

Affidavit

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
DIVISION: CORPORATIONS**

No. of 2010

IN THE MATTER OF: SONRAY CAPITAL MARKETS PTY LTD
(ADMINISTRATORS APPOINTED) ACN 104 482 993

**RE AN APPLICATION BY GEORGE GEORGES & JOHN ROSS
LINDHOLM IN THEIR CAPACITIES AS JOINT AND SEVERAL
VOLUNTARY ADMINISTRATORS OF SONRAY CAPITAL MARKETS
PTY LTD (ADMINISTRATORS APPOINTED) (ACN 104 482 993)**

Plaintiffs

On ¹⁵ July 2010, I, **GEORGE GEORGES**, Level 29, 600 Bourke Street, Melbourne in the State of Victoria, chartered accountant and registered liquidator, say on oath:

1. I am a chartered accountant, a registered liquidator and a partner of the firm Ferrier Hodgson.
2. Together with Mr John Ross Lindholm (**Mr Lindholm**) I am a joint and several administrator of the following companies:
 - (a) Sonray Capital Markets Pty Ltd (Administrators Appointed) (ACN 104 482 933) (**Sonray**);
 - (b) Sonray Capital Markets Nominees Pty Ltd (Administrators Appointed) (ACN 134 965 754) (**Sonray Nominees**);
 - (c) Sonray Capital Markets (Qld) Pty Ltd (Administrators Appointed) (ACN 119 300 300) (**Sonray QLD**); and
 - (d) Sonray Advisory Pty Ltd (Administrators Appointed) (ACN 121 868 826) (**Sonray Advisory**)

(together 'the **Sonray Group**').

Filed on behalf of: The plaintiffs
Prepared by:
Norton Rose Australia
RACV Tower, 485 Bourke Street
MELBOURNE VIC 3000

Solicitor's Code: 370
DX: 445 Melbourne
Tel: (03) 8686 6000
Fax: (03) 8686 6505
Ref: 2698457

Attention: Steven Palmer

3. I make this affidavit from my own knowledge except where otherwise indicated. Where I make this affidavit from facts outside my personal knowledge, I am informed by the source stated and truly believe those facts to be true.
4. Exhibited to this affidavit is a folder of documents marked "GG-1". References to GG-1 followed by a reference to a tab number are references to that exhibit and the tab number within the relevant exhibit folder where the document is to be found.

Appointment of joint administrators

5. Prior to accepting the position as joint and several voluntary administrators (**Administrators**), Mr Lindholm and I completed Ferrier Hodgson's standard pre-acceptance procedures which did not identify any conflicts which would preclude us from accepting the appointment.
6. On 22 June 2010, Mr Lindholm and I were appointed as Administrators of each of the companies within the Sonray Group by board resolutions pursuant to section 436A of the *Corporations Act 2001 (Act)*. At **GG-1 tabs 1 to 4** are copies of ASIC historical company extracts with respect to each of those companies showing the appointment of Mr Lindholm and I as administrators on 22 June 2010.

Overview of the activities of the Companies

7. From my enquiries and since my appointment as one of the Administrators I have learnt that:
 - (a) Sonray Nominees, Sonray QLD and Sonray Advisory are wholly owned subsidiaries of Sonray. I do not propose to seek an extension of the convening period for Sonray Nominees, Sonray QLD and Sonray Advisory. The principal business of the Sonray Group is conducted by Sonray.
 - (b) Sonray is the holder of an Australian Financial Services Licence number 231151, effective 4 May 2005 (**AFSL**). At **GG-1 tab 5** is a copy of the AFSL.
8. The AFSL authorises Sonray to:
 - (a) provide financial product advice on a range of financial products;
 - (b) deal in financial products;
 - (c) make a market for derivatives; and



