

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

SUBMISSIONS TEMPLATE

Each party to the proceeding and each of person given leave to be heard in the proceeding is required to make submissions to the Court substantially in the form of answers to such of the following questions as are applicable to the person or party's particular circumstances, or the class of investor that the party represents, or to which the person belongs, as the case may be.

A.	CLASS OR CIRCUMSTANCES
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- 1 In what capacity does the party or person make submissions to the Court?
 - (a) if as a representative of a class of investor, describe the class and its common interest;
 - (b) if the party claims to be in unique circumstances, on what basis does it so claim?

B.	GENERAL MATTERS
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- 2 Can the Liquidators pool all (or some) of the segregated accounts or does r 7.8.03(6) have to be applied separately to each segregated account?¹
- 3 If so should the Liquidators be allowed to convert any balances in foreign currency into Australian dollars for the purpose of such pooling?²

¹ Interlocutory Process paragraph 1(a).

² Interlocutory Process paragraph 1(b).

- 4 Is foreign currency “money” for the purposes of r 7.8.03(6)?³
- 5 Should the Liquidators be entitled to set off positive cash balances against negative cash balances in all accounts owned by the same client?⁴
- 6 Having regard to r 7.8.03(6) of the *Corporations Regulations* 2001:
- (a) What date should be used to determine an investor’s rateable entitlement for the payment of money from the segregated accounts?⁵
- (b) What is the proper basis for determining an investor’s entitlement to be paid money from the segregated accounts –
- (i) the investor’s net account balance(s),
- (ii) some other and if so what basis?⁶
- 7 Should the Liquidators be 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?⁷

C.	EFFECT OF THE DEFICIENCY - PROVIDERS OTHER THAN SAXO
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- 8 What is the effect of the ongoing deficiency in ANZ account numbered 013 006-1087-85428) (**ANZ AUD Segregated Account**) since February 2005 on a client who deposited funds into that account in the following cases:⁸
- (a) unauthorised withdrawals from the ANZ AUD Segregated Account occurred either on the same day as either the deposit and a transfer from the ANZ AUD Segregated Account to a Provider of an amount of money appropriated to the client’s account on the Trading Platform, or in the period between such deposit and transfer;
- (b) no unauthorised withdrawals from the ANZ AUD Segregated Account occurred either on the same day as either the deposit and a transfer from

³ Interlocutory Process paragraph 1(c).

⁴ Interlocutory Process paragraph 1(d).

⁵ Interlocutory Process paragraph 2

⁶ Interlocutory Process paragraph 2

⁷ Interlocutory Process paragraph 3

the ANZ AUD Segregated Account to a Provider of an amount of money appropriated to the client's account on the Trading Platform, or in the period between such deposit and transfer?

- 9 What is the effect of the ongoing deficiency in the ANZ AUD Segregated Account since February 2005 on:
- (a) shares purchased with the funds transferred from the ANZ AUD Segregated Account in the circumstances mentioned above;
 - (b) other financial instruments purchased by use of a Trading Platform using funds transferred from the ANZ AUD Segregated Account in the circumstances mentioned above (ie the funds in question were equal to or more than the minimum account balance required in order for the client to trade in such products on the Trading Platform);
 - (c) the proceeds of sale of shares or other financial instruments purchased as above;

purchased by the client mentioned in paragraph 8?

D.	EFFECT OF THE DEFICIENCY - SAXO AS PROVIDER
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- 10 What is the effect of the ongoing deficiency in the ANZ AUD Segregated Account since February 2005 on a client who deposited funds into that account in the following cases:⁹
- (a) in the period prior to 17 March 2009 unauthorised withdrawals from the ANZ AUD Segregated Account occurred either on the same day as either the deposit and a transfer from the ANZ AUD Segregated Account to a Provider of an amount of money appropriated to the client's account on the Trading Platform (whether as an identified sum or in the balance of account as a consequence of daily netting), or in the period between such deposit and transfer;
 - (b) in the period prior to 17 March 2009 no unauthorised withdrawals from the ANZ AUD Segregated Account occurred either on the same day as either the

