

IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
CORPORATIONS LIST

No 237028 of 2015

IN THE MATTER OF BBY LIMITED (RECEIVERS & MANAGERS APPOINTED) (IN LIQUIDATION)
ACN 006 707 777

**STEPHEN ERNEST VAUGHAN AND IAN RICHARD HALL IN THEIR CAPACITY AS LIQUIDATORS OF
BBY LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 006 707 777 AND
OTHERS**

First Plaintiff

FILED

23 DEC 2015



**BBY LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
ACN 006 707 777**

Second Plaintiff

**J MAZZETTI PTY LTD ACN 006 705 602 AS TRUSTEE FOR
J MAZZETTI PTY LTD STAFF SUPERANNUATION FUND (AND OTHERS)**

First Defendants

**PETER BRIAN HAYWOOD AND BRONWEN MENAI HAYWOOD AS TRUSTEES FOR THE HAYWOOD
SUPERANNUATION FUND ABN 19 554 375 088**

Second Defendant

CLIVE RISEAM

Third Defendant

**SECURITIES EXCHANGES GUARANTEE CORPORATION LIMITED
ACN 008 626 793**

Fourth Defendant


AFFIDAVIT OF STEPHEN ERNEST VAUGHAN

On 23 December 2015, I, Stephen Ernest Vaughan of 10 Shelley Street, Sydney in the State of New South Wales, Official and Registered Liquidator, affirm:

1. I am a plaintiff in this proceeding.



Signature of deponent



Signature of witness

Filed on behalf of the plaintiffs
Prepared by:
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Attention: Ryan Zahrai

2. I am a director of the accounting firm KPMG and work out of the Sydney office of KPMG.
3. I am one of the joint and several liquidators of the Second Plaintiff, BBY Limited (**BBYL**), together with my fellow liquidator Ian Hall. I am authorised to make this affidavit on behalf of Mr Hall and BBYL.
4. I refer to my previous affidavit affirmed on 13 August 2015 and filed in this proceeding (**First Affidavit**).
5. In this affidavit:
 - (a) a reference to "**my appointment**" or "**our appointment**" is to the date on which Ian Hall and I were appointed as administrators of the companies in the BBY Group (as defined in paragraph 16 below), being 17 May 2015; and
 - (b) a reference to "**the Liquidators**" is a reference to Ian Hall and I:
 - (i) in our capacity as administrators of BBYL from 17 May 2015 to 21 June 2015; and
 - (ii) in our capacity as liquidators of BBYL on and from 22 June 2015.
6. I make this affidavit from my own knowledge and from information, which I believe to be true, obtained during the course of the investigations conducted by Ian Hall, me and our staff into BBYL's affairs, including through review of the books and records by me and my staff. Where I have relied upon specific books or records I have specifically identified them in this affidavit. Where I have relied upon things that were said to me or my staff by former employees or persons concerned with the business of BBYL I have specifically indicated so.
7. Shown to me at the time of affirming this affidavit are:
 - (a) a compact disc marked "**Exhibit SV-4**" which contains the CSA Report (defined in paragraph 38 below), the "**Appendices**" referred to in the CSA Report and the additional Appendices referred to in this affidavit; and
 - (b) a compact disc marked "**Confidential Exhibit SV-5**" which contains the "**Confidential Exhibits**" referred to in the CSA Report and the additional Confidential Exhibits referred to in this affidavit.
8. References in this affidavit to:
 - (a) **Appendix** numbers are references to the correspondingly numbered Appendix file(s) on the compact disc marked "**Exhibit SV-4**"; and



(b) CE numbers are references to the correspondingly numbered Confidential Exhibit file(s) on the compact disc marked "Confidential Exhibit SV-5".

9. The Confidential Exhibits contain material which is likely to be confidential, which tends to identify individual employees of the BBY Group or which tends to identify individual clients of BBYL.

10. Where I refer to particular documents and use terms in *italics*, I am referring to the corresponding field or column in that document.

11. This affidavit contains the following Parts:

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A	Liquidators' experience	
12.	I am a registered liquidator and an official liquidator of the Supreme Court of New South Wales.	
13.	I have been practising in the insolvency industry for over 25 years. During that time, I have predominantly worked on corporate insolvencies. Appendix 72 is a copy of my curriculum vitae which outlines my relevant professional qualifications and experience.	
14.	Ian Hall has worked in the insolvency industry for over 30 years. Mr Hall is a Chartered Account, a registered liquidator and an official liquidator of the Supreme Court of New South Wales.	




Appendix 73 is a copy of Mr Hall's curriculum vitae which outlines his relevant professional qualifications and experience.

15. I have been responsible and actively involved in the direction and day-to-day conduct of the external administrations of the entities in the BBY Group (defined in paragraph 16 below). I have consulted with Mr Hall and kept him abreast of the main issues arising in the external administrations of the entities in the BBY Group.

B Background to the administration and liquidation

Appointment of administrators

16. On the evening of 17 May 2015, Mr Hall and I were appointed to act as joint and several voluntary administrators of the following companies pursuant to section 436A(1) of the *Corporations Act 2001* (Cth) (the **Act**):
- (a) BBY Limited (Receivers and Managers Appointed) (In Liquidation) ACN 006 707 777 (**BBYL**);
 - (b) BBY Holdings Pty Limited (Receivers and Managers Appointed) (In Liquidation) ACN 075 187 432 (**BBY Holdings**);
 - (c) Broker Services Australia Pty Ltd (In Liquidation) ACN 074 976 364 (**BSA**);
 - (d) BBY Advisory Services Pty Ltd (Receivers and Managers Appointed) (In Liquidation) ACN 102 761 008 (**BBY Advisory**);
 - (e) SmarTrader Limited (Subject to a Deed of Company Arrangement) ACN 115 752 102 (**SmarTrader**);
 - (f) BBY HomeTrader Pty Ltd (Subject to Deed of Company Arrangement) ACN 134 838 207 (**HomeTrader**);
 - (g) BBY Nominees Pty. Ltd. (In Liquidation) ACN 007 001 443 (**BBY Nominees**);
 - (h) BBY Protection Nominees Pty. Ltd. ACN 007 001 710 (**BBY Protection Nominees**);
 - (i) Tilbia Nominees Pty Ltd ACN 007 001 578 (**Tilbia**); and
 - (j) Options Research Pty Ltd ACN 006 770 627 (**Options Research**),
- collectively, the **BBY Group**.




17. **Appendices 74–83** are copies of historical ASIC extracts, retrieved on 9 December 2015, for each company in the BBY Group.

Appointment of receivers and managers

18. On 18 May 2015, Stephen Parbery and Brett Lord of PPB Advisory (the **Receivers**) were appointed by St George Bank, a division of Westpac Banking Corporation (**St George**) as receivers and managers of the property of BBYL, BBY Holdings, BSA and BBY Advisory pursuant to a fixed and floating charge dated 2 December 2011 granted by each of those companies to St George (the **Charge**). Pursuant to the Charge each of BBYL, BBY Holdings, BSA and BBY Advisory (the **Chargors**) charged all of their present and future rights, property and undertaking in favour of St George. Clause 2.1 of the Charge provides that the Chargors charge their property as "beneficial owner unless the details indicate that [they] enter [into the] charge as trustee of a trust". The "details" part of the Charge includes a section for the insertion of "Trustee details" which is marked "Not Applicable".
19. **Appendix 84** is a copy of the Charge obtained by my solicitors from the Personal Property Securities Register on 19 May 2015.
20. The receivership of BSA ceased on 20 May 2015. The Receivers remain receivers and managers of the property of BBYL, BBY Holdings and BBY Advisory.

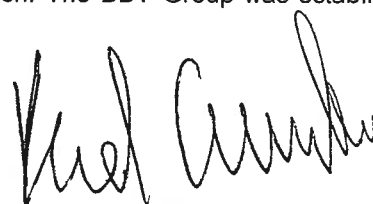
Appointment of liquidators

21. On 27 May 2015, Mr Hall and I convened a concurrent meeting of creditors, pursuant to section 436E of the Act, of each company in the BBY Group.
22. **Appendix 85** is a copy of the section 439A report which Mr Hall and I published and circulated to all creditors and clients of the BBY Group on 12 June 2015 (**439A Report**).
23. On 22 June 2015, Mr Hall and I convened a concurrent second meeting of creditors, pursuant to section 439A of the Act, of BBYL, BBY Holdings, BBY Advisory, BSA, HomeTrader and SmarTrader. At that meeting resolutions were passed by creditors that BBYL, BBY Holdings, BSA and BBY Advisory be wound up. Mr Hall and I subsequently became joint and several liquidators of those companies pursuant to sections 446A and 499 of the Act.

C Overview of the business of BBYL

Background

24. The BBY Group was an independent financial services group which provided a broad range of financial services to clients including stockbroking and associated services, dealing in financial products, asset management, financial advice and research. The BBY Group was established in

- 1987 and at the time of my appointment was majority owned by interests associated with non-executive director Kenneth Rosewall and executive chairman Glenn Rosewall.
25. At the time of our appointment as administrators, the BBY Group had approximately 180 staff and contractors, operated from 6 locations around Australia and had offices in New York and London.
26. BBYL acted as the main operating entity through which the BBY Group conducted its financial services and stockbroking business. The majority of the BBY Group's clients and creditors dealt with BBYL, which holds the most assets and has the most significant liabilities within the BBY Group.
27. BBYL dealt in financial products which can broadly be categorised as either:
- (a) exchanged-traded financial products, being products traded on an Australian or foreign exchange, where BBYL as agent for the client would pass orders to the relevant exchange (sometimes via another intermediary); or
 - (b) "over-the-counter" (OTC) financial products, being products not traded on an exchange, which were entered into directly by BBYL with its clients.
28. In the course of its business, BBYL:
- (a) advised clients on investment strategies and provided advice regarding the financial products in which its clients should invest in order to maximise their wealth;
 - (b) executed orders on behalf of its clients to acquire or sell exchange-traded financial products traded on an exchange of which BBYL was a participant (mainly the ASX);
 - (c) offered and sold OTC financial products directly to its clients;
 - (d) communicated (or facilitated the communication of) orders placed by its clients to other brokers for execution on exchanges (including Australian and foreign exchanges) of which BBYL was not a participant; and
 - (e) held monies on behalf of its clients in accounts maintained for the purposes of section 981B of the Act (**client segregated accounts** or **CSAs**) in order to facilitate those trading activities.
29. The exchange-traded financial products in which BBYL dealt on behalf of its clients prior to our appointment included cash equities (for example shares, units in listed trusts, and warrants), exchange-traded options (**ETOs**), futures contracts and options over futures contracts.