- (d) operate custodial or depository services other than investor directed portfolio services to retail and wholesale clients.
9. The specific activities of each of the wholly owned subsidiary companies within the Sonray Group are minimal. The MYOB accounts of the Sonray Group was, until November 2009, maintained by David Mandaletti under the supervision of Tony Worland, the then Chief Financial Officer of Sonray. From November 2009 until June 2010 a contractor by the name of Bożena Kosidlo took over the maintenance of records in MYOB. From May 2010 until my appointment, Phillip Simpson was employed to review MYOB and to try to reconcile the accounts to reflect Sonray's current position. This had not been completed at the time of my appointment. The activities and the financial information which I have been able to obtain from MYOB and from my investigations of staff at Sonray, about the wholly owned subsidiary companies are summarized below:
- (a) Sonray Nominees does not appear to operate a trading business. It was established in anticipation of it operating a new wholesale trading platform that Sonray was developing. As at the date of my appointment the only assets available to it was cash deposits in the sum of \$4839 cash at bank. It had no liabilities.
- (b) Sonray QLD does not appear to operate a trading business. It has minimal liabilities to trade creditors, which I estimate at the date of my appointment to be \$8,989.95. I estimate that the realizable value of its total assets is \$48,893.55 and accordingly I estimate its net assets at \$39,903.60.
- (c) Sonray Advisory operates only to employ brokers of Sonray and has no other trading business. As at the date of my appointment it had total liabilities, all to terminated employee creditors, in the sum of \$285,251.30 (excluding commissions) and no assets.
10. Sonray earned fees and commissions from providing financial product advice to its clients and by providing access to trading platforms which enable clients to trade in financial products on both an "over the counter" (OTC) basis and on various exchanges around the world.
11. As at the date of my appointment Sonray operated 6,760 active investor accounts owned by approximately 4000 investors.

12. Sonray is not a market participant in the Australian Securities Exchange (ASX) or any other exchange and therefore is unable to place trades on exchanges for its clients, unless it does so through an intermediary which is a market participant on any relevant exchange. In practice Sonray executed trades for its clients for both OTC and exchange traded products through third party financial services providers, referred to here as "providers".
13. Sonray has offices in Melbourne, the Gold Coast and Rockhampton. Upon the date of my appointment Sonray employed 25 employees and Advisory employed 21 employees. Since my appointment Sonray has terminated the contracts of 17 employees and Sonray Advisory has terminated the contracts of 20 employees.
14. There are no audited accounts for the financial year ending 30 June 2010. however audited accounts for the financial year ending 30 June 2009 were completed and lodged at ASIC. At **GG-1 tab 6** is a copy of the Audited Financial report for the year ended 30 June 2009, which has been lodged at ASIC. The financial report shows that the consolidated loss of the consolidated group during the 2009 financial year, after providing for income tax, amounted to \$1,494,543.00.
15. I have been unable to find any reliable profit and loss statements for Sonray post 30 June 2009 to be able to accurately assess the financial position of the company as at the date of my appointment and further investigation of the financial position is required to report more reliably on its position. The reasons for the lack of reliable information include:
 - (a) no financial controller had been employed at Sonray since the previous financial controller, Tony Worland, ceased his employment in April 2010;
 - (b) the present finance team employed at Sonray have only been employed for a relatively short period of time, and there is nobody in that team that commenced employment any earlier than 22 February 2010;
 - (c) no monthly management accounts have been prepared since June 2009;
 - (d) there is an absence of evidence to substantiate the accuracy of income figures, in particular commissions payable to brokers employed by Sonray;
 - (e) reconciliations between Sonray's MYOB accounts and Sonray's trading account bank statements had not been performed between March 2010



and June 2010. Further, it appeared that the reconciliations conducted prior to March 2010 were not reliable.

The Client Segregated Account

16. From my enquiries and investigations to date I understand that Sonray conducted its business broadly under 2 types of business models which were distinguishable by the way in which client funds, and products purchased with client funds, are held. These models can be described broadly as an agency model and a non-agency model.
17. Under the agency model brokers employed by Sonray provided advice to clients about financial products and placed orders on their behalf with third party providers, such as UBS Securities Australia Limited (**UBS**) and E*TRADE Australia Securities Limited (**E*TRADE**). Client money that was placed in accounts with third party providers is not deposited in any account controlled by Sonray or mingled with money attributable to other clients, and Sonray receives fees and commission from third party providers in relation to trades conducted by those clients. Securities such as equities (shares) held by clients under the agency model are generally held under a Holding Identification Number (**HIN**) that corresponds to the relevant client. At the time of my appointment there were 591 client accounts linked to UBS and E*TRADE under the agency model.
18. Under the non-agency model clients deposit funds into a segregated account maintained by Sonray at the time they open their account with Sonray and at later times when additional funds are required. While many clients of Sonray appear to have been under the impression that the funds that they placed into the segregated account were kept in a separate bank account from other clients' funds, the funds were actually pooled together and co-mingled with the funds of other investors in bank accounts held at the Hong Kong Shanghai Banking Corporation (**HSBC**) or the Australia and New Zealand Banking Group Limited (**ANZ**). These accounts are accounts within the meaning in sections 981A and 981B of the *Corporations Act 2001* and referred to here collectively as "the **Client Segregated Account**". Further, whilst many clients thought that financial products purchased with funds from the Client Segregated Account were held in their name, they were in fact held by Sonray, by one of the providers or in the name of a custodian. In all cases under the non-agency model the relevant clients had no direct relationship or contractual arrangements in place with the third party provider. However, I am aware that many investors assert a claim to shares

