

Form 3 Interlocutory process
(rule 2.2, 15A.4, 15A.8 and 15A.9)

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

No. VID 562 of 2010

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

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

Plaintiffs

A. DETAILS OF APPLICATION

This application is made under s. 511 of the *Corporations Act* 2001 (Cth) (**Act**) and s. 63 of the *Trustee Act* 1958 (Vic).

This application is for directions to be given to the First Plaintiffs (**Liquidators**) in their capacity as liquidators of Sonray Capital Markets Pty Ltd (In Liquidation) (ACN 104 482 993) (**Sonray**), and for directions to be given to Sonray, and other relief.

On the facts stated in the supporting affidavit(s), the Liquidators apply for the following relief:

- 1A An order pursuant to rule 9.05 of the Federal Court Rules 2011 that Sonray be joined as a party in this Interlocutory Process as a second plaintiff.
- 1 A direction as to whether the Liquidators would be justified in:
 - (a) pooling the balance of each Segregated Account into a single bank account and applying regulation 7.8.03(6) of the Regulations to that single bank account;

Filed on behalf of: The Plaintiffs
Prepared by:
Norton Rose Australia
RACV Tower, 485 Bourke Street
MELBOURNE VIC 3000
Dated: 5 September 2011

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Attention: David Porter

- (b) subject to the rights of clients described in paragraph 6(b), converting any balances in foreign currency into Australian dollars for the purpose of such pooling;
- (c) treating foreign currency as money for the purposes of regulation 7.8.03(6); and
- (d) setting off positive cash balances against negative cash balances in all accounts owned by the same client.

2 A direction as to the date on which and the basis on which a client's entitlement to be paid money from the Segregated Accounts is to be determined.

3 A direction that the liquidators are entitled to treat clients whose entitlement to participate in the Segregated Accounts is \$50 or less as having no entitlement to participate in the Segregated Accounts.

4 A direction whether:

- (a) money held by FXCM, Macquarie, MF Global or Interactive Brokers, on behalf of Sonray or any client of Sonray;
- (b) financial products purchased by FXCM, Macquarie, MF Global or Interactive Brokers pursuant to instructions by Sonray or its clients; and
- (c) the proceeds of sale of such financial products realised in accordance with paragraph 7 hereof;

are, when returned to Sonray by those Providers, to be held on trust for all clients of Sonray on a pro rata basis in accordance with the client's entitlement as determined under the direction requested in paragraph 2.

5A On the assumption that there is no claim to title in the Shares or the Dividends by any party other than Sonray and the Clients referred to below, a direction whether or not the Liquidator is obliged:

- (a) to give any party holding Shares direction to register the Shares in the name of the relevant Client on CHESS or, for non-CHESS shares, as the relevant Client directs; and

- (b) to direct the payment of the Dividends by the party holding the dividend as the Client directs.

- 5B If the direction in 5A is that the liquidator does not have to give the direction, a direction that, in the event that Sonray comes into possession of or acquires any title in the said Shares or Dividends, a direction whether:
 - (a) Sonray holds the said Shares and the said Dividends on trust for the relevant Clients; or
 - (b) the Shares and Dividends are held on trust for all clients of Sonray on a basis in accordance with the client entitlements as determined under the direction in paragraph 2 herein, or on some other basis, and if so, what basis.

- 6 A direction that the Liquidators are entitled to treat clients as falling into one of the following classes:
 - (a) clients who transferred shares from that client's HIN to a Provider's HIN and did not deal in those shares prior to 22 June 2010;
 - (b) clients who deposited foreign currency directly into a foreign currency Segregated Account and did not conduct any trading involving settlement in that foreign currency; and
 - (c) all other clients of Sonray.

- 7 A direction that Sonray be authorised to direct Interactive Brokers to liquidate all financial products held under Sonray's Consolidated Account, excluding financial products falling within paragraph 6(a), and to pay the proceeds and money held by Interactive Brokers to the Liquidators.

- 8 A direction that the Liquidators are entitled to treat clients in paragraph 6(a) above as beneficially entitled to those shares, and would be justified in requiring payment by those clients of any negative balances associated with their accounts as a condition of transferring those shares to or at the direction of those clients.