30. BBYL was a participant of the Australian Securities Exchange (**ASX**) operated by ASX Limited, the Chi-X Australia (**Chi-X**) exchange operated by Chi-X Australia Pty Ltd and the Asia Pacific Stock Exchange (**APX**) operated by Asia Pacific Stock Exchange Limited.
31. The OTC financial products in which BBYL dealt on behalf of its clients prior to our appointment included certain types of foreign exchange contracts and contracts for difference.
32. The counterparties with which BBYL had arrangements include Saxo Capital Markets (Australia) Pty Ltd (**SCMA**) and Interactive Brokers LLC (**IB**). SCMA and IB each provided an online platform to facilitate trading by BBYL clients in a wide variety of Australian and foreign financial products, including products traded on exchanges of which BBYL was not a participant, and certain OTC products.
33. BBYL dealt in futures contracts on behalf of its clients through futures brokers engaged for this purpose.
34. BBYL's dealings with these brokers and counterparties are dealt with more fully in Part F of this affidavit.
35. The nature of each of the financial products referred to above are further explained in paragraphs 68–118 below.

Financial position

36. At the time of our appointment BBYL maintained 47 CSAs to hold client monies in respect of its trading activities. In the 439A Report (**Appendix 85**), Ian Hall and I reported that our preliminary investigation into BBYL's CSAs and the likely amount of client claims led to the conclusion that there was likely to be a significant shortfall between the amount available in CSAs for distribution to BBYL clients and the estimated amount of client claims.
37. In connection with this proceeding, Ian Hall and I instructed our staff to investigate:
 - (a) BBYL's dealings with client monies and its CSAs;
 - (b) the reasons for the shortfall between amounts on deposit in CSAs and the estimated amount of client claims; and
 - (c) whether there is evidence that client monies have been mixed between:
 - (i) different CSAs within the same product line;
 - (ii) CSAs corresponding to different product lines; and/or



- (iii) CSAs and accounts used to hold monies to which BBYL or another member of the BBY Group was beneficially entitled.

38. The outcome of those investigations is recorded in a report prepared by our staff, under my supervision, contained on the compact disc marked **Exhibit SV-4 (the CSA Report)**. The nature and extent of those investigations is set out in section 5 of the CSA Report.

Client segregated funds

39. Our investigations show that BBYL broadly organised the CSAs it maintained by reference to a number of product lines, described in further detail in Part D below. BBYL maintained numerous CSAs for most of its product lines.

40. Section 4.3 of the CSA Report contains a table prepared by the Liquidators based on the books and records of BBYL which sets out:

- (a) the total balance of all CSAs corresponding to each product line as at 17 May 2015;
- (b) the estimated amount of client claims in respect of each product line;
- (c) the assets (including cash) that were either:
 - (i) held by third parties on behalf of BBYL clients as at the date of our appointment, but which were subsequently received by BBYL or the Liquidators; or
 - (ii) held by third parties on behalf of BBYL clients as at the date of the CSA Report and which are reasonably expected to be recovered in future,

(together, **Recoveries**); and

- (d) the surplus or shortfall (as applicable) between the aggregate of funds available in CSAs and Recoveries for each product line and the amount of client claims in respect of that product line (the **Surplus** or **Shortfall**).

41. In summary, taking the product lines as a whole, this table shows that:

- (a) the total balance of CSAs as at 17 May 2015 was approximately \$10.8 million (of which \$0.3 million, received by BBYL prior to our appointment, is claimed by the Receivers as debtor receipts);
- (b) estimated client claims total approximately \$56.9 million;
- (c) Recoveries (that is, including amounts reasonably expected to be recovered in future) total approximately \$29.4 million;

- (d) as a result, the Shortfall (taking into account all Recoveries) is at this stage estimated to be \$17.0 million.

House funds

42. BBYL also held funds in accounts to which BBYL or another member of the BBY Group was beneficially entitled (**House Accounts**). At the time of our appointment BBYL operated a total of 14 House Accounts.

Financial products in which BBYL dealt

43. BBYL organised its financial products into separate business lines (**product lines**) as follows:
- (a) cash equities (**Equities**);
 - (b) exchange-traded options (**ETOs**);
 - (c) futures (**Futures**);
 - (d) foreign exchange (**FX**);
 - (e) "**Saxo**" which related to trading via an online trading platform maintained by SCMA (the **Saxo Online Platform**) branded "BBY Online Trader" by BBYL;
 - (f) "**IB**" which related to trading via an online trading platform maintained by IB (the **IB Online Platform**) branded "BBY Online Professional" by BBYL; and
 - (g) miscellaneous other products (**Other Products**).
44. BBYL's product lines did not exclusively correspond to particular financial products offered within those product lines. In particular, BBYL's arrangements with SCMA and IB permitted its clients to trade in a wide variety of financial products, including options, futures, FX products and contracts for difference (**CFDs**). Such trading activity, which occurred through the online platforms maintained by SCMA and IB, was nonetheless attributable to a BBYL client's Saxo or IB account (records of which were maintained by SCMA and IB respectively) and therefore the Saxo or IB product line.
45. For a number of financial products, BBYL clients could trade in that product as part of BBYL's offering in more than one product line. For example, BBYL clients could trade in futures contracts by communicating orders to BBYL which BBYL would in turn communicate to futures brokers ABN AMRO Clearing Sydney Pty Ltd (**ABN AMRO**) and ADM Investor Services International Limited (**ADM**), with which BBYL had contractual arrangements. Such trading fell within BBYL's Futures product line. However BBYL clients could also trade in futures contracts on the online platforms

maintained by SCMA and IB, and access different futures markets by doing so. Although my staff and I have treated Equities and ETOs as separate product lines, funds in relation to both were combined in the same CSA in the course of each trading day (refer to paragraphs 54 and 55 below).

46. In Part D below, I explain the manner in which BBYL organised the CSAs corresponding to these product lines. In Part F below, I explain the products in which BBYL dealt and the counterparties with which it dealt. In Part I below, I explain the steps taken by the Liquidators in respect of Recoveries from counterparties.

D Client segregated accounts (CSAs)

Identification of CSAs

47. The Liquidators have identified a total of 118 bank accounts in over 10 currencies operated by BBYL in the recent past and which appear potentially relevant to BBYL's dealings with its client monies in the years prior to our appointment. I am aware of a number of other accounts that were at some time operated by BBYL but which did not form part of our investigations because:

- (a) they were closed several years prior to our appointment; or
- (b) they are held with the Bank of New Zealand in the name of a subsidiary of BBYL which is incorporated in New Zealand and to which we have not been appointed as administrators or liquidators, and the Bank of New Zealand has refused to release information; or
- (c) they are held in the name of SmarTrader or HomeTrader, each of which is now subject to a pooled deed of company arrangement (**DOCA**),

and in each case no information which came to light during the course of our investigation suggested that further inquiry was warranted.

48. The Liquidators have classified those accounts in the following way, subject to the matters set out in paragraphs 49–51 below:
- (a) accounts with account names which include a reference to "BBY" or to a company in the BBY Group but which do not contain any of the phrases "*trust*", "*client segregated*", "*client seg*" or "*seg*" are classified as **House Accounts**. Based on our investigations, these accounts appear to have been intended to hold money to which BBYL or the relevant BBY Group company was beneficially entitled; and
 - (b) accounts with account names which include any of the phrases "*trust*", "*client segregated*", "*client seg*" or "*seg*" are classified as **CSAs**. These accounts appear to have been intended

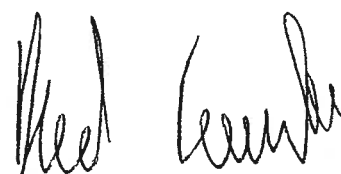



to be trust accounts or client segregated accounts, to be used to hold money for clients and maintained pursuant to Part 7.8 of the Act.

49. The Liquidators have also identified a spreadsheet entitled "*BBY Bank Account Apr15*", a copy of which is **Appendix 44**, within the books and records of BBYL (the **Bank Account List**). The Bank Account List sets out an *Account Type* (for example "*Operating*", "*Facility*" or "*Trust*") for many of the bank accounts we have identified and is generally consistent with the classification of House Accounts and CSAs that we have adopted. Notably, the Futures 'House' account (defined in Table 1 below) has been classified as a CSA notwithstanding that the account name is "BBY Ltd Futures House" because it is identified as a "*Trust*" account in the Bank Account List. This account has a very low level of activity and had a balance of \$66 on the date of our appointment.
50. The account names for the accounts we have classified as Saxo CSAs and IB CSAs do not contain any of the phrases "*trust*", "*client segregated*", "*client seg*" or "*seg*". They have nonetheless been classified as CSAs because:
- (a) our investigations reveal that these accounts were in fact used to hold monies received by Saxo and IB clients of BBYL (respectively); and
 - (b) these accounts are identified as "*Trust*" accounts in the Bank Account List.
51. The names of some of the Saxo CSAs and of the IB Buffer Account contain the word "*buffer*". This is explained by the fact that BBYL client monies for the Saxo and IB product lines were partly held in accounts controlled by SCMA and IB respectively, with BBYL holding an amount (in theory, the balance of the Saxo and IB client monies) as a "*buffer*" to facilitate client withdrawals and to hold deposited funds in transit to SCMA or IB. BBYL's arrangements with SCMA in respect of client monies are described in paragraphs 106–110 below.

Classification of product line CSAs

52. Subject to what I say in paragraphs 54–55 below about the combination of client monies for the Equities and ETO product lines, BBYL's bank accounts were in most cases clearly designated to correspond to particular product lines. This can be seen, for example, by the fact that each account the Liquidators have classified as a Futures CSA contains the word "*Future*" or "*Futures*" in the account name. The exceptions to this general rule are explained in paragraphs 53–58 below.
53. The CSAs classified as Other Trust Accounts in **Appendix 45** to the CSA Report are a residual category for accounts designated as trust accounts but which are not aligned to particular product lines (in name or, so far as our investigations reveal, in fact). The Liquidators' investigations indicated that the Other Trust Accounts were frequently used as conduits for transfers between other BBYL accounts, possibly in an attempt to mask the true source of funds (refer to section 6.9.3 of the CSA Report). In our discussions with former employees of BBYL we were informed

that the Other Trust Accounts were used to facilitate particular transactions such as initial public offerings.