purchased by the third party providers, or otherwise assert a claim against third party providers.

19. As at the date of my appointment Sonray administered a total of 4,561 client accounts which had non-zero balances of cash or stock.
20. There are 3 separate trading platforms which were used by Sonray's clients to effect trades through third party providers, of which most, but not all, were used to acquire financial products under the non-agency model, namely:
 - (a) Sonray Trader, which is a trading platform upon which Sonray has placed its brand, and used to effect trades of products through a Danish investment bank called Saxo Bank A/S pursuant to terms and conditions in agreements entered into between Sonray and Saxo Bank A/S;
 - (b) Sonray Global, which is a trading platform upon which Sonray has placed its brand, and which is used to effect trades through Interactive Brokers LLC (**Interactive Brokers**) and
 - (c) Webtrader, which is a trading platform, branded by Sonray, and used by clients of Sonray (described by Sonray as wholesale clients) who themselves serve retail clients, to effect trades through Saxo Bank A/S and Interactive Brokers, as well as a number of other third party providers.
21. Initially the process of dealing with funds into and out of the Client Segregated Account was the same in respect of all third party providers in that all funds deposited into the Client Segregated Account were transferred across to accounts of the relevant third party provider and held by that provider to effect trades upon instructions of Sonray, initiated by the Sonray client. The fact that segregated client accounts were held with both ANZ and HSBC was practical only – one allowed for B-pay payments and the other did not.
22. In early 2008 the process of dealing with funds from the Client Segregated Account to and from Saxo Bank A/S changed. I have been unable to determine the reason for the change and have not obtained any document explaining the need for the change or the terms and conditions that applied to the change in the management of the flow of funds. I am informed by Mr Lindholm and believe that he has asked Saxo Bank A/S for an explanation and that whilst the discussions with Saxo Bank A/S are co-operative, no explanation has yet been forthcoming. I was informed by Russell Johnson, the director of Sonray, that:

- (a) after the change, client funds were deposited into the Client Segregated Account and a record of receipt was sent to Saxo Bank A/S, however the client's deposited funds were not physically transferred across to Saxo Bank A/S;
 - (b) in some instances funds from the pool of funds in the Client Segregated Account were transferred across to Saxo Bank A/S when margin calls were made to Sonray by Saxo Bank A/S.
23. In addition, I am informed by other staff members at Sonray and believe that since the time of the changed arrangement with Saxo Bank A/S, Sonray did not conduct any reconciliations of the transactions with Saxo Bank A/S against the cash balance of the Client Segregated Account and the records of the individual client positions.
24. From my investigations it appears that since, and possibly before, the change in the process of dealing with client funds with Saxo Bank A/S, there have been significant mishandling of client's funds deposited in the client segregated account. It appears that there is a significant deficiency in client funds in the order of \$46 million. I have been informed that:
- (a) In early 2008 a trader had entered into approximately \$6,000,000 of unauthorized trades on behalf of clients without their instructions. Following my preliminary investigations of this allegation, including the questioning of the relevant trader and an examination of corroborating evidence, my preliminary view is that this allegation is incorrect, but I have not yet been able to determine the reason behind the deficiencies in the Client Segregated Account.
 - (b) A substantial quantity of funds were transferred out of the Client Segregated Account and transferred to Sonray's general account and used for general working capital purposes. I have been informed that in one instance Sonray transferred funds in the sum of approximately \$4,500,000.00 from the funds in the Client Segregated Account and transferred to the Sonray general account, but my investigations into this allegation are not yet complete.
 - (c) I have been informed that a number of "house accounts" were established within Sonray in an attempt to make successful trades and recover amounts which had been transferred out of the Client Segregated Account. These