⁸ Interlocutory Process paragraph 4

⁹ Interlocutory Process paragraph 5.

deposit and a transfer from the ANZ AUD Segregated Account to a Provider of an amount of money appropriated to the client's account on the Trading Platform (whether as an identified sum or in the balance of account as a consequence of daily netting), or in the period between such deposit and transfer;

- (c) in the period from 17 March 2009 to 22 June 2010 unauthorised withdrawals from the ANZ AUD Segregated Account occurred, there was no transfer from the ANZ AUD Segregated Account to Saxo of an amount of money appropriated to the client's account on the Trading Platform, and Sonray transferred sums of money to Saxo from time to time solely in response to margin calls calculated on the global position of Sonray's consolidated (or omnibus) account with Saxo?

11 What is the effect of the ongoing deficiency in the ANZ AUD Segregated Account between February 2005 and 17 March 2009 on:

- (a) shares purchased with the funds transferred from the ANZ AUD Segregated Account in the circumstances mentioned above;
- (b) other financial instruments purchased by use of a Trading Platform using funds transferred from the ANZ AUD Segregated Account (ie the funds in question were equal to or more than the minimum account balance required in order for the client to trade in such products on the Trading Platform) in the circumstances mentioned above;
- (c) the proceeds of sale of shares or other financial instruments purchased as above;

purchased by a client mentioned in paragraph 10 prior to 17 March 2009?

12 What is the effect of the ongoing deficiency in the ANZ AUD Segregated Account after 17 March 2009 on:

- (a) shares purchased with the funds transferred from the ANZ AUD Segregated Account in the circumstances mentioned above;
- (b) other financial instruments purchased by use of a Trading Platform using an account balance that was uploaded onto the Trading Platform, but was not matched by a transfer of funds from Sonray to Saxo (because funds were

transferred to Saxo from the ANZ AUD Segregated Account after March 2009 solely in response to or in anticipation of margin calls and without appropriation to any particular client);

- (c) the proceeds of sale of shares or other financial instruments purchased as above;

purchased by the client mentioned in paragraph 10 after 17 March 2009?

E.	EFFECT OF THE DEFICIENCY - APPLICABLE PRINCIPLES
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- 13 In light of the ongoing deficiency in the ANZ AUD Segregated Account what rules, principles or bases of distribution are applicable and should be applied to determine any client's entitlements (other than to the extent that r 7.8.03(6) takes over)?
- 14 For what reasons is any such rule, principle or basis of distribution either applicable or inapplicable or being applicable, not to be applied?
- 15 If it is impossible (e.g. due to the non-existence of records) or impracticable (e.g. due to the time and expense required) to analyse the sequence of authorised and unauthorised deposits, transfers and withdrawals, and then to apply the otherwise appropriate legal rules to each and every dealing in sequence, what then is the appropriate principle to apply in determining the entitlement to:
- (a) funds which are deposited or transferred into the ANZ AUD Segregated Account;
- (b) other funds or assets.

F.	CLASSES OF CLAIMANT
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- 16 Do Sonray's clients fall into 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.¹⁰

17 If not what other classes of client are there and why?

18 Are you in circumstances that differ from all other clients of Sonray so as to warrant special treatment and if so why?

G.	HIN INVESTORS
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19 Where:

- (a) clients transferred shares to a Trading Platform (Transferred Shares); and
- (b) as at the date of the liquidators appointment, the Transferred Shares remained on the Trading Platform in the relevant client's account,

is the client beneficially entitled to those shares?¹¹

20 Where shares held on a client's sub account on a Trading Platform were acquired utilising one or more of:

- (a) funds representing the traceable proceeds of sale of Transferred Shares (Traceable Proceeds); and/or
- (b) a loan facility provided by the Trading Platform;

is the client beneficially entitled to those shares?