54. The '541 Account (defined in Table 1 below) was the principal daily working trust account for BBYL's Equities and ETOs business. Prior to about January 2015, client monies for the Equities product line and the ETOs product line were paid into and combined in the '541 Account during the course of the trading day, but were segregated by:
- (a) payment of Equities client monies into the Equities Trust 2 Account; and
 - (b) payment of ETOs client monies into the ETO Trust Account,
- at the end of each trading day until the following morning.
55. The practice of daily segregation of ETOs client monies ceased on about 7 January 2015 and the practice of daily segregation of Equities client monies ceased on about 2 March 2015 following a review by the ASX of BBYL's dealings with its Equities and ETOs client monies. CE 1 is a copy of the ASX Interim Review Report dated 10 February 2015. From about March 2015, the '541 Account held client monies corresponding to both the Equities and ETOs product lines at all times. As a result of the daily mixing of Equities and ETOs client monies prior to about January 2015, and their permanent combination from about March 2015, the CSAs corresponding to those product lines have been classified as (combined) "**Equities/ETOs**" CSAs.
56. The WLP Omnibus Account (defined in Table 1 below and classified as a Saxo CSA) appears to have been used to facilitate payments to and from both IB and SCMA as explained in sections 6.2.7 and 6.2.8 of the CSA Report. "WLP" appears to be a reference to "white label platform", and both SCMA and IB provided white label online platforms for BBYL. The term "white label" describes an arrangement whereby the platform was hosted and operated by SCMA or IB but bore BBYL branding. For the purposes of the transaction matching matrix analysis we performed (described in section 5.2.4 of the CSA Report), the WLP Omnibus Account was classified as a Saxo CSA.
57. The account named "BBY Limited – Trust EUR" has been classified as a FX CSA because it was designated as a FX "*Trust*" account in the Bank Account List and the account number corresponds to the account number series for BBYL's other FX CSAs.
58. The Carbon Trading Account has been classified as a CSA (even though the account name does not contain any of the phrases "*trust*", "*client segregated*", "*client seg*" or "*seg*") because this is the only account maintained by BBYL relating to carbon trading.
59. The BBYL bank accounts that were most significant to our investigations are summarised for convenience in Table 1, together with the corresponding abbreviations used in this affidavit. Our

investigative approach to the BBYL bank accounts is set out in section 5 of the CSA Report. A complete list of bank accounts identified as relevant is **Appendix 45** to the CSA Report.

Table 1: Selected BBYL bank accounts

Bank	Account name	Abbreviation	Account no.	Curr
House Accounts Further House Accounts are listed in sections 6.2.1 and 6.2.2 of the CSA Report				
St George	BBY Ltd - Facilitation Account	Facilitation Account	553453106	AUD
St George	BBY Ltd General Account	General Account	553452576	AUD
St George	BBY Ltd Operating Ac	Operating Account	553619401	AUD
St George	BBY Ltd Clearing Account	Clearing Account	553581319	AUD
St George	BBY Ltd OD Excess Account	OD Excess Account	553774516	AUD
CSAs				
Other Trust Accounts Further Other Trust Accounts are listed in section 6.2.3 of the CSA Report				
St George	BBY LTD GENERAL TRUST ACCOUNT	General Trust Account	553980002	AUD
St George	BBY TRUST ACCOUNT 3	Trust 3 Account	553619217	AUD
St George	BBY TRUST ACCOUNT 4	Trust 4 Account	553619372	AUD
Equities/ETOs CSAs Further Equities/ETOs CSAs are listed in section 6.2.4 of the CSA Report				
St George	BBY Ltd ETO Trust Account	ETO Trust Account	553486012	AUD
St George	BBY Ltd Client Trust Account	'541 Account	553452541	AUD
St George	BBL Ltd Equities Trust 2	Equities Trust 2 Account	553469415	AUD
Futures CSAs Further Futures CSAs are listed in section 6.2.5 of the CSA Report				
St George	BBY Ltd Futures House	Futures 'House'	553619305	AUD
St George	BBY Ltd Futures Client Seg	Futures AUD CSA	553619284	AUD




Bank	Account name	Abbreviation	Account no.	Curr
FX CSAs		Further FX CSAs are listed in section 6.2.6 of the CSA Report		
St George	BBY Ltd FX Trust	FX AUD CSA	553619268	AUD
Saxo CSAs		Further Saxo CSAs are listed in section 6.2.7 of the CSA Report		
St George	BBY Limited - WLP Omnibus	WLP Omnibus Account	553619137	AUD
St George	BBY Ltd Saxo Buffer	Saxo Buffer Account	553619356	AUD
IB CSAs		Another IB CSA is listed in section 6.2.8 of the CSA Report		
St George	BBY Ltd IB Buffer	IB Buffer Account	553619321	AUD
Other Product CSAs				
St George	BBY Ltd Carbon Trading Corp A/c	Carbon Trading Account	553486047	AUD

E Client agreements

60. BBYL clients were required to complete a client application form to trade with BBYL. Part of the client application form required the applicant to elect the product line(s) in which they wished to trade. It also specified which terms and conditions and product disclosure statements (PDS) applied to trading in each product line. The client agreements and PDS corresponding to each product line are summarised in Table 2.
61. In the case of products offered via the IB Online Platform (branded "BBY Online Professional" by BBYL) and the Saxo Online Platform (branded "BBY Online Trader"), the client could also elect the particular categories of financial product in which they wished to be able to trade.

Table 2: Client agreements and product disclosure documents

Product line	Client agreements and disclosure documents	Date	Document at
All	Client Application Form	July 2014	Appendix 68
	Client Application Form	December 2014	Appendix 7
	Financial Services Guide	February 2014	Appendix 8
	Direct Debit and Credit Form	August 2012	Appendix 69




Product line	Client agreements and disclosure documents	Date	Document at
Equities	ASX, APX and International Trading Terms	March 2014	Appendix 9
	CHESS Sponsorship Agreement	March 2014	Appendix 10
ETOs	ASX, APX and International Trading Terms	March 2014	Appendix 9
	Exchange Traded Options PDS	March 2013	Appendix 11
Futures	Futures Terms	July 2014	Appendix 12
	Futures PDS	June 2011	Appendix 70
FX	Desk FX Terms	June 2013	Appendix 14
	Desk FX and Commodities PDS	August 2012	Appendix 71
Saxo	Online Account Terms	June 2013	Appendix 16
	Online Trader PDS	June 2013	Appendix 17
Interactive Brokers	Online Account Terms	June 2013	Appendix 16
	Online Professional Futures and Derivatives PDS	June 2012	Appendix 13
	Online Professional FX and Commodities PDS	June 2012	Appendix 15
Other Products	Carbon Trading Terms and Conditions	February 2012	Appendix 18

62. "BBY Online Trader" was not offered as part of the client application form dated December 2014 as a result of termination of BBYL's relationship with SCMA at about that time (refer to paragraphs 106–110 below).
63. BBYL used separate accounting software to manage its client accounts for each product line. It used:
- (a) "GBST Shares" to manage client accounts for its Equities product line;
 - (b) "GBST DCA" to manage client accounts for its ETOs product line;
 - (c) "Sungard GMI" to manage client accounts for its Futures product line;
 - (d) "Pallion MFX" to manage client accounts for its FX product line;

- (e) the **Saxo Online Platform** to manage client accounts for its Saxo product line; and
 - (f) the **IB Online Platform** to manage client accounts for its IB product line.
64. When BBYL received a completed Client Application Form, it would establish client accounts for the applicant in each of the software systems corresponding to the product lines in which the applicant wished to trade.
65. The Liquidators' review of the client account lists for each product line and the daily reporting generated in relation to the Equities and ETOs product lines (described at paragraph 211 and following) indicated that:
- (a) GBST Shares (for Equities) and GBST DCA (for ETOs) interacted in the way described in detail in paragraphs 221–222 below and clients had corresponding account numbers in GBST Shares and GBST DCA;
 - (b) BBYL established client trust ledger accounts in GBST Shares for clients who traded in ETOs to facilitate payment to and from those clients in the manner described in paragraph 88 below; and
 - (c) otherwise, there was little or no interaction between the software systems used by BBYL to manage its client accounts, and BBYL clients who traded in multiple product lines were generally assigned different client account numbers in the accounting software for each product line.
66. For this reason the Liquidators are presently unable to determine the identity of clients who are, across more than one product line, net creditors and those who are net debtors to BBYL (by performing a notional set off between accounts held by the same client in multiple product lines) without incurring significant expense. If this Court finds that the Liquidators would be justified in setting off the balances of client accounts corresponding to different product lines held by the same client, the Liquidators propose to determine whether a given client holds multiple accounts (capable of set off) based on information provided by the client in respect of their claim.
67. Clauses 4.4(b) and 4.5(a) of the Online Account Terms, clause 15 of the ASX, APX and International Trading Terms and clause 3.8.2 of the Desk FX Terms provided that BBYL was entitled to the interest earned on client trust monies.

F Product lines

Equities

68. BBYL dealt in cash equities (including shares, units in listed trusts, and warrants) on behalf of its clients. It did so as a trading participant of the ASX, Chi-X Australia and APX exchanges. BBYL

was also a clearing participant of ASX Clear Pty Ltd (**ASX Clear**) and a settlement participant of ASX Settlement Pty Ltd (**ASX Settlement**). ASX Clear and ASX Settlement performed the ASX market functions described in paragraphs 70–72 below.

69. The overwhelming majority of BBYL's equities business was conducted on the ASX. As a clearing participant of ASX Clear, BBYL was bound by the ASX Clear Operating Rules, a copy of which is **Appendix 86**.

Equities traded on the ASX

70. In the ordinary course of its business, BBYL clients placed orders with BBYL to buy or sell a certain number of particular equity instruments. For example, a client of BBYL may place an order to buy a certain number of shares. BBYL would place that order, as agent for the client, on the ASX. The order would then be matched by ASX with an equal and opposite order (that is, a sell order for the same number of the same instrument), or a number of opposite orders totalling the same number of the same instrument. The resulting contracts were, under the ASX Clear Operating Rules, immediately novated to ASX Clear so that BBYL (as clearing participant) faced ASX Clear as its counterparty (rather than being exposed to the credit risk of the trading participant(s) on the other side of the contract). ASX Clear is the central counterparty — the buyer to every seller and the seller to every buyer. The novation process is referred to as "**clearing**".
71. As a clearing participant of the ASX, BBYL was responsible to ASX Clear for settlement of trades as principal, effectively guaranteeing settlement of trades by its underlying clients. One of the main functions of a clearing participant is to manage the risk to the market of settlement failures.
72. Equities trades on the ASX are settled on what is referred to as a "T+3" basis (that is, day of trade plus three trading days). For example, if a trade was placed on Wednesday 1 April 2015, settlement would occur on Monday 6 April 2015. Payment of the purchase consideration and delivery of the equity instrument generally occurs simultaneously on the settlement date (T+3) in a process managed by ASX Settlement and referred to as "delivery versus payment" (**DvP**). Settlement would occur on a net basis between ASX settlement participants including BBYL and ASX Settlement.