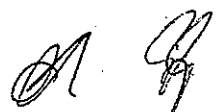
house accounts were allegedly represented to Saxo Bank A/S as being established under the usual procedures of Sonray under the names of genuine client, but in fact they were unfunded, artificial accounts controlled by certain employees in the management team at Sonray. The trading under the house accounts ultimately exacerbated the deficiencies in the Client Segregated Account. I have made some progress in understanding this issue but my investigations are still preliminary.

Client Segregated Account – Terms and Conditions

25. I am informed that every client of Sonray was generally required to sign an account application form containing a set of terms and conditions, which varied from time to time, prior to entering into commercial relations with Sonray. Sonray maintains a file for each client and I am informed that each client's file contains the original signed application form and terms and conditions which that client signed. The following summary of the categories of clients and the types of account forms and terms and conditions that each client signed is formed from my preliminary investigations, advice from my solicitors following a review of the template documents from Sonray and from discussions that both I and staff at Ferrier Hodgson have had with Sonray employees.
26. I am informed that Sonray distinguished between clients which it determined to be retail clients and wholesale clients within the meaning of the *Corporations Act 2001*.
27. I am informed that clients of Sonray that it determined were retail clients within the meaning of section 761G(1) of the *Corporations Act 2001* who wished to set up an account under the non-agency model were provided with a copy of the Sonray financial services guide (**FSG**) and a product disclosure statement (**PDS**) for the products that they wish to instruct Sonray to deal in. A copy of Sonray's FSG dated 13 January 2009 is at **GG-1 tab 7**. A copy of Sonray's PDS dated 23 December 2009 for contracts for difference is at **GG-1 tab 8**. A copy of Sonray's PDS dated 23 December 2009 for futures and options products is at **GG-1 tab 9**. A copy of Sonray's PDS dated 23 December 2009 for margin foreign exchange is at **GG-1 tab 10**.
28. A copy of the account application form with attached terms and conditions for retail clients that was in circulation at the time of my appointment, is dated 13 May 2010 and marked version 3 and is at **GG-1 tab 11**. Sonray's retail clients' account

application form plus terms and conditions, dated 9 September 2009 version 2, is at **GG1 tab 12**.

29. I am informed that clients of Sonray that it determined were wholesale clients within the meaning of section 761G(4) of the *Corporations Act 2001* who wished to set up an account under the non-agency model were provided with the Wholesale Account Application Form with attached terms and conditions which appear to be virtually the same as those attached to the retail account application form. Under the Wholesale Account Application Form the relevant Sonray client was required to demonstrate that they were a wholesale investor within the meaning of the *Corporations Act 2001*. An example of a Wholesale Account Application Form is at **GG1 tab 13**.
30. Sonray also offered to its clients, whom it characterized as wholesale clients within the meaning of section 761G(4) of the *Corporations Act 2001*, a service whereby the relevant client authorized Sonray to engage in discretionary trading on that client's behalf pursuant to an agreed investment mandate. Such clients were provided by Sonray with a Wholesale Account Application Form including an Individually Managed Account Mandate (**IMA**). It appears that the terms and conditions attached to the Wholesale Account Application Form (IMA) were generally the same as that for Sonray's retail clients except that in addition to requiring the client to demonstrate they were a wholesale clients within the meaning of *Corporations Act 2001*, there were additional terms and conditions that were specific for the individually managed account investment mandate in relation to the level of risk, type of products, minimum investment horizon and level of investment of the relevant client. An example of the Wholesale Account Application Form (IMA) is at **GG-1 tab 14**.
31. Clients of Sonray, whether they be wholesale or retail clients within the meaning of the *Corporations Act 2001*, were often introduced to Sonray through intermediary businesses who would obtain a fee or commission from Sonray for arranging the introduction. Sonray staff referred to clients who were introduced to it by a third party intermediary as a client under its wholesale business model and referred to the third party intermediary as a "wholesale client". Clients who were introduced to Sonray by third party intermediaries under the wholesale business model would generally be provided with the same application form and terms and conditions that applied for other clients of Sonray, except that the forms would be branded with that relevant intermediary business' name. An example of an Account



Application Form, which is branded on its front page with the name of an intermediary business under Sonray's wholesale business model, is at **GG-1 tab 15**. The relevant third party intermediary's name in this example is "Mason Stevens", which was an authorised representative of Sonray.

