

# **Sonray Capital Markets Pty Ltd and Associated Companies (Administrators Appointed)**

**First creditors' meeting**

**2 July 2010**



# Chairman's introduction

## Chairman's introduction

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- Administrators – George Georges and John Lindholm
- Appointed on 22 June 2010 over the four companies in the Group
- Norton Rose Lawyers act as Administrators' Solicitors
- Separate meetings held together
- George Georges to act as Chairman
- Live sites in Sydney and Brisbane

# Housekeeping

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- Please turn off all mobile phones during the meeting
- Media will be asked to leave
- Chairman will invite questions at appropriate time
- All questions to be directed to Chairman
- When asking a question, please present your attendance card to the microphone attendant

# Introduction of meetings

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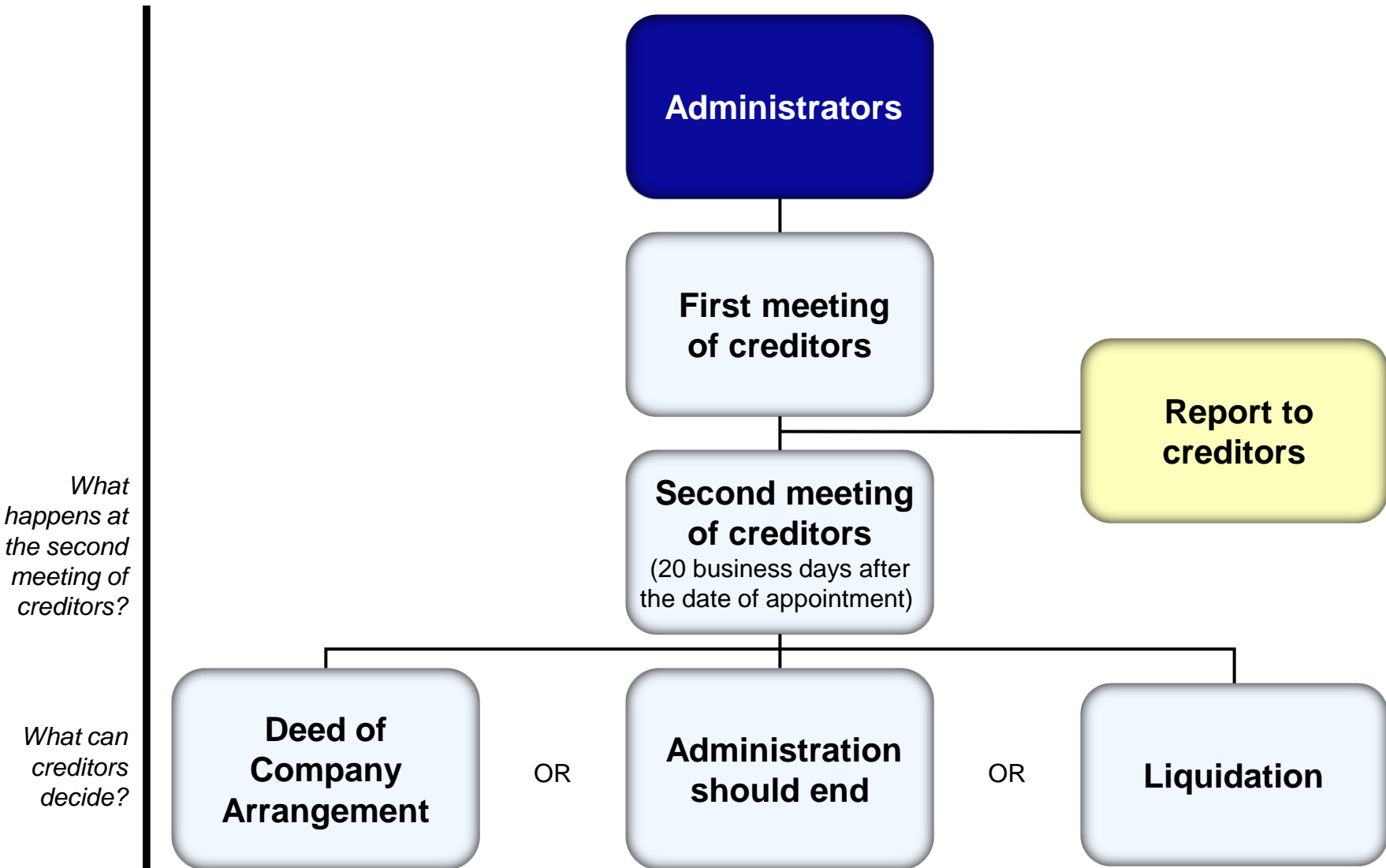
- First meetings of creditors
- Notice of meetings
- Purpose of meetings
- Separate meetings held together
- Admission of proxies
- Amount admitted – voting purposes only
- Quorum
- Voting and resolutions