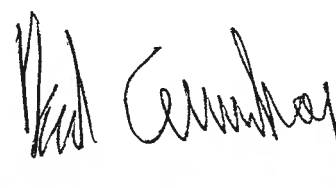
GBST Shares

73. BBYL managed its Equities client accounts and trading activity using software which (as noted above) is called "GBST Shares". GBST Shares is a terminal-based software system with a text-only display. The user can recall information from the underlying database by typing commands into the terminal. GBST Shares was:
- (a) linked to a data feed provided by the ASX which allowed GBST Shares access to the latest market prices for equities traded on the ASX;

- (b) interfaced with reporting software provided by a company known as Agility Applications (the **Agility Software**), which automatically generated a variety of daily reports in Excel spreadsheet format and emailed those reports to various BBY Group staff; and
 - (c) generated computer files containing instructions to make withdrawals from, or deposits to, cash management accounts held by Equities and ETO clients of BBYL with particular banks (described further in paragraphs 122–125 below).
74. GBST Shares maintained individual accounts, including client accounts for Equities and ETOs clients, and records of each transaction affecting those accounts (the **Equities Ledger**). A credit balance for a client's account in the Equities Ledger meant that BBYL was obliged to account to the client for that balance. A debit balance meant that the client was a debtor. On settlement of an equities purchase, a debit equal to the purchase price plus brokerage and commission would be automatically entered on the client's Equities Ledger account by GBST Shares. On settlement of an equities sale, that account would be automatically credited with an amount equal to the purchase price less brokerage and commission by GBST Shares.
75. The Liquidators have not directly accessed GBST Shares in the course of the liquidation to reconcile the Equities Ledger to bank accounts for the reasons set out in section 5.2.4 of the CSA Report. GBST Shares is relatively old software and effective interrogation of the underlying database would require the assistance of both the vendor, GBST, and the provider of the reporting software used by BBYL, Agility Applications, as well as considerable expertise. The Liquidators are informed by the Receivers that they have, with the assistance of Fiona Bilton (BBYL's former Head of Operations primarily responsible for the Equities and ETOs product lines) undertaken a reconciliation of transactions affecting the principal CSA for the Equities and ETO product lines (the '541 Account) for the period from 18 May 2015 to 31 August 2015. I further explain that reconciliation in paragraphs 241–244 below.
76. It appears that a daily report known as the "**Detailed Trust Position Report**" (described in paragraph 236 below) which was generated from the Equities Ledger and reconciled to the '541 Account on a daily basis (as explained in section 3.2.4 of the CSA Report), is the most reliable record of BBYL Equities clients' claims. This report and "**Statements of Transactions**" regularly provided to Equities and ETOs clients (examples of which are **CE 112** and **CE 113**) were both generated from the Equities Ledger in GBST Shares.

Exchange-traded options (ETOs)

77. ETOs are options contracts that are traded on an exchange such as the ASX. ETOs traded on the ASX are cleared by ASX Clear as central counterparty in a similar manner to Equities (described at paragraph 70 above). As with equities products, BBYL dealt in ETOs as a clearing participant of ASX Clear.



78. An ETO is a contract in respect of an existing underlying instrument (such as a parcel of shares) which gives the buyer the right, but not the obligation, to sell (in the case of a "put" option) or buy (in the case of a "call" option) the underlying instrument at a fixed price (the "**strike price**") on (or before) a fixed date. The buyer of the option pays the seller a premium for that right. The seller is sometimes referred to as the "**writer**" of the option. When the contract is entered into (and registered with the relevant exchange) it is said to represent an "**open position**". An open position can be terminated ("**closed out**") before expiry by entering into an equal but opposite position with the two positions effectively cancelling each other out. An option which has not been closed out represents an open position until it expires, is exercised, or is closed out.
79. ETO trades on the ASX are settled on what is referred to as a "T+1" basis (that is, day of trade plus one trading day). For example, if a trade was placed on Wednesday 1 April 2015, settlement would occur and the position would be opened on Thursday 2 April 2015.
80. The potential exposure of the writer of an option will fluctuate as the value of the underlying instrument changes prior to expiry of the option. The writer of a call option has a contingent obligation to deliver an instrument where the price of that instrument may increase, potentially to well above the strike price. The writer of a put option has a contingent obligation to pay for an instrument which may decrease in value, potentially to well below the strike price. Settlement risk is mitigated in options markets by requiring the writer of an option to provide security for its open position. The value of the security required by the relevant exchange for an open position is referred to as "margin" (**ETO margin**). Because the buyer of an ETO will not generally exercise an option unless doing so would be profitable, the buyer is generally not subject to margin obligations.
81. ETO margin on the ASX is calculated daily and comprises:
- (a) initial margin, being an amount calculated by the ASX as a buffer against the maximum probable fluctuation in the price of the underlying security during the course of a day; and
 - (b) variation margin, based on the market value of the open position at a particular time.
82. Calculating margin in this way has the effect that, if the party who has made a margin payment defaults (either at settlement or when required to make a further payment of margin), ASX Clear will, as counterparty to all open ETOs, apply the collateral against any losses.
83. ETO margin obligations are satisfied by either cash or financial products pledged to ASX Clear, or some combination of the two (together referred to as "**collateral**"). Cash and bank guarantee collateral ("**cash collateral**") is treated under the ASX Clear Operating Rules as securing a margin obligation equal to its face value, whereas equities collateral ("**non-cash collateral**", usually share collateral) is treated as securing a margin obligation equal to 70% of the current market value of the equity instruments (the "**collateral value**").



84. Rule 14.7.1 of the ASX Clear Operating Rules (**Appendix 86**) requires each market participant (including BBYL) to call collateral from the client to which each ETO relates in an amount that the market participant considers sufficient to ensure that it is able to satisfy its obligations to ASX Clear. As the clearing participant, BBYL remains ultimately responsible to ASX Clear for lodgement of collateral for ETO margin.
85. Shares held in the Clearing House Electronic Subregister System (**CHESS**), a computer system controlled by ASX Settlement, are traded electronically by making changes to a register of ownership maintained in CHESS. Individual share owners are identified within CHESS by a unique holder identification number (**HIN**). A pledge of shares to ASX as collateral for an open option position is effected by placing a "lock" on those particular shares within CHESS. Ownership of the shares is not affected but the lock prevents any transfer of those shares while it remains in place.
86. BBYL was required by rule 12.17.5 of the ASX Clear Operating Rules (and the associated Procedures) to settle the net movement in its ETO margin obligation with ASX Clear at 10.30 am each trading day.

GBST DCA

87. BBYL managed its ETOs client accounts and trading activity using software called "**GBST DCA**". GBST DCA:
- (a) maintained a ledger of client accounts (the **ETO Ledger**);
 - (b) received a data feed from the ASX which allowed it to constantly determine the market value of ETO positions; and
 - (c) was used to calculate and manage the ETO margin obligation for ETOs clients.
88. Although GBST DCA was used to calculate ETO margin obligations and maintain records of cash and non-cash collateral held by ASX Clear on behalf of BBYL clients, GBST Shares was used to facilitate the deposit and withdrawal of cash collateral for ETO margin to and from client CMAs. This was possible because each morning the day's ETO margin obligation for each ETOs client was "transferred" from that client's ETO Ledger account to that client's Equities Ledger account (the **Daily Journaling** process, explained further in paragraphs 221–224 below).
89. It appears that the "**Detailed Trust Position Report**" (described in paragraph 236 below) which was generated from the Equities Ledger and reconciled to the '541 Account on a daily basis (as explained in section 3.2.4 of the CSA Report), is the most reliable record of BBYL ETOs clients' claims (excluding any claim particular ETOs clients may have to the Returned Cash Collateral described in paragraph 176 below).

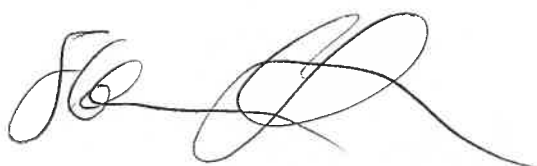
Futures

90. A futures contract is an agreement to deliver or take delivery of a fixed amount of an asset (usually a financial instrument or a commodity) for an agreed price at a fixed time in the future. A futures contract may provide for physical settlement (delivery of the financial instrument or commodity) or cash settlement (payment of an amount equal to the difference between the agreed price and the market price of the asset at the time for delivery).
91. Futures contracts are exchange-traded and highly standardised. They are referred to as leveraged products because an investor can obtain exposure to movements in the price of the underlying instrument or commodity (equal to the exposure they would obtain by actually acquiring the instrument or commodity) without being required to pay the full price for the instrument or commodity in advance. Instead, the investor makes a payment of initial margin equal to a fraction of the price of the underlying instrument or commodity.
92. Futures positions are valued daily according to their cost to close out (a process referred to as "mark to market") and margin is usually called daily (when required) in an amount sufficient to provide for:
- (a) any negative movement in the market value of the position to date; and
 - (b) a buffer against potential future negative movements in the value of the position.
93. BBYL was not a participant of any futures exchange. Instead, it engaged futures brokers ABN AMRO and ADM, participants on Australian and foreign futures exchanges, to execute trades in futures on behalf of its clients.
94. **Appendix 87** is a copy of the customer agreement between BBYL and ADM executed by BBYL on 15 May 2014.
95. **Appendix 88** is a copy of a letter dated 18 March 2014 sent by ABN AMRO to BBYL advising BBYL of amendments sought by ABN AMRO to two documents — the "Security Deed" and the "Standard Client Agreement" — to which BBYL and ABN AMRO were party. **Appendix 89** is a copy of the amendment deed restating the Standard Client Agreement between BBYL and ABN AMRO. **Appendix 90** is a copy of the ABN AMRO Clearing Services Agreement dated 7 March 2014. **Appendix 91** is a copy of an agreement between ABN AMRO and BBYL relating to electronic access to United States markets. The Liquidators have not yet located a copy of the "Security Deed".
96. As is explained in section 3.3.4 of the CSA Report, it appears that the "**Futures Dealer Report**" is the most reliable record of BBYL Futures clients' claims. This document was reflective of client

trading positions that had been entered into Sungard GMI. A copy of the Futures Dealer Report for 15 May 2015 is **CE 8**. An example of a Futures client statement is **CE 9**.

Foreign exchange (FX)

97. BBYL provided two kinds of foreign exchange (FX) products to its clients. It entered into spot FX contracts directly with its clients for the exchange of a specified amount of one currency for another currency at an agreed conversion rate on short settlement terms (generally "T+2", being day of trade plus two trading days) (**Spot FX**). BBYL effected such currency exchanges through arrangements with its banks, NAB and St George.
98. BBYL also offered margin FX products, which are effectively contracts for difference in respect of currency pairs (**Margin FX**). A contract for difference (CFD) is an agreement to pay the difference between a price for an instrument or commodity (in the case of Margin FX, an exchange rate) at the time of entry into the CFD and the market price of that instrument or commodity on close out of the CFD. CFDs are leveraged and are subject to margin requirements. CFDs are less standardised than futures contracts and are predominantly OTC products not traded on an exchange.
99. BBYL appears to have dealt in Margin FX by:
- (a) facilitating trading by its clients on the Saxo Online Platform maintained by SCMA (a platform which also allowed BBYL clients to trade in other products) from about 2011. The Saxo Online Platform is further explained at paragraphs 106–110 below;
 - (b) facilitating trading by its clients on the IB Online Platform maintained by IB (a platform which also allowed BBYL clients to trade in other products) from about 2011. The IB Online Platform is further explained at paragraphs 111–114 below; and
 - (c) entering into Margin FX contracts directly with clients as part of its FX product line which it referred to as "**Desk FX**". Clients would place trades with BBYL by telephone or email. The Liquidators are informed by former employees of the BBY Group that when this occurred BBYL would place corresponding orders with SCMA in BBYL's "BBY FX Omnibus Account" on the Saxo Online Platform. My understanding is that this was a BBYL "house" account which BBYL used to hedge its liability to clients under Desk FX transactions.
100. **Appendix 14** is a copy of the Desk FX Terms between BBYL and its clients. **Appendix 71** is a copy of the Desk FX and Commodities PDS.
101. Margin FX trading undertaken by clients on the Saxo and IB online platforms was referable to the Saxo and IB product lines respectively (rather than the FX product line) in the manner explained in paragraph 44 above.