32. Some third party intermediaries, under the wholesale business model, who had their own Australian Financial Services Licence, provided their clients with a document entitled a Tripartite Account Application Form which would be signed by both the intermediary and the end client. The document was branded with the relevant intermediary's name. The terms and conditions attached to that form were generally the same as that attached to the application form for other Sonray clients. A copy of an example of a Tripartite Account Application Form with attached terms and conditions is at **GG-1 tab 16**. This example refers to Avestra Capital Pty Ltd as the relevant third party intermediary and AFSL holder.
33. Whilst I understand that the Client Segregated Account is regulated by Division 2 of part 7.8 of the Corporations Act 2001 I believe that the following terms and conditions are also relevant to the conduct of the funds in the Client Segregated Account.
34. The terms and conditions that are currently in circulation in relation to all categories of Sonray's clients contain the following terms and conditions that are relevant to the characterization of the Client Segregated Account as a trust account established for the benefit of all parties:

"5. Account establishment

- a) *Sonray agrees to establish an account in the name of the Client, who is the person named as the holder of the account.*

...

- c) *No one except the Client has an interest in the Client's account with Sonray opened for the purposes of these Terms & Conditions.*

6. Segregated accounts

The Client agrees and acknowledges that:

- a) *All money and property deposited by the Client with Sonray, or received by Sonray on behalf of the Client shall be deposited to the*

Client's account and form a credit balance and will initially be paid into a client segregated bank account established and maintained by Sonray and invested in accordance with applicable legal and regulatory requirements;

- b) Such segregation of the Client's money and property does not protect the Client's money and property from the risk of loss;*
- c) Whilst the Client's money and property is segregated from Sonray's money and property, it may be co-mingled with the money and property of other Sonray clients, and utilised as free and clear collateral by Sonray from time to time in respect of open positions;*
- d) Unless otherwise agreed in writing, Sonray shall be entitled to retain any interest earned on such segregated money or property held or invested by Sonray;*

...

- f) Sonray may use the funds in the client segregated account to manage Sonray's dealings with its counterparties with respect to client positions. The Client acknowledges that this serves as sufficient written authorisation for Sonray to withdraw without notice to, or further authorisation from, the Client any money or property deposited into the segregated account to be used by Sonray for this purpose. The Client has no interest in or claim over Sonray's contracts (if any) with any other person or in the accounts into which Sonray lodges or pays the funds which were withdrawn from the segregated accounts. The Client acknowledges that the balance of the Client's account may not be protected if there is a default in the dealings with counterparties or in the overall segregated account balance; and...*
- h) Financial product trades executed through Sonray are routed to Sonray's wholesale service provider, who then routes the order to the applicable market or exchange. Depending on the relevant jurisdiction or exchange, either Sonray or its service provider will be the registered owner of the instrument, within Sonray's client omnibus account. The value, dividends and relevant corporate*

notices are then provided to clients by Sonray in accordance with their recorded, and continually reconciled, holdings. However, if Sonray were to go into liquidation, and an administrator appointed, clients would be prima facie entitled to fair value for their recorded holdings, rather than holding such instruments in their name directly, thereby placing clients in the position of unsecured creditors with the administrators."

35. I note that clause 6(c) of version 2 of the terms and conditions attached to account application form, included an additional sentence at the end of paragraph 6(c) as follows:

"Such monies and property shall accordingly be treated as the legal and beneficial property of Sonray, subject to an obligation by Sonray to transfer equivalent back to client in accordance with their transaction rights under these terms and conditions."