# **Independence, relationships and indemnities**

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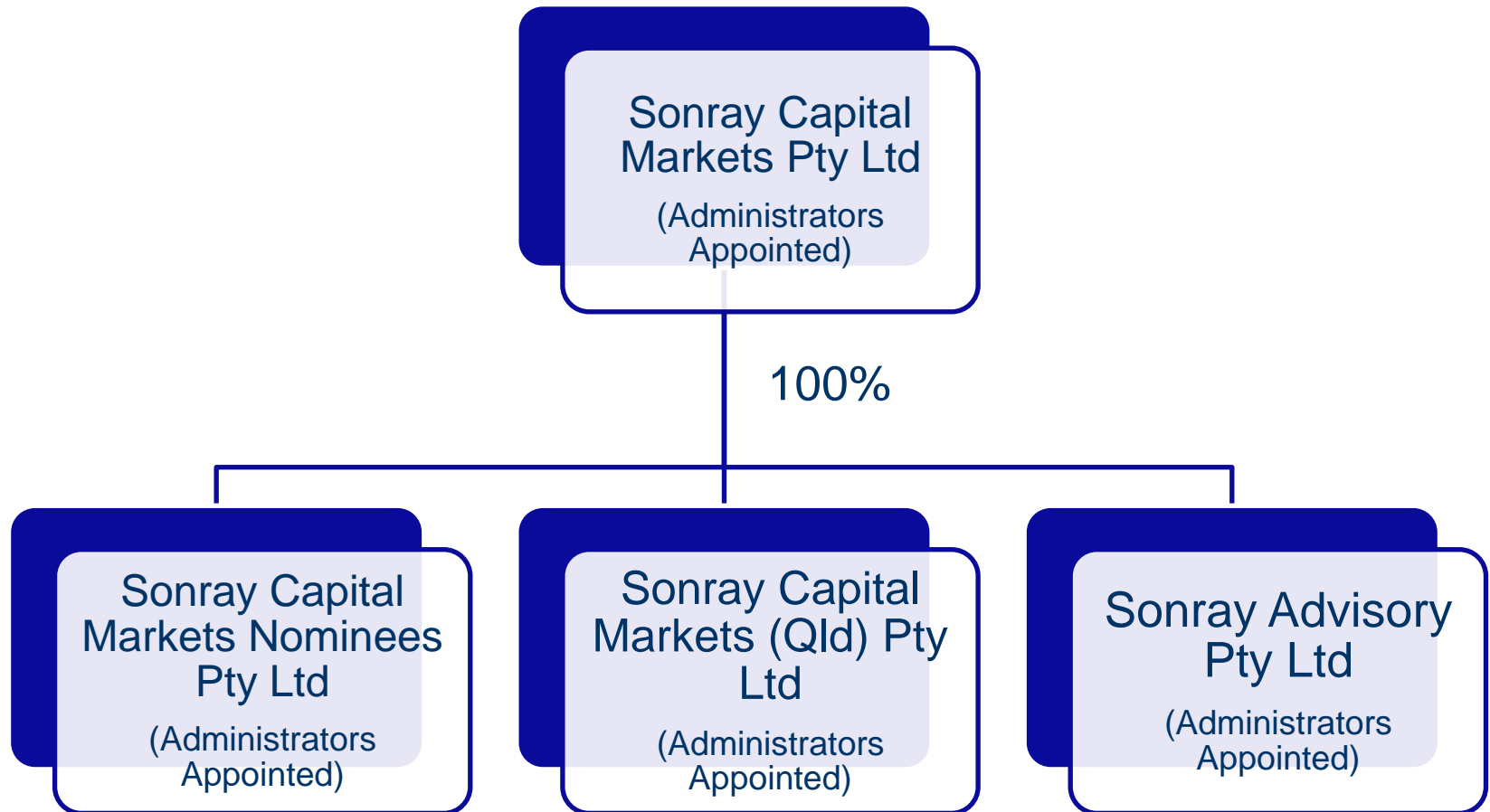
- Declaration attached to Notice of Meeting
- No prior relationship with Company or related parties
- No conflict of interest