- 9 A direction:
- (a) that a client who deposited foreign currency directly into a foreign currency segregated account and conducted any trading involving settlement in that foreign currency is not entitled to the amount so deposited (or the remaining balance thereof) to the extent that transactions executed by a Provider in accordance with the client's instructions have been settled without any amount being debited to the foreign currency Segregated Account; and
 - (b) subject to paragraph (a), that the Liquidators are entitled to treat clients in paragraph 6(b) above as beneficially entitled to the foreign currency in the relevant foreign currency Segregated Account.
- 10 If the Court declines to grant the directions sought in 6 above, then a direction as to which clients or categories of clients are beneficially entitled to financial products resulting from transactions undertaken through a Trading Platform or money held in a Segregated Account on 22 June 2010.
- 11 A direction that having regard to the cost and time required or, where records are inadequate, the impossibility, of determining each client's entitlement by indentifying and reconciling transactions through the Segregated Accounts and indentifying and reconciling the client's funds to trading on a Platform, that the Liquidators need not undertake those tasks and that funds or other assets held outside the Segregated Accounts are to be distributed rateably in accordance with the directions sought in paragraphs 4 and 5.
- 12 An order that, to the extent that the Remuneration and Expenses of the Liquidators, whether as former administrators or as liquidators of Sonray, exceed the assets of Sonray which it holds beneficially, the Liquidators are entitled to have recourse to funds presently held in the Segregated Accounts, and to a lien over the funds presently held in the Segregated Accounts for the payment thereof.
- 13 A declaration that the amounts recoverable by the Liquidators under 12 above is the "Proper Amount" as defined in the orders made in this proceeding on 8 December 2010.

- 14 A direction as to whether funds recovered by the Liquidators from third parties during the course of the Administration and Liquidation are to be treated as funds recovered for the benefit of Sonray or its clients.
- 15 An order and directions for the appointment of contradictors as representative parties.
- 16 An order that the Liquidators' costs and expenses of this application be costs in the liquidation.
- 17 Liberty to apply generally.
- 18 Such further or other orders as may be just or necessary.

Definitions

In this Interlocutory Process, the following words have the following meanings:

Administration means the administration of Sonray by the Plaintiffs, pursuant to Part 5.3A of the Act, commencing 22 June 2010.

Clients means Clients of Sonray who instructed the acquisition of shares and paid or released monies to Sonray for the purchase thereof.

Dividends means dividends paid or declared on the Shares.

Expenses means expenses incurred by the Plaintiffs in the Administration of Sonray and Liquidation of Sonray relating to the Segregated Accounts, including:

- (a) the ascertainment of the nature and value of the position of the assets and liabilities relevant to the Segregated Accounts;
- (b) the investigation of the financial relationship between Sonray and the Segregated Accounts;
- (c) the identification of the creditors who may claim in respect of the Segregated Accounts and any matters necessary to determine appropriate action to be taken in relation to the Segregated Accounts on behalf of Sonray including action to preserve and protect the Segregated Accounts;

- (d) identifying or attempting to identify the source of money held in the Segregated Accounts;
- (e) recovering or attempting to recover funds or other assets the proceeds of which should have been held in the Segregated Accounts on or before 22 June 2010;
- (f) protecting or attempting to protect funds or other assets the proceeds of which should have been held in the Segregated Accounts on or before 22 June 2010;
- (g) distributing funds held in the Segregated Accounts to the persons beneficially entitled to them;
- (h) identifying claims which may be brought to benefit the Segregated Accounts or reduce other claims against it, being in either case claims relating to funds or other assets which should have been held in the Segregated Accounts on or before 22 June 2010;
- (i) reviewing and dealing with claims by any person to any entitlements in respect of the Segregated Accounts;
- (j) instructing lawyers to:
 - (i) advise in relation to any of the matters referred to above; and
 - (ii) commence this application.
- (k) the Plaintiffs' costs in respect of the procedure referred to in paragraph 5 of the order made by Justice Finkelstein on 8 December 2010;
- (l) the Plaintiffs' costs and expenses of this application on an indemnity basis.

FXCM means Forex Capital Markets LLC.

HIN means holder identification number (or similar) for the purposes of a clearing house system for financial products.

Interactive Brokers means Interactive Brokers LLC.

Interactive Brokers Platform means the internet based trading system owned by Interactive Brokers and used by customers of Sonray to direct the execution of trades in

financial instruments by Interactive Brokers. The platform is also referred to as the Sonray Global Platform.

Liquidation means the liquidation of Sonray by the Plaintiffs, pursuant to Part 5.5 of the Act, commencing 27 October 2010.

Macquarie means Macquarie Equities Limited ABN 41 002 574 923.

Macquarie Bank Cash Management Account: means Macquarie Cash Management Account number 961006129.

MF Global: means MF Global Australia Limited ABN 50 001 662 077.