36. This clause, which I was informed was included at the insistence of Credit Suisse with whom negotiations were then underway by Sonray to attract as a third party provider, was later withdrawn from clause 6(c) in version 3 of the client application form and terms and conditions.
37. I am aware that there are some Sonray clients who have signed earlier versions of the account application form and terms and conditions and who invested funds under Sonray's non-agency model. I am not aware of any client having signed an account application form incorporating terms and conditions that did not contain a clause that is similar in effect to the following words: *"Whilst the Client's money and property is segregated from Sonray's money and property, it may be co-mingled with the money and property of other Sonray clients."*
38. In each of the PDS's I have noted that there are clauses which refer to the treatment of client monies in the Client Segregated Account, that they are co-mingled with other clients' funds and kept separate from Sonray's monies and assets.

Third Party Providers

39. Under the non-agency model clients that deposit funds into the Client Segregated Account thereafter submit instructions to Sonray to initiate trades with one of the Sonray's non-agency third party providers, namely Interactive Brokers, Saxo Bank

A/S, Forex Capital Markets Ltd, Macquarie Bank, MF Global Australia Ltd and D2MX Pty Ltd.

40. Sonray has entered into agreements with each of the third party providers in relation to the establishment of the consolidated accounts on behalf of clients in the Client Segregated Account. There is no legal relationship between the third party providers and the end client. The only agreements that have been executed between each of the third party providers are those involving Sonray and the relevant third party provider.

Summary of Financial Position (Client Segregated Account) and Third Party Provider Accounts

41. I believe that as at 22 June 2010 the financial position with respect to funds in the Client Segregated Account and the Macquarie Cash Management Account (in relation to funds for trading assets on the Web Trader Platform through Macquarie) and in relation to the assets purchased with funds in the Client Segregated Account was as follows:
- (a) the sum of cash held in the Client Segregated Account and the Macquarie Cash Management Account was approximately \$6,506,729.80. At **GG-1 tab 17** are relevant bank statements showing the balances of the ANZ bank account, the HSBC bank account and the Macquarie Cash Management Account as at 22 June 2010;
 - (b) the sum total of all cash and the estimated realizable value of holdings in possession of third party providers was approximately \$30,157,772.07 At **GG-1 tab 18** is a statement prepared by Ferrier Hodgson following its investigations with third party providers which summarizes the financial position of all cash and open positions held with all third party providers under the non-agency model;
 - (c) the sum total of the recorded value of positions of all Sonray clients that had entered trades under the non-agency model, was approximately \$76,850,000. It is unclear if the recorded value of positions has been inflated by the use of artificial house accounts as my investigations into the use of the house accounts and the present value of the recorded value of positions attributed to the house accounts is not yet complete; and

- (d) the current estimated shortfall, if all holdings are converted to cash, between the cash that would then be available and the recorded value of positions, is approximately \$46,700,000.00.
42. I am informed by my solicitors and believe that by virtue of section 981H of the Corporations Act 2001, and Regulation 7.8.07, that investors who have a notional balance in the Client Segregated Account are beneficiaries of a trust (**the Trust Fund**).
43. It is my preliminary view that a client may not be able to identify any specific financial product as having been paid for exclusively with client's funds from the Client Segregated Account because of the changed method of settlement between Sonray and Saxo Bank A/S, the deficiencies caused by unauthorized transfers of funds out of the Client Segregated Account and the use of unfunded "house accounts" for trading, all of which may have resulted at any given time in continuing or rolling deficiencies in the Client Segregated Account so that the client funds have been depleted prior to the purchase of a financial product.
44. I intend seeking directions and declarations about these and other issues, including directions about payment of remuneration to the Administrators for the preservation and administration of the Trust Fund as soon as practicable.

Summary of Financial Position (Sonray)

45. I do not yet have a report as to affairs (**RATA**) from the sole director and company secretary of all companies of Sonray, Russell Johnson. From the enquiries and investigations of the unaudited financial records at Sonray I understand that:
- (a) The major assets available to Sonray are:
- (i) Cash at bank - \$309,214.00
 - (ii) Cash on deposit - \$619,444.69
 - (iii) Commissions notionally receivable from third party providers, but possibly the subject of set off claims by these providers - \$915,676.00
 - (iv) Property and Equipment, including a Wholesale trading platform, - the value of this property and equipment is commercially sensitive and difficult to value. I have however received some 25 enquiries

about the wholesale trading platform so am hopeful of realising it. Some or all of the benefit of this wholesale trading platform may also be held on constructive trust for investors.

