

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

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**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 section 63 of the *Trustee Act* 1958 (Vic).

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

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

~~1A direction as to whether the Liquidators are required to cause Sonray to administer and distribute the money held in the Segregated Accounts as if regulation 7.8.03(6) of the *Corporations Regulations* 2001 (Cth) (**Regulations**) applies separately to each such account.~~

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
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Ref: ~~AFK: 2769329~~
AFK: 2769329

Attention: David Porter

[Amended Interlocutory Process - showing marked up changes\(11345586_1\).DOC14345586-4](#)

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~~21~~ A direction as to whether, if the Liquidators are so required, they would be justified in:
A direction as to whether the Liquidators would be justified in:

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(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; ~~and~~

~~(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; converting any balances in~~

~~(c) -treating foreign currency as money for the purposes of regulation 7.8.03(6); and~~

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~~into Australian dollars for the purpose of such pooling.~~

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~~(d) setting off positive cash balances against negative cash balances in all accounts owned by the same client.~~

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~~32~~ A direction as to the date on which ~~and the basis on which a client's the~~ entitlement to ~~be paid money from participate in~~ the Segregated Accounts is to be ~~calculated~~ 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;~~ in circumstances where:

~~(a) from on or about 16 February 2005 there is a deficiency in the Segregated Accounts or, alternatively, the Segregated Accounts denominated in Australian dollars;~~

~~(b) a client deposited money into a Segregated Account for use on a Trading Platform;~~

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~~(c) Sonray transferred an equivalent amount of money from the Segregated Account to the Trading Platform;~~

~~(d) the client used the Trading Platform to order the purchase of financial products;~~

~~(e) the purchase was executed and the financial products were purchased as instructed;~~

~~(a) as to whether the client deposit in 4(b) is to be treated as a reduction of the extant deficiency in the Segregated Accounts in 4(a) such that all financial products purchased with money from the deficient Segregated Accounts after 16 February 2005, and proceeds of sale thereof and /or the money, are mixed trust assets to be held on trust for all clients on a pro rata basis, 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.~~

5 Subject to Saxo's rights in relation to the financial products and money which ~~they~~ it holds, a ~~further~~ direction, ~~in circumstances where~~ whether:

~~(a) from on or about 16 February 2005, there was a deficiency in the Segregated Accounts or, alternatively, the Segregated Accounts denominated in Australian dollars;~~

~~(b) a client deposited money into a Segregated Account for use on the Saxo Platform;~~

~~(c) after 17 March 2009, Sonray did not transfer an equivalent amount of money from the Segregated Account to the Saxo Platform, but instead incurred a liability to Saxo for that amount;~~

~~(d) the client used the Saxo Platform to order the purchase of financial products;~~

~~(e) the purchase was executed and the financial products were purchased as instructed;~~

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(a) as to whether all financial products so purchased through the Saxo-Platform after 17 March 2009, the proceeds of sale thereof and/or the money are mixed trust assets to be held on trust for all clients on a pro-rata basis-money held by Saxo on behalf of Sonray or any client of Sonray;

(b) financial products purchased by Saxo pursuant to instructions of Sonray or its clients; and

(c) the proceeds of sale of such financial products;

are, when returned to Sonray by Saxo, 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.

If the answer to 4 and 5 above is yes, then:

(a) a direction that for purposes of regulation 7.8.03(6)(d) of the Regulations the Liquidators are entitled to treat clients as falling into one of the following classes:

(i) clients that purchased financial products prior to on or about 16 February 2005 and did not trade in those financial products after that date;

(ii) clients that purchased financial products after on or about 16 February 2005, or those that traded after on or about 16 February 2005 in financial products purchased prior to on or about 16 February 2005;

(iii) clients that transferred shares direct from that client's HIN to the HIN of a Trading Platform; and

(iv) clients who sold shares referred to in sub-paragraph (iii) and used the proceeds of those sales to acquire additional shares;

(v) clients that deposited foreign currency directly into the foreign currency-segregated accounts;

(b) a direction that Sonray be authorised to direct Interactive Brokers to liquidate into cash all financial products held under Sonray's Consolidated Account, excluding financial products falling within paragraphs 5(a)(i) and (iii), and to

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~~pay the proceeds and money held by Interactive Brokers into Australia and New Zealand Banking Group account numbered 013006-1087-85428;~~

~~(c) a direction that the Liquidators are entitled to treat clients described in paragraph 5(a) (i) above as beneficially entitled to the financial products purchased prior to on or about 16 February 2005;~~

~~(d) a direction that the Liquidators are entitled to treat clients in paragraph 5(a) (iii) above as beneficially entitled to those shares, subject to payment by those clients of any negative balances associated with their accounts.~~

6 A direction that the Liquidators are entitled to treat clients as falling into one of the following classes:

(a) clients who transferred shares direct 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 If the answer to 4 and 5 above is no, then having regard to the cost and time required to trace each individual client's money vis-à-vis the timing of defalcations from the Segregated Accounts, directions in the terms listed at 5 above.~~

~~8 If the Court declines to grant the directions sought in 6 and 7 above, then a determination as to the clients or categories of clients that may be beneficially entitled to financial products resulting from transactions undertaken through a Trading Platform or money held in a Segregated Account on 22 June 2010.~~

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 identifying and reconciling transactions through the Segregated Accounts and identifying 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,

912 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.

4013 A declaration that the amounts recoverable by the Liquidators under 12-10 above is the "Proper Amount" as defined in the orders made in this proceeding on 8 December 2010.

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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.

4415 An order and directions for the appointment of contradictors as representative parties.

4216 An order that the Liquidators' costs and expenses of this application be costs in the liquidation.

4317 Liberty to apply generally.

4418 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.

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.

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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.

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 ~~third party p~~providers contracted with Sonray to provide such services. ~~The third party providers were Saxo, Interactive Brokers, MF Global, D2MX, FXCM and Macquarie.~~

Date:

Norton Rose Australia
Solicitors for the Plaintiffs
Signed by David Porter , 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.

Note -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.

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.

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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