102. Following termination of BBYL's relationship with SCMA in December 2014 (described in section 6.9.2 of the CSA Report), BBYL entered into arrangements with:
- (a) CMC Markets Asia Pacific Pty Ltd (**CMC Markets**) from about December 2014; and
 - (b) Halifax Investment Services Limited (**Halifax**) from about March 2015.
103. It appears that the accounts with CMC Markets and Halifax were opened as substitutes for the "BBY FX Omnibus Account" previously maintained with SCMA and used to hedge BBYL's liability to clients for Margin FX transactions.
104. **Appendix 92** is a copy of BBYL's application to CMC Markets for a CFD account dated 5 December 2014. **Appendix 93** is a copy of the Client Service Agreement between BBYL and Halifax executed on 31 March 2015.
105. As is explained in section 3.5.4 of the CSA Report, it appears that the "**FX Dealer Report**" is the most reliable record of BBYL FX clients' claims. This document was reflective of client trading positions that had been entered into Pallion MFX. A copy of the FX Dealer Report for 15 May 2015 is **CE 10**. An example of a FX client statement is **CE 11**.

Saxo

106. SCMA operates the Saxo Online Platform on which users are able to trade stocks, FX products, futures, CFDs and other derivatives. On 21 June 2012, BBYL and SCMA entered into the following agreements:
- (a) Institutional Trading Agreement (**ITA**) (**Appendix 22**);
 - (b) White Label Trading System Agreement (**Appendix 23**); and
 - (c) ISDA Master Agreement (**Appendix 94**),
- together, the **Saxo Agreements**.
107. Pursuant to the White Label Trading System Agreement, SCMA agreed to make available a "white label" online trading platform (the **Saxo Online Platform**).
108. Clause 2.1.5 of the ITA provided that "Contracts" (as defined therein) were between SCMA and BBYL as principal, and that SCMA had no relationship with BBYL's clients (referred to as "Underlying Clients" in the ITA). However, individual clients of BBYL who used the Saxo Online Platform had separate "sub-accounts" on the platform and could log in, view their open trades and trading history, and place orders for new trades.

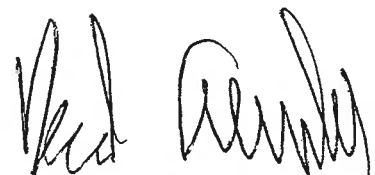
109. BBYL's product disclosure information referred to the Saxo Online Platform as "BBY Online Trader". **Appendix 17** is a copy of the BBY Online Trader PDS. This PDS related to "BBY Contracts" (as defined therein), including "BBY Equity Contracts" (described as a "synthetic equity product"), CFDs, options over indices, futures and commodities and FX and metal products.
110. As is explained in sections 3.5.4 and 4.2.4 of the CSA Report, it appears that the "**Saxo Outstanding Clients Listing**" (**CE 12**) is the most reliable record of Saxo clients' claims given that SCMA's records do not account for amounts actually returned by BBYL to its clients.

IB

111. IB operates an online trading platform which facilitates online trading in stocks, options, futures, FX, CFDs and other products in over a dozen jurisdictions.
112. The Liquidators have been informed by former employees of BBYL (and my solicitors have been informed orally by Thomas Lee, Manager at IB) that individual BBYL clients had personalised usernames and passwords and were able to log in, monitor trades and view trading history, and place trades within their individual Customer Account.
113. The Liquidators have also been informed by Mr Lee that BBYL holds:
- (a) an IB Consolidated Account with account number I322352 opened in 2006, linked to a "white label" online platform branded by BBYL "Spectrum Live – Online Trading Platform";
 - (b) an IB Consolidated Account with account number I242781 opened in 2005, linked to a "white label" online platform branded by BBYL "BBY eBridge Professional"; and
 - (c) an IB Advisor Master Account with account number F1145587 opened in 2013.

A copy of that correspondence is at **Appendix 95**.

114. Each of the agreements and disclosure statements between BBYL and IB listed in Schedule 1 were provided by Mr Lee in response to a request from my solicitors. Agreements relating to supply of market data and privacy statements have been omitted from Schedule 1. Mr Lee also informed the Liquidators that:
- (a) each IB Consolidated Account is associated with many underlying "**Customer Accounts**". Copies of the client summary reports, consolidated activity summary reports and master activity summary reports for each of the IB Consolidated Accounts as at 15 May 2015 and 24 November 2015, provided by Mr Lee, are **CEs 15–26**; and
 - (b) the IB Advisor Master Account is:

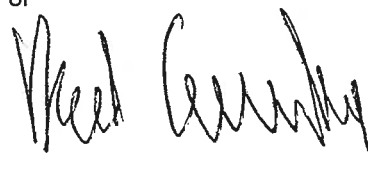
- (i) structured differently to the IB Consolidated Accounts;
 - (ii) exists to collect fees for managing "fully-segregated, disclosed IB accounts"; and
 - (iii) holds approximately A\$72,000 and USD\$8,700.
115. As explained in sections 3.6.4 and 4.2.5 of the CSA Report, it appears that the IB client summary reports are the most reliable record of IB clients' claims. An example of an IB client statement is **CE 27**.
116. The Liquidators have requested that IB provide a record of payments made by IB to BBYL in the period 17 May 2014 to 17 May 2015 for the purpose of assessing whether amounts received by BBYL from IB were in fact returned to IB clients. In this regard the Liquidators' investigations are continuing.

Other Products

117. The Liquidators have been informed by former employees of BBYL that:
- (a) for a time, BBYL facilitated trading in carbon credits; and
 - (b) this trading activity represented a negligible proportion of BBYL's overall trading activity.
118. **Appendix 18** is a copy of the BBYL Carbon Trading Terms and Conditions obtained from the books and records of BBYL. To date, the Liquidators have not located any document in the nature of a client trust ledger for BBYL's carbon trading business.

G Client cash management accounts

119. A large number of BBYL's Equities and ETOs clients held cash management accounts (**CMAs**) with one of: Macquarie Bank Limited; Australia and New Zealand Banking Group Limited; Commonwealth Bank of Australia (**CBA**); Bankwest (a division of CBA); St George; Bendigo and Adelaide Bank Limited; and Bank of Queensland Limited (together, the **CMA Banks**). Because clients had nominated BBYL as an "advisor" in respect of those accounts, BBYL had the ability to view the current account balance and/or transact (including by debiting funds from the CMA), depending on the scope of authority given by the client.
120. An example of a CMA application form (for St George) used by BBYL is **Appendix 96**.
121. CMAs were particularly convenient for clients of BBYL who traded in ETOs because the client's ETO margin obligation (described in paragraphs 80–83 above) would fluctuate daily and require daily payment to be made either:
- (a) from the client to BBYL (in the case of a margin call); or

- (b) from BBYL to the client (in the case of a reduced margin obligation).
122. GBST Shares (the software used to manage Equities client accounts) had the capability to generate computer files containing instructions to make withdrawals from, or deposits to, cash management accounts (**CMA Files**). These files were communicated to the CMA Banks during the course of each trading day.
123. Funds withdrawn from client CMAs were transferred to a CMA "clearing" bank account held with the relevant CMA Bank before being deposited into the '541 Account. The first spreadsheet in the 2013/14 Bank Movements Workbook (**CE 114**, described in paragraph 229 below) appears to list several CMA clearing bank accounts.
124. GBST Shares also maintained "clearing" accounts (that is, ledger accounts) for each CMA Bank within the general ledger which recorded as separate line items individual withdrawals from and deposits to CMAs identifying the relevant bank, BSB and account number for that CMA and the client's BBYL account number (in that order) (the **CMA Ledger Accounts**). Copies of the CMA Ledger Account records for each CMA Bank for 18 May 2015, provided to the Liquidators by the Receivers, are **CEs 140–145**. It is my understanding that there were no withdrawals or deposits from Bendigo and Adelaide Bank Limited CMAs on 18 May 2015 and accordingly no corresponding CMA Ledger Account record.
125. BBYL received and made CMA withdrawals and deposits by way of real-time gross settlement (**RTGS**). RTGS is an expedited process (facilitated by the Reserve Bank of Australia) by which funds can be transferred (and received as cleared funds) from one bank account to another account held with a different bank within about 1 hour. In the ordinary course, BBYL received CMA withdrawals and deposits for a given day in a single gross RTGS payment for each CMA Bank.
126. Clients who did not hold a CMA generally:
- (a) provided BBYL with a direct debit/credit authority (a blank copy of which is **Appendix 69**); and/or
- (b) made direct deposits into BBYL's CSAs in anticipation of future trading activity.

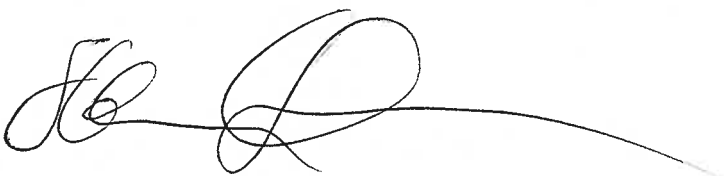
H Transactions of interest

127. The Liquidators' approach to investigating BBYL's dealings with its CSAs is set out in section 5 of the CSA Report. Those investigations have included:
- (a) formal interviews with former staff of the BBY Group. In these interviews a variety of particular transactions of interest were brought to our attention and were the subject of further investigation;

- (b) analysis of electronic bank transaction data for BBYL's bank accounts, using computer software to correlate deposits and withdrawals appearing in different accounts by matching the numerical amount of a deposit in one account with a corresponding withdrawal in another account on the same day. Where a numerical match was found, the match was classified according to the varying levels of match quality described in section 5.2.4 of the CSA Report;
 - (c) requesting bank traces to identify the source or destination for funds deposited to or withdrawn from particular accounts in respect of particular transactions of interest;
 - (d) examining funds transfers with generic descriptions of the kind identified in section 5.2.4 of the CSA Report which our interviews with former employees of BBYL suggested were more likely to relate to funds transfers which were not "business as usual"; and
 - (e) review of emails forensically imaged from the books and records of BBYL.
128. In the remainder of this Part of my affidavit I give an outline of the most significant events and transactions that we have identified as a result of our investigation into BBYL's dealings with its client monies.