# Voluntary Administration process



# Group overview

# Group structure



# Sonray

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## ■ Background

- Established in 2003
- One of the first companies in Australia to provide advice on Contracts For Difference (“CFD’s”)

## ■ Products

- Equities
- Options
- Futures
- CFD’s
- Margin Foreign Exchange
- Exchange Traded Funds (“EFT’s”)



- Operated four trading platforms
  - **Sonray Global** – Interactive Brokers (**IB**)
    - Futures & Futures Options
    - Options
    - Margin FX
    - Equities
  - **Sonray Trader** – Saxo Bank
    - Managed Equities
    - CFD's
    - EFT's
    - Futures & Margin Forex
  - **Web Trader** – The Wholesale platform
  - **Agency** – E\*Trade & UBS for HIN shares

## ■ Offices

Melbourne

GoldCoast

Rockhampton

## ■ Employees

	<b>Contractors</b>	<b>Employees</b>	<b>Total</b>
No on appointment	7	46	53
Terminated	6	26	32
Remaining	1	20	21

**Events leading up to  
our appointment**

## Events leading up to our appointment

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- In early 2008, management identified that an employee had allegedly entered into a number of unauthorised trades
- These trades affected 40 – 60 clients whose gross value of accounts were approximately \$10M
- The total value of the “losses” were approximately \$6M
- Affected clients’ account deficiencies were “rectified” by accounting entries
- Over half of these affected clients subsequently withdrew their investment

## Events leading up to our appointment

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- Since then there was an attempt to “fix” the deficiency by entering into further trades through the use of “house accounts”
- Whilst this attempt led to significant paper gains in the interim, with the advent of the GFC these gains became short lived and losses grew
- By early 2010, it is our preliminary understanding that the losses had grown to approximately \$15M
- As the financial position became more dire, an attempt to sell the business and fund the shortfall was made
- Given the uncertainty of the quantum of the losses as the sale was being attempted, the sale discussions ceased and administrators were appointed

# **Action Taken by the Administrator**

## Action taken by the administrators

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- Notified and met with ASIC
- Terminated staff
- Commenced investigations into the allegations of the shortfall
- Interviewed the directors and senior staff
- Forensically imaged all the Groups computer records, laptops and Blackberry's
- Issued preliminary notices to all unsecured creditors and investors
- Notified all landlords
- Wrote and spoke with all counterparties and platform providers

## Action taken by the administrators

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- Met with Saxo Bank's legal representatives
- Wrote to the Company's auditors
- Dealt with numerous investor and creditor queries
- Arranged to meet with former employees of interest
- Reviewed the Company's books and records
- Reviewed the Company's accounting systems
- Suspended all trading to minimise any further exposure to Sonray and clients

# Preliminary Findings

# Preliminary Findings

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- Account record keeping deficiencies by Sonray
- A minimal number of employees with knowledge of events leading to the cause of the appointment or a knowledge of the accounting systems
- No Financial Controller employed
- No reconciliations of client accounts between Sonray records and Saxo records
- No bank reconciliations performed

