets of BBY Limited.</p> <p>KPMG Australia has an ongoing business relationship with Credit Suisse. KPMG has provided external financial audit services to Credit Suisse and/or their international affiliates.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for Credit Suisse is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by Credit Suisse in relation to the affairs of the Companies. Credit Suisse will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
<p>Macquarie Leasing Pty Ltd</p>	<p>Macquarie Leasing Pty Ltd has a registered security interest over the assets of BBY Limited.</p> <p>KPMG Australia has not directly performed services for Macquarie Leasing Pty Ltd. However KPMG has an ongoing business relationship with the wider Macquarie banking group through the provision of Tax, Advisory and other non-audit services.</p>	<p>There are no matters of which we are aware which give rise to a conflict in this appointment.</p> <p>Each professional engagement undertaken for the Macquarie banking group is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by Macquarie Leasing Pty Ltd in relation to the affairs of the Companies. Macquarie Leasing Pty Ltd will be treated as a secured creditor during the Administrations.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>

Name	Nature of relationship	Reasons why no conflict of interest or duty									
<p>AIMS Group Financial Holding Pty Ltd (“AIMS Group”)</p>	<p>KPMG Australia has provided external financial audit services to the following companies in the AIMS Group:</p> <ul style="list-style-type: none"> AIMS Fund Management Limited AIMS Real Estate Funds Limited Asia Pacific Exchange Limited Asia Pacific Exchange Limited Fidelity Fund AIMS Home Loans Pty Limited AIMS Securitisation Pty Limited AIMS Warehouse Trust No.1, AIMS 2004-1 Trust, AIMS 2005-1 Trust, AIMS 2007-1 Trust AIMS Property Securities Fund AIMS Commercial Mortgage Fund MacarthurCook Diversified Property Income Fund MacarthurCook Property Securities Fund MacarthurCook Mortgage Fund MacarthurCook Office Property Trust CWH Australia Trust <p>There are other companies in the AIMS Group which KPMG does not audit. Total fees received in the last 2 years by KPMG from AIMS Group entities has been \$371,000.</p>	<p>Commentary in relation to AIMS has been updated and discussed further below.</p> <p>Each professional engagement undertaken for the AIMS Group is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>Neither KPMG nor the Administrators have been, or will be, engaged by AIMS Group in relation to the affairs of the Companies.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>									
<p>Linc Energy Limited</p>	<p>KPMG Australia and overseas KPMG firms have provided external financial audit and other services to Linc Energy Limited in Australia and overseas.</p> <p>Total fees received in the last 2 years by KPMG from Linc Energy Limited entities has been:</p> <table border="1" data-bbox="352 1294 791 1420"> <thead> <tr> <th></th> <th>2014</th> <th>2015</th> </tr> </thead> <tbody> <tr> <td>Australia</td> <td>\$978,911</td> <td>\$520,150</td> </tr> <tr> <td>Overseas</td> <td>\$838,947</td> <td>\$726,776</td> </tr> </tbody> </table>		2014	2015	Australia	\$978,911	\$520,150	Overseas	\$838,947	\$726,776	<p>Linc Energy Limited was a former client of BBYN which held in trust securities on its behalf in a nominee capacity. Commentary in relation to the BBYN Administrators dealings with Linc Energy Limited is set out in more detail below.</p> <p>Each professional engagement undertaken by KPMG for Linc Energy Limited is conducted on an entirely separate basis and has no bearing on this appointment.</p> <p>This relationship is not one that will have any impact on the performance of our statutory and fiduciary duties associated with the Administrations in an objective and impartial manner.</p>
	2014	2015									
Australia	\$978,911	\$520,150									
Overseas	\$838,947	\$726,776									

AIMS Group

Since our appointment, we have liaised with representatives of the AIMS Group in respect of a prospective sale and recapitalisation of the Companies via the voluntary administration process. We and the AIMS Group have had independent legal advice throughout those discussions and have dealt at arms' length with each other.

In the course of our discussions with AIMS Group, AIMS Group Financial Service Pty Ltd (AFG) made a limited recourse loan of \$500,000 to Stephen Vaughan in his capacity as Administrator for the specific purpose of funding wages and other costs and expenses that may be incurred during the week following the appointment of the Administrators and to allow time for a possible sale agreement to be agreed. The limited recourse loan also permitted a capped amount of remuneration to be funded up to \$100,000, with remuneration being subject to approval in accordance with the Act.



On 26 May 2015, the Voluntary Administrators entered into a Share and Asset Sale Deed with BBY Asia Pacific Group Holdings Pty Ltd (an AIMS subsidiary), selling specified BBY Group assets, including various shareholdings. The sale terms were agreed and proceeds were shared with the Receivers and Managers under a separate agreement. The sale was an arm's length transaction and both parties had separate legal representation.

Linc Energy Limited (“LE”)

KPMG is the auditor of LE, which is an oil and gas company listed in Singapore and the USA.

In May 2012 LE engaged BBYL as its broker in relation to a parcel of shares owned by LE in AFC Energy PLC (“AFC”), a publicly traded company listed in the UK. LE utilised the nominee services of BBYN to hold the shares through a London based counterparty, Jeffries International (Nominees) Limited (“Jeffries”) to be held as sub-custodian for BBY Nominees on behalf of LE pursuant to a nominee agreement.