- (b) The major liabilities of Sonray are:
- (i) Employee entitlements of the terminated employees and all outstanding superannuation of all employees - \$168,532.28;
 - (ii) 53 unsecured trade creditors – \$515,978.57;
 - (iii) The Australian Tax Office for Pay as You Go Tax - \$407,221.25;
 - (iv) unsecured Loans - \$400,000;
 - (v) commissions payable to brokers - \$332,286.92; and
 - (vi) claims by investors for breach of trust – yet to be determined but potentially \$46.7 million.
- (c) Whilst fixed and floating charges on the assets and undertakings of Sonray to ANZ and Credit Suisse Securities (Europe) Limited (**Credit Suisse**) have been registered at ASIC they secure nothing as neither ANZ nor Credit Suisse are creditors of Sonray. There are no secured creditors of Sonray.

Administrators' Investigations

46. Prior to my appointment, Sonray was involved in negotiations with Saxo Bank A/S for the sale of its business. I understand from my enquiries that the director of Sonray hoped to use the purchase price to correct the deficiency in the client funds.
47. Pursuant to the *Corporations Act 2001* I have obligations and duties to conduct investigations into the affairs and activities of the Sonray Group. Given the substantial complexity of, and the significant deficiencies in Sonray's book and records along with the considerable number of beneficiaries to certain Sonray accounts, I have not yet completed meaningful or substantive investigations into the affairs of Sonray.
48. To date, the Administrators have undertaken the following tasks in the administration of the Sonray Group:

- (a) attended to statutory notifications;
- (b) notified and met with ASIC in relation to its investigation into the affairs of Sonray;
- (c) suspended all trading under the non-agency model trading platforms which would cause the opening of new positions;
- (d) negotiated with Sonray's landlord about the leased premises at 367 Collins Street Melbourne;
- (e) communicated with employees, creditors, a substantial number of investors, landlords and shareholders and dealt with ongoing queries from those stakeholders, including instructing my solicitors to respond to correspondence from investor's legal representatives about their entitlements;
- (f) terminated staff;
- (g) commenced a review of the Sonray Group's books and records and accounting systems;
- (h) reviewed the information technology environment of the Sonray Group and forensically imaged all computer records, laptops and Blackberries;
- (i) met with management of the Sonray Group to discuss the factors which led to the appointment of Administrators;
- (j) interviewed the director, senior staff, and a number of former employees of interest about the circumstances that led to the deficiency in the client segregated account;
- (k) dealt with media enquiries;
- (l) commenced investigations into nature, and size of the deficiency in the client segregated account;
- (m) met with legal representatives from Saxo Bank A/S;
- (n) written to Sonray's auditors and other advisors seeking copies of their files and terms of their retainer;



- (o) written to Sonray's insurer seeking copies of the terms of all relevant insurance policies and have begun considering their terms and preparing notifications;
 - (p) instructed my solicitors to collect and review the major agreements with all third party providers in relation to the ability of Sonray and its third party providers to terminate those agreement and liquidate open positions held by Sonray on a consolidated basis on behalf of its clients;
 - (q) written to and spoken with all third party providers;
 - (r) convened a first meeting of creditors for all creditors of Companies in the Sonray Group, held concurrently in Melbourne, Sydney and the Gold Coast;
 - (s) obtained legal advice about the characterisation of investors as beneficiaries of a trust, including seeking the advice of Senior Counsel.
 - (t) Convened meetings of the committee of creditors.
 - (u) Dealt with investors and their lawyers in respect of various claims including in respect of injunction proceedings brought in the New South Wales Supreme Court.
49. The types of tasks that will still need to be completed by the Administrators include:
- (a) completing our analysis and investigation of the Sonray's business, property, affairs and financial circumstances;
 - (b) continuing investigations into the cause of the deficiency in the Client Segregated Account and considering whether recovery actions may lie against other parties;
 - (c) continuing investigations into the terms of the audit reports that were conducted of Sonray, and the insurance policies that were held by Sonray
 - (d) identifying the proper beneficiaries of the funds held in trust in the Client Segregated Account and their proper entitlements;
 - (e) determining an appropriate and fair mechanism to distribute assets held in the Client Segregated Account to the beneficiaries of the Account;