Aquila

129. Paragraphs 130–148 below summarise section 6.8 of the CSA Report which explains the "**Aquila transaction**", a significant share purchase brokered by BBYL in June 2014 which required BBYL to lodge significant cash amounts with ASX Clear and resulted in a large number of transfers (involving a significant quantum of funds) between BBYL CSAs and House Accounts.
130. Aquila Resources Limited (**AQA**) is a listed mining company with mining assets located in Western Australia. In May and June 2014, AQA was subject to a joint takeover bid by Baosteel Resources Australia Pty Ltd and Aurizon Operations Limited.
131. On 11 June 2014, BBYL contracted to acquire 51.4 million shares in AQA with a market value of approximately \$192 million on behalf of one of its clients, Mineral Resources Limited. The date for settlement was 15 June 2014. Also on 11 June 2014, BBYL received a security deposit from Mineral Resources Limited of \$29 million (the **Security Deposit**). This amount was deposited into the '541 Account.
132. As an ASX Clear participant, BBYL was required to meet certain obligations to ASX Clear. Cash market margin (**CMM**) is an obligation that clearing participants owe ASX Clear (under rule 12.17.2A of the ASX Clear Operating Rules (**Appendix 86**) and associated Procedures) as the central counterparty in the market in order for ASX Clear to manage its exposure as central counterparty to every open trade. In the event of default by BBYL on a settlement date, ASX Clear

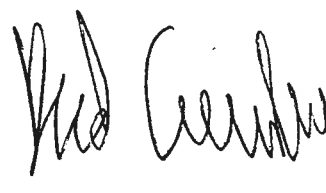



could apply the collateral provided by BBYL against any loss incurred by ASX Clear when settling the trade, as central counterparty, with the seller's clearing participant. CMM is not an obligation of the clearing participant's (in this case, BBYL's) underlying client. CMM is calculated using a complex formula and includes a component in respect of all of the clearing participant's open (that is, not yet settled) trades.

133. Unlike other types of margin, rule 14.8.1 of the ASX Clear Operating Rules (**Appendix 86**) expressly forbids clearing participants from:
- (a) calling collateral for CMM from clients; or
 - (b) using client monies or collateral to meet the clearing participant's CMM obligations.
134. BBYL was required to settle the net movement in its CMM obligation with ASX Clear at 10.30 am each trading day.
135. On 12 June 2014 the market price for AQA shares declined. As a result, BBYL was required to make payments to ASX Clear in respect of margin on 13 June 2014 which totalled about \$40 million. That amount consisted of:
- (a) \$18 million initial margin;
 - (b) \$7 million variation margin; and
 - (c) \$15 million capital-based position limit (**CBPL**) additional margin.
136. BBYL had insufficient cash available to meet the entirety of the margin calls made by ASX Clear in relation to the AQA trade and other open BBYL positions.
137. On 12 June 2014 BBYL informed the ASX that it had sufficient funds to pay \$25 million in respect of initial and variation margin, but had insufficient funds to pay the \$15 million CBPL additional margin. It requested that the ASX delay \$10 million of the CBPL additional margin call so that BBYL could avoid an event of default under the ASX Clear Operating Rules. The ASX advised that it would delay the making of the \$15 million CBPL additional margin call and instead make an additional CBPL margin call of \$5 million.
138. BBYL paid \$25.7 million to the ASX in respect of initial and variation margin on 12 June 2014 using the Security Deposit. An additional \$5 million was paid by BBYL to the ASX in respect of the additional CBPL margin call from the Facilitation Account. These transfers are shown diagrammatically in section 6.8.10 of the CSA Report.
139. It appears that on about 12 June 2014 BBYL advised the ASX that \$8 million in shareholder funds would be received for the purpose of settling the outstanding \$10 million CBPL additional margin

and that additional funding was being sought from St George. A copy of an email between BBY Group staff which refers to that communication is CE 96. An email circulated internally to BBY Group staff on 2 February 2015 (CE 100) suggests that \$10 million in shareholder funds were ultimately received.

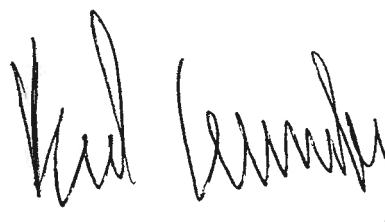
140. On 13 June 2014 BBYL was also required to pay an additional \$3.2 million in respect of variation margin resulting from a further decline in the market price of AQA shares. BBYL paid \$13.2 million (comprising the \$10 million CBPL additional margin and \$3.2 million variation margin) to ASX that day. The ultimate sources for that amount (shown diagrammatically in section 6.8.10 of the CSA Report) included:
- (a) \$1.8 million from the Saxo Buffer Account; and
 - (b) \$6.8 million from the Futures AUD CSA.
141. On the same day, Mineral Resources Limited deposited \$164 million in respect of the outstanding purchase price (after taking into account the Security Deposit) into the '541 Account.
142. On 15 June 2014 the seller failed to deliver the stock and settlement was deferred.
143. On 16 June 2014 the seller delivered a portion of the shares, allowing partial settlement to occur. BBYL paid \$105.9 million from the monies received from Mineral Resources Limited on 13 June 2014. BBYL borrowed a further \$26 million from St George that day, which was paid into the Facilitation Account.
144. On 17 June 2015:
- (a) the seller delivered the outstanding shares and BBYL paid the remainder of the purchase price from the Facilitation Account;
 - (b) ASX Clear returned cash collateral to the Facilitation Account in separate payments of \$15 million and \$28 million;
 - (c) from the Facilitation Account (among other transfers):
 - (i) a total of \$8.8 million was (in a series of transactions) transferred to the Trust 4 Account; and
 - (ii) \$2.5 million was paid to the '541 Account; and
 - (iii) BBYL returned the borrowed amount of \$26 million to St George.
145. On 25 June 2014:



- (a) \$3.5 million was transferred from the Trust 4 Account (into which the \$8.8 million referred to above had been deposited) to the General Trust Account; and
 - (b) \$7.5 million was transferred from the Trust 4 Account into three separate high interest term deposit accounts by separate payments of \$4.5 million, \$2 million and \$1 million.
146. The Trust 4 Account was closed on 26 June 2014. The amounts of \$4.5 million, \$2 million and \$1 million referred to in sub-paragraph 145(b) above were transferred to the General Trust Account (into which the amount referred to in paragraph 145(a) above was deposited) several months later, in August and September 2014. These payments are shown diagrammatically in section 6.8.15 of the CSA Report.
147. Funds on deposit in the General Trust Account were subsequently used to provide daily funding to the '541 Account in the manner summarised in paragraphs 160–162 below, more fully explained in sections 6.2.3–6.2.4, 6.5.2, and 6.6.3 of the CSA Report.
148. To date, our investigations have not revealed restoration of the \$1.8 million withdrawn from the Saxo Buffer Account or the \$6.8 million withdrawn from the Futures AUD CSA.

Saxo 1:1 funding agreement

149. At paragraphs 106–110 above, I describe the Saxo product line offered by BBYL. BBYL established its Saxo product line following the acquisition of the business of Stonebridge Group (**Stonebridge**) in or around August 2011. The bank statements for the "eBridge Buffer" bank account acquired by BBYL are **CE 102** and an analysis of the funds flows relating to that account and the Stonebridge acquisition appears in section 6.9.6 of the CSA Report. At least a significant proportion of those funds appear to relate to the clients that previously traded on the Saxo Online Platform through Stonebridge and who were essentially "transferred" to BBYL.
150. The Saxo Agreements referred to in paragraph 106 above were amended on or about 9 December 2013 when SCMA gave notice by letter to BBYL of amendments to the ITA, which were to take effect from 1 April 2014 (the **9 December Letter**). A copy of that letter is at **CE 115**. SCMA's notice was given pursuant to a right in clause 23.1.1(b) of the ITA to amend the ITA on three months' notice. Had those amendments become effective, BBYL would have been required to deliver, within one business day after close of trading each day on the New York Stock Exchange, sufficient cash to SCMA to ensure the balance of BBYL's account with SCMA was at least a specified amount (the **Required Balance**). The Required Balance was the greater of certain other amounts, one of which was the aggregate amount of cash standing to the credit of BBYL's clients on the Saxo Online Platform. Thus, the 9 December Letter in effect required BBYL to transfer all client monies that should be held in respect of the Saxo Online Platform to SCMA by 1 April 2014.

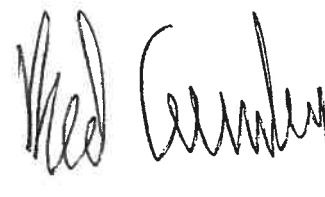


151. On or about 19 December 2013, SCMA gave notice by letter to BBYL of further amendments to the ITA to take effect from 1 April 2014 (the **19 December Letter**). A copy of that letter is **CE 111**. The amendments notified by the 19 December Letter had the effect that, instead of being required to maintain the Required Balance from 1 April 2014, BBYL was instead required to progressively increase the amount of cash held by SCMA in accordance with the milestones in Table 3.

Table 3: Saxo milestones

Milestone	Amount to be held by SCMA	Period for payment
First	33.33% of the Required Balance	"On or before 1 April 2014 to 31 August 2014"
Second	66.67% of the Required Balance	"On or before 1 September 2014 to 30 November 2014"
Third	100% of the Required Balance	"On or before 1 December 2013"

152. It appears that the reference to "1 December 2013" in clause 4.1A(c) of the 19 December Letter, being the date of the third milestone, was intended to be a reference to "1 December 2014".
153. The amendments set out in the 9 December Letter and the 19 December Letter were referred to by BBYL as the "**1:1 funding agreement**" with SCMA.
154. The requirement to maintain the Required Balance with SCMA, and to achieve the milestones set out in the 19 December Letter, appears to have been one catalyst for BBYL's eventual failure. As explained in paragraphs below and in section 6.9 of the CSA Report, BBYL did not hold sufficient cash on behalf of its Saxo clients to meet its obligation to SCMA to maintain the Required Balance on 1 December 2014.
155. The flow of funds in connection with the payments by BBYL to SCMA for the purpose of meeting the Required Balance appears at section 6.9.5 of the CSA Report (on the left hand side of the funds flow diagram). These funds transfers did not necessarily occur on particular days but over the periods of time indicated on that diagram.
156. In the period 1 April 2014 to 12 December 2014, BBYL transferred approximately \$28.7 million to SCMA. My staff prepared a schedule of payments by BBYL to SCMA in the period 11 April 2014 to 12 December 2014, a copy of which is **Appendix 65**. Importantly, the sources of the funds used to pay SCMA included:
- (a) \$7.1 million from the General Trust Account, into which \$6.8 million in client funds referable to the Futures product line had been paid following the Aquila acquisition referred to in paragraph 140 above; and

- (b) \$1 million initially withdrawn from the FX AUD CSA and deposited into the Trust 3 Account.
157. As explained in section 6.9.2 of the CSA Report, on 1 December 2014 SCMA terminated the Saxo Agreements, effective 1 February 2015, because SCMA asserted that BBYL had not complied with the 1:1 funding agreement. From late February 2015, BBYL's Saxo client base was run down and significant payments were made by SCMA to BBYL for distribution to clients.
158. The flow of funds in connection with the payments by SCMA to BBYL in returning funds to BBYL for clients appears at section 6.9.5 of the CSA Report (on the right hand side of the funds flow diagram). In the period 10 February 2015 to 15 May 2015, SCMA transferred approximately \$44.7 million to BBYL. Of that amount:
- (a) \$0.5 million was paid into the Futures AUD CSA; and
- (b) \$1.1 million was paid into the FX AUD CSA.
159. In summary, as indicated in the CSA Report:
- (a) as part of the process of BBYL making payments to SCMA to maintain the Required Balance in 2014, approximately \$20 million of funds were transferred from sources outside of the Saxo CSAs;
- (b) the funds taken from other product lines do not appear to have been (fully) restored. Table 4 summarises the net position in respect of the other product lines (excluding Equities/ETOs transfers which appear to relate to commissions payable to BBYL and therefore represent "house" monies); and
- (c) the Liquidators' investigations indicate that a significant amount of the Saxo client funds controlled by BBYL as a result of its acquisition of the business of Stonebridge were subsequently used for non-Saxo client purposes in that:
- (i) BBYL was unable to meet the requirements of the 1:1 funding agreement in 2014 (even after drawing on CSAs designated for other product lines); and
- (ii) \$1.8 million was paid from the Saxo Buffer Account to meet the Aquila margin call in June 2014 (see sub-paragraph 140(a) above).