21 Where shares held on a client's sub account on a Trading Platform were acquired utilising a combination of:

- (a) Traceable Proceeds and/or a margin facility provided by the Trading Platform; and

¹⁰ Interlocutory Process paragraph 6.

¹¹ Interlocutory Process paragraph 6(a)

- (b) money deposited into a Segregated Account and transferred from the Segregated Account for use on the Trading Platform;

is the client beneficially entitled to those shares (and if so, to what extent)?

- 22 If the answer to any of question 19, 20 or 21 is yes, is the client's beneficial entitlement to any or all of those shares subject to payment of any negative net cash balances associated with their accounts?¹²
- 23 If the answer to question 22 is yes, what is the relevant date for determining the client's liability under their accounts?
- 24 Is a client entitled to Traceable Proceeds (including interest thereon) and dividends paid in respect of shares beneficially owned by the client and held by a Trading Platform?
- 25 If the terms of agreements entered into between a particular client and Sonray differ materially from the terms and conditions in Account Application Version 3 (as defined in the affidavit of George Georges sworn on 4 July 2011), is the answer to any of the questions above different?

H.	THE FOREIGN CURRENCY SEGREGATED ACCOUNTS
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- 26 Where:
- (a) a client deposited foreign currency directly into a foreign currency segregated account conducted trading on a Trading Platform in that foreign currency or in financial products denominated or settled in that foreign currency;
- (b) the Provider settled transactions executed pursuant to the client's use of the Trading Platform, in that foreign currency; and
- (c) Sonray did not debit any amount being debited to client's account balance in the foreign currency Segregated Account;

is the client entitled to the whole balance recorded in the client's name in the foreign currency Segregated Account without allowance for the cost of the trading, or any profits or losses incurred by the client on the Trading Platform through

¹² Interlocutory process paragraph 8

trading in that foreign currency or in financial products denominated or settled in that foreign currency?¹³

- 27 If the client is not entitled to the whole balance recorded in the client's name in the foreign currency Segregated Account how should the balance be adjusted so as to reflect the client's entitlement to foreign currency in the foreign currency Segregated Account?¹⁴
- 28 What is the effect of the ongoing deficiency in the ANZ AUD Segregated Account since February 2005 on the entitlement of a client to foreign currency in the client's name in a foreign currency Segregated Account where the funds that have been transferred into it were deposited into the ANZ AUD Segregated Account and:
- (a) unauthorised withdrawals from the ANZ AUD Segregated Account occurred either on the same day as either the deposit and a transfer from the ANZ AUD Segregated Account to the foreign currency Segregated Account, or in the period between such deposit and transfer; or
 - (b) no unauthorised withdrawals from the ANZ AUD Segregated Account occurred either on the same day as either the deposit and a transfer from the ANZ AUD Segregated Account to the foreign currency Segregated Account, or in the period between such deposit and transfer.

I.	RECOVERED FUNDS
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- 29 Which of the following accounts should funds recovered by the Liquidators be deposited into:
- (a) the general account of the Company;
 - (b) a trust account that is not a Segregated Account;
 - (c) a Segregated Account?¹⁵
- 30 Why should the funds be deposited into that account?

¹³ Interlocutory Process paragraph 9(a).

¹⁴ Interlocutory Process paragraph 9(b).

¹⁵ Interlocutory Process paragraph 14.

- 31 If the answer to the previous question is 'a Segregated Account' (and there is no pooling), how should the Liquidators determine which Segregated Account or Accounts such funds are to be deposited into and in what proportions?

J.	LIQUIDATOR'S REMUNERATION
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- 32 Does the party oppose the Liquidators being paid their fees and expenses from the Segregated Accounts and if so, why?
- 33 If the party opposes the Liquidators being paid their fees and expenses from the Segregated Accounts, how does the party propose that the administration of the assets held by or in the name of the Company be funded up to and including distribution of those assets?