- (f) continuing discussions with Saxo Bank A/S about a number of matters, including the circumstances of the change in the process of payments with Sonray, and the cause of the deficiency in the Client Segregated Account, and the negotiations for the purchase of Sonray's business;
 - (g) ongoing meetings with the committee of creditors;
 - (h) dealing with ongoing queries from employees, creditors, investors, landlords and shareholders;
 - (i) attending to statutory notifications;
 - (j) preparing and distributing a report to the creditors which provides an opinion and recommendation on the best course of action for creditors to take in relation to the future of Sonray;
 - (k) given the complexity and uncertainty of the legal position – issuing proceedings, seeking directions and declarations about the rights of various parties in relation to some of these issues, including investors.
 - (l) Considering whether parties are prepared to quickly convene mediations in the hope of avoiding drawn out litigation.
50. Prior to advertising for sale the assets of Sonray I received over 25 expressions of interest for its wholesale trading platform. I have also discussed with one party the possibility of some forms of proposal which may involve the purchase of the Sonray business as a going concern.
51. Pursuant to section 439A(5) of the *Corporations Act 2001*, the convening period ends on 20 July 2010. Pursuant to section 439A (2) the Administrators are required to hold the second meeting of creditors of Sonray by 27 July 2010. Pursuant to section 439A(4)(b) of the Act the Administrators are also required to prepare and provide a report and statements and to express an opinion about whether it would be in the creditors' interests for:
- (a) the administration of Sonray to end; or
 - (b) to execute a deed of company arrangement; or
 - (c) Sonray to be wound up.

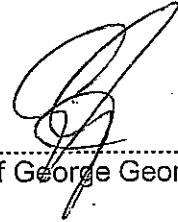
52. There are a number of matters which are likely to cause me to be unable to complete my investigations into the affairs and activities of Sonray prior to the end of the convening period. These matters include:
- (a) the complexity of the business and affairs of Sonray;
 - (b) the substantial record keeping deficiencies in the books and records held by Sonray;
 - (c) the size and nature of the shortfall in the Client Segregated Account and its impact on over 4000 retail investors;
 - (d) the fact that there is minimal current staff at Sonray who have been employed over a sufficiently long period to provide a proper information as to the development of systems and procedures and the recording of financial information;
 - (e) The serious allegations of unscrupulous conduct of former and current employees which are likely to have caused the shortfall in the Client Segregated Account;
 - (f) The forensic difficulty in properly understanding the use of "house accounts" and their effect;
 - (g) The legal complexity surrounding the rights and obligations of parties;
 - (h) The difficulty in clearly identifying recoveries which may be made.
53. I am concerned that the Administrators will not be able to properly provide an opinion to creditors at the second meeting of creditors if it is held on or before 27 July 2010 given the minimal amount of time available to us to conduct substantive investigations into the affairs and activities of Sonray.
54. In the circumstances detailed in this my affidavit, it is necessary and reasonable and in the best interests of all the respective creditors, including employees of Sonray for the convening period for the second meeting of creditors to be extended as requested in the originating process. This will enable the Administrators to complete their investigations and carry out their obligations and to report to creditors in a constructive and meaningful way.



55. At the first creditors meeting on 2 July 2010 I informed the creditors that the Administrators were likely to apply for an extension of the convening period and I received no objections. I am informed by Mr Lindholm and believe that on 13 July 2010 at a meeting of the committee of creditors that he discussed the proposal to seek an extension of the convening period with the committee and whilst he did not call for a vote, the committee was generally supportive of the proposal.

SWORN by George Georges at
Melbourne in Victoria on 15 July 2010

)
)
)
)



Signature of George Georges

Before me:



Signature of person taking affidavit

ALLAN FARREL KAWALSKY
RACV Tower, 485 Bourke Street
Melbourne Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.

CERTIFICATE OF COMPLIANCE

I, Steven Palmer, certify to the Court that the affidavit of George Georges sworn on July 2010 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

¹⁵
Date: July 2010



Solicitor for the plaintiffs

Filed on behalf of: The plaintiffs
Prepared by:
Norton Rose Australia
RACV Tower, 485 Bourke Street
MELBOURNE VIC 3000

APAC-#6788894-v1

Solicitor's Code: 370
DX: 445 Melbourne
Tel: (03) 8686 6000
Fax: (03) 8686 6505
Ref: 2698457
Attention: Steven Palmer