Table 4: Funds from FX and Futures used to meet 1:1 funding agreement

Payment	Futures	FX
Funds used to pay SCMA as part of the 1:1 funding agreement	– \$6.8 million	– \$1.0 million




Funds returned from SCMA on termination of Saxo Agreements	\$1.0 million	\$1.1 million
Net effect	– \$5.8 million	\$0.1 million

Overnight funding of the '541 Account from the General Trust Account

160. As explained in paragraph 238 below, BBYL used funds from its House Accounts, if necessary at the conclusion of each trading day, to ensure that the balance of the '541 Account was equal to the amount that BBYL regarded itself as obliged to hold on trust for Equities and ETOs clients (the *Required Balance* reported by the Trust Movements Report, explained in paragraph 237 below).
161. The Liquidators' analysis of bank statement data and email correspondence has revealed that:
- (a) between about June 2014 and December 2014, funds on deposit in the General Trust Account (into which the monies referred to in paragraph 146 above were paid) were used on a regular basis to provide overnight funding to the '541 Account, apparently because BBYL was otherwise unable to ensure that the '541 Account balance was at least the amount BBYL regarded itself as required to hold on trust for Equities and ETOs clients on those days (refer to paragraphs 237–238 below). These regular transfers are further explained in sections 6.2.3–6.2.4, 6.5.2 and 6.6.2–6.6.3 of the CSA Report;
 - (b) on 16 December 2014 amounts totalling \$1,881,968 were deposited in the Trust 3 Account from a variety of sources, shown diagrammatically in section 6.6.3 of the CSA Report. That deposit comprised (among other amounts):
 - (i) \$14,400 from the WLP Omnibus Account;
 - (ii) \$20,372 from the Carbon Trading Account;
 - (iii) \$554,000 from the IB Buffer Account;
 - (iv) \$26,000 from the FX AUD CSA; and
 - (v) \$757,000 from the Futures AUD CSA;
 - (c) on the same day, the amount of \$1,881,968 was transferred in separate payments of \$1,505,668 and \$376,300 from the Trust 3 Account to the General Trust Account; and
 - (d) on the same day, the total balance of the General Trust Account, being \$4,092,210, was transferred to the '541 Account. The bank statement description for this transfer was "BBY".

162. We have found no evidence that the amounts withdrawn from CSAs, referred to in paragraph 161(b) above, were restored to those CSAs.

Other transactions of interest

163. My staff have identified a variety of transactions of interest in addition to those associated with the Aquila acquisition, the Saxo 1:1 funding agreement, and the 16 December 2014 transfers described in paragraphs 161–162 above. Those transactions are set out diagrammatically in section 6 of the CSA Report, accompanied by our findings in respect of those particular transactions.

164. The transactions of interest that my staff have identified include circumstances in which:

- (a) BBYL appears to have transferred funds from a CSA corresponding to a particular product line to a CSA corresponding to another product line for the purpose of meeting an obligation from the latter CSA which BBYL would otherwise have been unable to meet (due to an insufficient balance in the latter CSA). Examples of this kind appear on pages 77 and 89 of the CSA Report. In some cases these transactions are subsequently "made right" and in other cases they are not; and
- (b) BBYL appears to have transferred funds from multiple CSAs to the General Account where they may have contributed to payments made to the Facilitation Account or to the '541 Account in connection with the daily funding pattern described in paragraph 230 below. Examples of this kind appear on pages 83 and 85 of the CSA Report. On both 2 March 2015 and 4 March 2015 the "borrowed" funds were returned to the source CSAs on the same day via the General Trust Account.

165. The findings of my staff in respect of the CSAs for each product line are summarised in section 7 of the CSA Report.

I Funds held by counterparties and Recoveries

166. The agreements between BBYL and the counterparties referred to in Part F of this affidavit (together with the disclosure statements provided by those counterparties) are listed in Schedule 1 and are the Appendices and Confidential Exhibits identified in that Schedule.

167. The amount of Recoveries identified by the Liquidators to date are summarised in the table in section 4.3 of the CSA Report. In paragraphs 168–204 below, I give an explanation of the nature of the Recoveries.



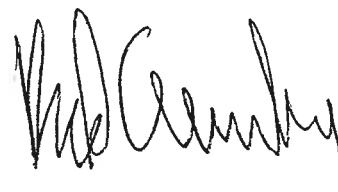
Returned Cash Collateral and Cash Stock Refunds returned by ASX

168. BBYL's ASX market participation was suspended by ASX Clear at about 10.50 am on 18 May 2015. A copy of the ASX notice published at about that time is **Appendix 103**. At that time BBYL clients held 4,625 open ETO positions and ASX Clear held:
- (a) cash and bank guarantee collateral of \$23,441,047; and
 - (b) non-cash collateral with a market value of \$169,812,108
- in respect of those positions.
169. A copy of a spreadsheet received by the Liquidators from ASX which records collateral held by ASX Clear in respect of BBYL clients on 15 May 2015 is **CE 28**. A copy of a spreadsheet received by the Liquidators from ASX which records open ETO positions held by BBYL clients on 15 May 2015 is **CE 116**. Those spreadsheets were provided to the Liquidators under cover of a letter dated 5 June 2015, a copy of which is **Appendix 101**. The enclosures to that letter are **CEs 120, 134, 135, 136, 137 and 138**. **CE 119** is a copy of a revised version of the "Close Out Derivatives Client Account Level Summary" enclosure, which was subsequently provided to the Liquidators by ASX after making the correction referred to in the letter at **Appendix 102**.
170. BBYL did not settle its ETO margin obligation with ASX Clear after 18 May 2015. On 18 May 2015 BBYL received payment in respect of both Equities settlements and ETO margin (on a net basis BBYL was a recipient of funds).
171. At about 11.53 am on 18 May 2015 the ASX published a notice to the effect that it would consider the transfer of BBYL client ETO positions and collateral to a new clearing participant in the circumstances specified in that notice. According to that notice, one requirement which needed to be satisfied before ASX Clear would consider facilitating the transfer of positions was that the proposed substitute clearing participant notify ASX Clear by 1.30 pm on 18 May 2015 of the BBYL clients whose positions the clearing participant wished to assume. ASX also advised that:
- (a) if ASX Clear determined to facilitate such a transfer, that transfer must be completed by 5.00 pm on 20 May 2015; and
 - (b) the decision whether to facilitate transfer of positions and collateral remained in the absolute discretion of ASX Clear.
- A copy of that notice is **CE 29**.
172. At about 9.47 am on 19 May 2015, the ASX published a notice advising the market that unsettled equities trades entered into by BBYL on or before 15 May 2015 would be closed out. A copy of that notice is **Appendix 104**.

173. At about 4.13 pm on 20 May 2015, the ASX published a notice advising the market that the ASX had determined to extend the time by which transfers of positions and collateral were to be completed from 5.00 pm on 20 May 2015 to 9.00 am on 21 May 2015. A copy of that notice is **Appendix 105**.
174. A copy of a spreadsheet produced by the ASX which lists BBYL clients whose ETO positions were transferred to a different clearing participant in the period 18 to 26 May 2015 (and particulars of those positions) is **CE 117**. A copy of a spreadsheet produced by the ASX which lists BBYL clients whose cash and non-cash collateral was transferred to a different clearing participant in the period 19 May 2015 to 26 May 2015 (and particulars of that collateral) is **CE 118**.
175. At about 6.04 pm on 5 June 2015, the ASX published a notice advising the market that:
- (a) ASX Clear had provided the Liquidators of BBYL details of the forced close out of equities trades and ETOs;
 - (b) approximately 400 BBYL clients' ETO positions were closed out;
 - (c) approximately 217 BBYL clients' ETO positions and collateral were transferred to a new clearing participant in accordance with the procedure prescribed by the ASX; and
 - (d) ASX held, in respect of ETO margin:
 - (i) a cash surplus after applying cash collateral to satisfy the cost of closing out ETO positions (the **Returned Cash Collateral**); and
 - (ii) a cash surplus after realising non-cash collateral to satisfy the cost of closing out ETO positions (the **Cash Stock Refunds**),and intended to:
 - (iii) transfer the Returned Cash Collateral to BBYL's trust account; and
 - (iv) return the Cash Stock Refunds directly to the registered holders of the corresponding non-cash collateral upon receipt of bank account information for each of those persons.

A copy of that notice is **Appendix 106**.

176. The Returned Cash Collateral, being \$3,400,115.54, was paid into a segregated trust account controlled by the Liquidators on 4 August 2015. Based on discussions I have had with employees of the ASX, I understand that the Cash Stock Refunds, totalling \$232,430.61, were paid by the ASX directly to the relevant BBYL clients in about October 2015. **CE 119** is a copy of a



spreadsheet produced by the ASX and provided to the Liquidators. That document appears to record, among other things:

- (a) the cost to close out ETO positions held by BBYL clients at the time those positions were closed (*Total Cost to Close*);
- (b) the value of non-cash collateral required to be realised to close out after application of any cash collateral (*Coll Value to be Sold*);
- (c) the amount of cash collateral applied (*Cash Cover Used*) and non-cash collateral liquidated (*Collateral Liquidated*) by ASX Clear to close out positions;
- (d) the surplus cash collateral after cash collateral was applied against the cost to close out, representing the Returned Cash Collateral (*Remaining Cash Cover*); and
- (e) the surplus cash proceeds of liquidation of non-cash collateral required to close out open positions, representing the Cash Stock Refunds (*Residual Cash after Liquidation*),

in respect of each BBYL client. The difference between the *Coll Value to be Sold* and the *Collateral Liquidated* is attributable to the fact that ASX Clear liquidated an additional amount of non-cash collateral as a buffer against any adverse movement in the market price of the collateral before, or during, its sale.