# Preliminary Findings

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- Minimal funds on hand in the Sonray general operating account (circa \$300,000)
- General confusion by Investors as to how their accounts were managed and controlled by Sonray
- Misunderstanding by clients as to how the "segregated" accounts operated
- Year end financial accounts were audited by HLB Mann Judd with the 30 June 2009 accounts being signed off on 18 February 2010
- Various Compliance Framework and Solvency Reviews were performed by PwC
- Over the last 2 years, the Company changed its record keeping systems and on the last change found that the records it did hold, did not reconcile to the Saxo platform

## Preliminary Findings

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- We also identified that in/or around 2008, the process of dealing with Saxo funds into and out of the segregated account changed
  - Prior to the change, client funds received that flowed into the segregated account, were recorded and then transferred out to a Sonray-Saxo account
  - After the change, client funds were received into the segregated account and a record of receipt was sent to Saxo Bank with no funds flowing to Saxo Bank
  - In some instances, funds from the segregated account were transferred to Saxo Bank when “margin calls” were required
  - Funds from the segregated account were allegedly transferred out of the segregated account to the Sonray general account for working capital purposes

## Preliminary Findings

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- Investors were introduced to Sonray via Authorised Representatives or by Introducers
- Investors either directly invested in equities via an “Agency” basis whereby the client held a Holder Identification Number (“HIN”) using the UBS/E\*Trade platforms. These investors therefore **OWN** their shares and Sonray has no claim or right over those HIN shareholdings
- Most Investors, however, utilised the trading platform. These Investors were provided with a Product Disclosure Statement (“PDS”) and an Account Application form which set out Sonray’s terms and conditions (“T&C”)

## Preliminary Findings

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- We undertook a review of the latest Terms & Conditions (v<sub>2</sub> 040909) provided to Clients on the opening of accounts
- What we identified in *Clause 6 – Segregated Accounts* was the following:
  - a) *All money & property deposited.... will initially be paid into a Client segregated bank account...*
  - b) *Such segregation of the Client's money... does not protect the client's money... from the risk of loss*
  - c) *Whilst the Client's money... is segregated from Sonray's money.., it may be co-mingled with the money of .., other Sonray clients, and utilised as free and clear collateral by Sonray... such monies... shall accordingly be treated as the legal & beneficial property of Sonray*

## Preliminary Findings

- f) *Sonray may use the funds in the Client Segregation account to manage Sonray's dealings with its counterparties with respect to client positions*
- h) *... However, if Sonray were to go into liquidation and an administrator appointed, client 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 administration*
- Most Investors believed that they were placing funds into the segregated account, although what it appears they were actually doing was putting their funds into a “pooled account”, which was consistent with the T&C
- Upon investment instructions by individual investors, trades were entered into with Saxo Bank on their behalf and the transaction was recorded in the books of Saxo Bank as being carried out on behalf of **Sonray**

## Preliminary Findings

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- What Investors saw on their online view was their individual amounts recorded. By way of example, Mr Smith would see that he had given Sonray \$100,000, his \$100,000 used to acquire 100 BHP shares @ \$35 each, leaving him with a cash balance of \$65,000 and an investment of 100 BHP shares worth \$35,000
- In reality, Saxo acquired and held the 100 BHP shares on behalf of Sonray and Mr Smith's \$65,000 was in the Sonray segregated account which was pooled with every other Investor deposits
- We have identified that Sonray operated 6,760 Active Investor Investment accounts
- We believe that these accounts were owned by approximately 4,000 Investors
- There are presently approximately 53 ordinary unsecured creditors

# Preliminary Findings

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Gross client position of approximately	\$76.85M
Gross client holdings in either cash/equities held by all counterparties	\$30.15M
Current estimated shortfall	\$46.70M

## Interested Parties

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- Notwithstanding we have not yet advertised the Group's assets for sale, we have received over 25 expressions of interest

# Common Questions Asked

## Common Questions Asked

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- 1. Q.** “Are Client funds protected by ASX Stockbroker Insurance Schemes?”

**A.** No – Sonray was not a market participant.
- 2. Q.** “Why is the T&C document on the Ferrier Hodgson website different to the one I have signed?”