At the request of LE, the BBYN Administrators reviewed the AFC asset holding and client records relating to LE and confirmed its entitlements to the shares. We subsequently instructed Jeffries to take direct instruction from LE in relation to the AFC shares as part of a wider process that is being carried out with other former clients, of BBYN to confirm entitlements, terminate nominee arrangements and deal with assets identified to be held clients' behalf.

As part of these arrangements we negotiated a fee of \$30,000 to cover our associated costs including legal fees, which was paid into a trust account with our lawyers, Ashurst, as well as an indemnity from LE against any possible claims made against us in connection with the directions given by LE.

We also instructed Jeffries to pay to the Ashurst trust account \$639,055 in proceeds held by Jeffries from a previous sale of AFC shares to be held against any obligations of LE under the indemnity as well as any other costs. We expect that sum will ultimately be released to LE after deduction of any costs in accordance with the agreement reached with LE.

BBYN also acts in a nominee capacity for approximately 380 clients holding shares in LE, including LE employees. These shares are held in a sub-custodian arrangement through ABN AMRO Clearing Bank N.V. in Singapore. LE is not a party to these arrangements. We are progressively contacting former clients of BBY Nominees, including these LE shareholders in order to confirm entitlements, terminate nominee arrangements and deal with assets identified to be held on their behalf.

We do not believe these relationships give rise to us having a conflict of interest or being unable to act as Administrators of the Companies. If information should come to light at a future point during the course of the Administrations, which has the potential to affect our independence as administrators of the Companies, whether in relation to KPMG's relationship with the AIMS Group or another matter, we would undertake a full analysis of the circumstances to determine whether the relationship or threat is one that could have precluded the acceptance by us of our appointment.

If following that analysis we concluded that the circumstances at issue would not have precluded our acceptance of the appointment, we would continue with the Administrations subject to amending this DIRRI and disclosing the full circumstances to the Companies' creditors.

If we were to conclude that the circumstances could have precluded our acceptance of the appointment, then as soon as practicable after the circumstances or facts were identified we would prepare and deliver a report to creditors (disclosed also to ASIC and ARITA) setting out:

- the nature of the circumstances, including the key facts and origin, the reasons why the issue was not detected prior to acceptance of the Appointment, and the potential impact on our independence or our perceived independence;
- the status of the Administrations – work done, work in progress and work to complete the Administrations;
- our estimated costs of stepping down and transferring the Appointment; and
- remuneration drawn and accrued subject to the approval of creditors.

In such circumstances, and where the Administrations were substantially complete or we consider that our replacement as administrators was not in the interests of the Companies' creditors, we would apply to the Court for leave to continue and complete the Administrations.

If the Administrations were not substantially complete at that time, or our replacement would be in the interests of the Companies' creditors, we would seek a consent from suitable replacement administrators and seek our replacement as administrators by Court order, disclosing the full particulars to creditors by a circular or report.

iii) Prior professional services to the Insolvent

Neither Stephen Vaughan or Ian Hall, or KPMG Australia, or a related party covered by the extended definition of firm, have provided any professional services to the Companies in the previous 24 months or prior period with the exception of the solvency review conducted over 5 days between 11 May and 15 May 2015.

iv) Group Company Appointments

We were originally appointed as Administrators to 10 entities (the Companies) within the BBY Group. BBYH was the holding company and BBYL was the main trading entity. It appears the majority of business activity was conducted through BBYL. The other entities over which we have been appointed are subsidiaries of either BBYH or BBYL.

It is not uncommon for a practitioner to be appointed to a group of related companies and there are sound commercial and practical reasons for an appointment of this nature. However there can be circumstances where possible conflicts could arise as a result of group appointments, such as preference payments between the Companies, other voidable or contestable transactions, insolvent trading liabilities of the parent company and contentious proofs of debt. The financial information available to us at the time of appointment was very limited due to the state of available records. At the time of our appointment, we were not aware of any conflicts of interest between the Companies.

We believe that the multiple appointments do not result in a conflict of interest or duty because we have obtained and reviewed further information since our appointment and have not identified any issues that may present a conflict. We believe that the Administrations should be conducted by one practitioner and that this will lead to efficiencies in the orderly resolution of the Companies' estates and as such is in the interests of creditors. Should such a conflict arise, we will keep creditors informed and take appropriate action to resolve the conflict.

v) No other relevant relationships to disclose

There are no other known relevant relationships of the Administrators, including personal, business and professional relationships, from the previous 24 months with the Companies, an associate of the Companies, a former insolvency practitioner appointed to the Companies or any person or entity that has a charge on the whole or substantially whole of the Companies' property that should be disclosed.

C. Indemnities and up-front payments

We received an indemnity from Linc Energy Limited in relation to the release of AFC shares, as discussed earlier. We consider this was a normal and prudent step for an Administrator to take in these circumstances. We also received limited funding during the Administrations from AIMS as discussed earlier.

We have not otherwise been indemnified in relation to the Administrations, other than any indemnities that we may be entitled to under statute or received any up-front payments in respect of our remuneration or disbursements.

Dated: 14 December 2015



.....
Stephen Vaughan
Joint and Several Administrator



.....
Ian Hall
Joint and Several Administrator

Note:

1. If circumstances change, or new information is identified, I am/we are required under the Corporations Act 2001 and ARITA's Code of Professional Practice to update this Declaration and provide a copy to creditors with my/our next communication as well as table a copy of any replacement declaration at the next meeting of the insolvent's creditors.

2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.



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