Plaintiffs means George Georges and John Ross Lindholm (whether acting as administrators in the Administration of Sonray or liquidators in the Liquidation of Sonray from time to time).

Providers means Saxo, Interactive Brokers, MF Global, D2MX, FXCM and Macquarie.

Remuneration means such remuneration of the Plaintiffs as the Court will approve in respect of their Administration of Sonray and Liquidation of Sonray relating to the Segregated Accounts including:

- (a) the ascertainment of the nature and value of the position of the assets and liabilities relevant to the Segregated Accounts;
- (b) the investigation of the financial relationship between Sonray and the Segregated Accounts;
- (c) the identification of the creditors who may claim in respect of the Segregated Accounts and any matters necessary to determine appropriate action to be taken in relation to the Segregated Accounts on behalf of Sonray including action to preserve and protect the Segregated Accounts;
- (d) identifying or attempting to identify the source of money held in the Segregated Accounts;
- (e) recovering or attempting to recover funds or other assets the proceeds of which should have been held in the Segregated Accounts on or before 22 June 2010;

- (f) realising or attempting to realise funds or other assets the proceeds of which should have been held in the Segregated Accounts on or before 22 June 2010;
- (g) protecting or attempting to protect funds or other assets the proceeds of which should have been held in the Segregated Accounts on or before 22 June 2010;
- (h) distributing funds held in the Segregated Accounts to the persons beneficially entitled to them;
- (i) identifying claims which may be brought which may directly or indirectly benefit the Segregated Accounts or reduce other claims against it, being in either case claims relating to funds or other assets which should have been held in the Segregated Accounts on or before 22 June 2010;
- (j) reviewing and dealing with claims by any person to any entitlements in respect of the Segregated Accounts; and
- (k) instructing lawyers to:
 - (i) advise in relation to any of the matters referred to above; and
 - (ii) Commence and continue this application.

Saxo means Saxo Bank A/S.

Segregated Accounts means:

- (a) Australia and New Zealand Banking Group account numbers 013006-1087-85428, 120824CAD00001, 120824USD00001, 120824NZD00001, 120824JPY00001, 120824GBP00001, 120824EUR00001, 120824CHF00001;
- (b) Hong Kong Shanghai Banking Corporation account numbers 001-225333-002, 001-225333-003, 001-225333-901, 001-225333-160, 001-225333-904, 001-225333-900, 001-225333-902, 001-225333-903, 001-225333-159; and 260-696760 and
- (c) Macquarie Cash Management Account number 961006129.

Segregated Account means each individually numbered account within the Segregated Accounts.

Shares means Shares acquired on the instructions of Sonray on behalf of Clients.

Sonray means Sonray Capital Markets Pty Ltd ACN (In Liquidation) (ACN 104 482 993).

Sonray's Consolidated Account means the two undisclosed master introducing broker accounts, otherwise referred to by Interactive Brokers as "I accounts", established in the name of Sonray at Interactive Brokers and including the multiple numbered subaccounts attributed to clients of Sonray.

Saxo Platform means the internet based trading system owned by Saxo and used by customers of Sonray to direct the execution of trades in financial instruments by Saxo Bank A/S. The Saxo Platform is also referred to as the Sonray Trader Platform.

Trading Platform means any of Interactive Brokers Platform, Saxo Platform, TT Platform, Web Trader Platform.

TT Platform means an internet based trading system which is linked to Sonray's Web Trader platform for use by customers of Sonray to direct the execution of trades in futures by MF Global Australia Ltd.

Web Trader Platform means the internet based trading system owned by Sonray and used by the clients of Sonray to direct the execution of trades in financial instruments by Providers contracted with Sonray to provide such services.

Date:

Norton Rose Australia
Solicitors for the Plaintiffs
Signed by Steven Palmer, Partner

This application will be heard by the Federal Court of Australia at Commonwealth Law Courts, 305 William Street, Melbourne, Victoria at _____ am/pm on _____

B. NOTICE TO RESPONDENT(S) (IF ANY)

Not applicable

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

<p><i>Note</i> Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.</p>

C. FILING

This Interlocutory Process is filed by Norton Rose Australia for the Plaintiffs.

D. SERVICE

The Plaintiffs' address for service is c/- Norton Rose Australia, RACV Tower, 485 Bourke Street, Melbourne, Victoria 3000

It is intended to serve a copy of this Interlocutory Process on any person listed below:

Roland Ward of 9 Telopea Street, Mount Colah, NSW 2079

Australian Securities and Investments Commission at Level 24, 120 Collins Street
Melbourne Victoria 3000