**A.** There are multiple versions of the T&C that we have identified but we believe they are not materially different.
- 3. Q.** “Why was the trading platform shut down?”

**A.** Immediately on our appointment we notified all counterparties that Administrators had been appointed. Some counterparties exercised their right to close out their positions. We requested counterparties to cease trading while we undertook our initial investigation.

## Common Questions Asked

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**4. Q.** “Who appointed the Administrators?”

**A.** The Administrators were appointed by the directors of the various companies.

**5. Q.** “Who are the directors of the Company and which of the companies is the main Company?”

**A.** The common director of all four companies is Russell Johnson. Most of the business transacted under Sonray Capital Markets P/L.

**6. Q.** “Have you identified the employee who allegedly entered into unauthorised trades?”

**A.** Yes. An interview has been arranged to discuss the circumstances surrounding the loss. This issue is the subject of ASIC’s ongoing investigations.

## Common Questions Asked

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**7. Q.** “Has Ferrier Hodgson been appointed over Pegasus Asset Management Limited?”

**A.** No. It is a separate entity.

**8. Q.** “Will I get all my money back?”

**A.** Investors and creditors are very different. Based on our preliminary investigations, it is unlikely that unsecured creditors will receive any dividend.

Investors on the other hand, are likely to receive a dividend of approx \$0.25 to \$0.30 in the dollar if there are no additional recoveries made, and a higher return if a sale or a Deed of Company Arrangement can be achieved.

## Common Questions Asked

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- 9. Q.** “Why did Ferrier Hodgson say that Investors are likely to be unsecured creditors?”
- A.** Investors are likely to be regarded as beneficiaries of a trust, the assets of which are the available “pooled” funds arising out of the segregated account. Any shortfall from the available pool where the beneficiaries rank *pari passu*, are likely to be unsecured claims against Sonray for any deficiency.
- 10.Q.** “Why aren't the funds in the segregated account regarded as mine?”
- A.** When funds were deposited into the segregated account, they were pooled with other investor funds and have lost their identity. Funds held in the segregated account are pooled for the benefit of all investors who had funds deposited.

## Common Questions Asked

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**11.Q.** “Why did I get an email circular and not a hard copy?”

**A.** The records held by Sonray were incomplete and records in some instances only showed email addresses rather than actual addresses and vice versa.

**12.Q.** “Have you spoken to the Auditors?”

**A.** We have written to the auditors asking them to provide us with records.

**13.Q.** “What is ASIC doing?”

**A.** ASIC investigators have been working closely with the Administrators and gathering data to assist with their enquiries.

## Common Questions Asked

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**14.Q.** “Will my commissions be paid?”

**A.** All claims are subject to the moratorium imposed by the Corporations Act. These commissions will be assessed when formal Proofs of Debts are called.

**15.Q.** “I heard that there were lots of things that shouldn’t have happened that did. What do I do about it?”

**A.** Please contact our office even on an anonymous basis and advise us. We will investigate all credible claims.

## Common Questions Asked

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**16.Q.** “Why can’t I just sell my shares?”

**A.** Whilst the online system indicates that these shares are held in an investor name, they are in fact held on behalf of Sonray unless the investor has a HIN. We are yet to determine the basis of Sonray’s holding.

**17.Q.** “How long is this process going to take before I get my money?”

**A.** Unfortunately, due to the state of the Sonray records, the complexity of the issues and the necessary investigations, we are not in a position to say with any certainty when we will be in a position to release funds.

**Formal items of business**

# Committee of Creditors

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- Specific to companies
- Consult with and receive reports from the Administrators
- Assist the Administrators as a “sounding board” for proposals
- Approve the Administrators’ remuneration



# Appointment of Administrators

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- Creditors to resolve pursuant to Section 436E(4) of the Corporations Act 2001 whether or not:
  - (i) To remove the Administrators from office
  - (ii) To appoint an alternate administrator of the companies
- No nominations for an alternate administrator have been received

# Closure of meetings

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- Other business
- Final questions
- Next steps
  - Report to creditors
  - Second creditors meeting
- Thank you for attendance