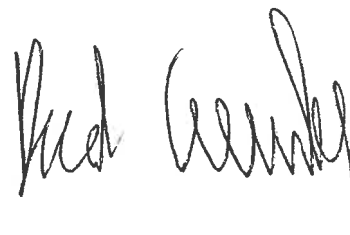
177. A copy of a spreadsheet produced by the ASX which itemises the non-cash collateral held for BBYL clients and sets out the number of units sold (to close out an open ETO position) and the number of units to be returned to that client is **CE 120**.

CMM / CBPL collateral held by ASX

178. It appears from an email sent by Brendon Luscombe of ASX to Fiona Bilton of BBYL on 20 May 2015 stating that no CMM would be returned to BBYL that day, that ASX held \$7,512,525.55 cash collateral for CMM that morning. A copy of that email appears at **CE 139**. The Liquidators are informed by ASX that, as at 14 December 2014, ASX Clear held \$1,321,735 cash collateral in respect of CMM and \$5,948,444 in respect of "CBPL/general requirement Additional Cover".

Futures funds held by ABN AMRO

179. On 5 August 2015 my solicitors wrote to Sean Lawrence, Chief Executive Officer of ABN AMRO, requesting information about BBYL's arrangements with ABN AMRO, including whether ABN AMRO held any open positions or funds for BBYL or its clients. A copy of that letter is **Appendix 107**.

180. On 13 August 2015 Joy Wooden, Head of the Legal Department at ABN AMRO, responded by email to my solicitors requesting that the Liquidators obtain the Receivers' consent to the release of the requested information. **Appendix 108** is a copy of that email. **Appendix 109** is a copy of an email sent by the solicitors for the Receivers on 18 September 2015 in which the Receivers consented to the release of this information to the Liquidators.
181. On about 7 December 2015, Joy Wooden informed my solicitors by telephone that ABN AMRO had closed out all open positions held for BBYL and its clients and was holding an amount of cash.
182. On 17 December 2015, Aurelie Jacquet of ABN AMRO informed my solicitors by email (a copy of which is **Appendix 110**) that ABN AMRO would provide details of the quantum of cash held by ABN AMRO for BBYL. I expect that this information will be received within the next month.

Futures funds held by ADM

183. On 5 August 2015 my solicitors wrote to Tracy Hetherington, Deputy Compliance Officer at ADM, requesting information about BBYL's arrangements with ADM, including whether ADM held any open positions or funds for BBYL or its clients. A copy of that letter is **Appendix 111**.
184. **Appendix 112** is a copy of a response which my solicitors received from Ms Hetherington on 6 August 2015. Enclosed with that response were detailed spreadsheets detailing, among other things, all of the open positions and funds which ADM held on behalf of BBYL or clients of BBYL.
185. While at the time of our appointment ADM held a relatively large number of open positions for BBYL clients, some open positions have expired over time. I have also instructed ADM to close a small number of open positions in circumstances where keeping those positions open was impractical or otherwise risked exposing BBYL to significant liabilities (for example, positions which would, unless closed out, require BBYL to physically deliver or take physical delivery of assets such as crude oil).
186. As a result of the expiry and close of open positions, BBYL now has very few open positions with ADM. On 7 December 2015 Jean-Marc Lamontagne-Defriez of ADM provided a statement (dated 4 December 2015) containing details of the four remaining open positions held by BBYL. A copy of this statement is **Appendix 114**. The statement also sets out the cash held by ADM in a number of currencies.
187. ADM has, to date, refused to return any funds to BBYL while BBYL continues to hold open positions with ADM.
188. The Liquidators are considering steps to close out the remaining positions and instruct ADM to return all funds held on behalf of BBYL or BBYL's clients. The ADM Recoveries are expected to be about \$1.8 million (refer to sections 4.2.2 and 4.3 of the CSA Report).



FX funds returned by Halifax

189. On 26 August 2015 my solicitors wrote to Cassandra Moloney of Halifax, requesting information about BBYL's arrangements with Halifax, including whether Halifax held any open positions or funds for BBYL or its clients. A copy of that letter is **Appendix 116**.
190. **Appendix 117** is a copy of an email which was sent to my solicitors by Ms Moloney on 11 September 2015. In that email, Ms Moloney confirmed that BBYL did not have any open position with Halifax. Ms Moloney also confirmed that on 16 June 2015, Halifax paid all of the funds it held on behalf of BBYL and its clients (\$455,863.49) to the Receivers.
191. The Receivers have agreed to transfer the funds received from Halifax into a separate trust account controlled by the Liquidators in the name of BBYL. The Liquidators are in the process of opening an appropriate bank account and expect these funds to be deposited shortly.

Saxo cash and positions

192. On 5 August 2015 my solicitors wrote to Anthony Griffin, Chief Executive Officer of SCMA, requesting information about BBYL's arrangements with SCMA, including whether SCMA held any open positions or funds for BBYL or its clients. A copy of that letter is **Appendix 118**.
193. **CE 133** is a copy of an email (with the attachments that are spreadsheets) which was sent to my solicitors by Mr Griffin on 13 August 2015. In that email, Mr Griffin confirmed that BBYL did not have any open positions with SCMA. Mr Griffin also confirmed that SCMA held cash and a large number of securities (held via Citi, acting as a custodian) for BBYL.
194. **Appendix 120** is a copy of an email which was sent by Rani Adhar of SCMA to my solicitors on 12 November 2015. Ms Adhar attached to that email a spreadsheet containing details of the securities held by SCMA.
195. On 2 December 2015, following a request from me communicated by my solicitors, SCMA transferred \$206,624.91 to a new trust account in the name of BBYL controlled by the Liquidators which I arranged to have opened to hold Saxo Recoveries. SCMA retained \$19,384 to cover the potential costs of liquidating the securities. The email correspondence between my solicitors and Rani Adhar of SCMA, concluding with an email from Rani Adhar dated 9 December 2015, is **Appendix 121**.
196. My present intention is to instruct SCMA to sell all assets and realise the securities held by SCMA and to deposit the proceeds of that sale into a separate trust account to be opened by the Liquidators in the name of BBYL pending the outcome of this proceeding.



IB cash and positions

197. On 6 August 2015 my solicitors wrote to Brian Yeung, Head of Legal and Compliance Asia Pacific at IB, requesting information about BBYL's arrangements with IB including whether IB held any open positions or funds for BBYL or its clients. A copy of that letter is **Appendix 122**.
198. **Appendix 123** is a copy of an email (excluding the voluminous attachments) which was sent to my solicitors by Thomas Lee of IB on 25 August 2015. In that email, Mr Lee confirmed that IB held a large number of open positions and cash in a number of currencies for BBYL and its clients.
199. My solicitors have, on my behalf, made a number of requests for information regarding the amount of cash that can be returned by IB to BBYL in circumstances where there are open positions. **Appendix 125** is an email chain which ends with an email from Mr Lee to my solicitors dated 10 December 2015. In that correspondence IB indicated that there are a number of practical issues with returning more than a nominal amount to BBYL while positions remain open.
200. The Liquidators are considering steps to close out all positions held in respect of BBYL's clients and to deposit the proceeds of that sale into a separate trust account to be opened by the Liquidators in the name of BBYL pending the outcome of this proceeding.

Other enquiries made by the Liquidators

201. As part of my investigation I have instructed my staff or my solicitors to write to a number of other financial services counterparties of BBYL.
202. **Appendix 126** comprises copies of letters I caused to be sent by my solicitors to each of the following counterparties:
- (a) Asia Pacific Stock Exchange Limited;
 - (b) Chi-X Australia Pty Ltd;
 - (c) Commonwealth Government – Clean Energy Regulator;
 - (d) Deutsche Bank Australia;
 - (e) Societe Generale – NewEdge USA; and
 - (f) Australia and New Zealand Banking Group Limited.
203. **Appendix 127** is a copy of the responses (excluding attachments) which have been received by my solicitors from each of the above counterparties (other than Societe Generale – NewEdge USA, which did not respond). Those responses indicate that BBYL does not hold any open




positions with those counterparties and that those counterparties do not hold any funds or other assets (whether "house" or client monies) for BBYL.

204. I am not aware of any other counterparties who hold assets or funds on behalf of BBYL or its clients.

J The Mazzetti Proposal

Background

205. On 5 November 2015 Partners Legal, the solicitors for the first named First Defendant, wrote to my solicitors stating, among other things, that:

- (a) they act for J Mazzetti Pty Ltd (**Mazzetti**), the representative defendant for ETO clients of BBYL with open positions as at 15 May 2015 (**Relevant ETO Clients**);
- (b) the Relevant ETO Clients have (according to Partners Legal) a very strong case that:
 - (i) the Returned Cash Collateral of \$3,400,116; and
 - (ii) \$2,410,066.47 withdrawn from client CMAs on 19 May 2015 in respect of ETO margin (the **Post-appointment Margin Receipts**);
 belong to them;
- (c) as such, those funds ought to be promptly distributed to the Relevant ETO Clients (the **Mazzetti Proposal**) and unless a party to this proceeding opposes the Mazzetti Proposal, Mazzetti will seek an unopposed hearing on that question; and
- (d) should Mazzetti be required to incur the costs of participating fully in pre-trial procedures and the trial of the "pooling application" in March 2016, then upon any order being made at trial to similar effect to the Mazzetti Proposal, Mazzetti would seek indemnity for its costs from any party who opposed the Mazzetti Proposal.

206. A copy of that correspondence is **Appendix 128**. My solicitors responded by letter dated 23 November 2015, a copy of which is **Appendix 129**, to the effect that the consent by the Liquidators to the Mazzetti Proposal may be premature.

207. Mills Oakley, the solicitors for the Second Defendant, representing Equities clients of BBYL and ETOs clients of BBYL without open positions, responded by letter dated 23 November 2015, a copy of which is **Appendix 130**.




208. Corrs Chambers Westgarth, the solicitors for the Third Defendant representing Futures, FX, Saxo IB and Other Products clients of BBYL responded by letter dated 17 November 2015, a copy of which is **Appendix 131**.
209. Clayton Utz, the solicitors for the Fourth Defendant responded by letter dated 20 November 2015, a copy of which is **Appendix 113**.
210. In order to assist the parties to this proceeding to consider their response to the Mazzetti Proposal, my staff and I have examined the books and records of BBYL to determine the manner in which BBYL conducted its ETOs business on a day-to-day basis, including the sequence of payments by which cash collateral for ETO margin was paid by BBYL to ASX Clear. Below I set out:
- (a) the reporting generated at the end of each trading day relevant to ETO margin payable the following trading day (in paragraphs 213–225 below);
 - (b) the manner in which clients' ETO margin obligations were "transferred" from the ETO Ledger to the Equities Ledger each morning (in paragraphs 221–224 below);
 - (c) the payments made by BBYL at about 10.30 am each morning in order to settle its CMM, ETO margin and Equities settlement obligations with ASX Clear and ASX Settlement (in paragraph 226 below);
 - (d) the transfers that BBYL made at the end of each trading day in order to ensure that it held sufficient monies in the '541 Account on account of its Equities and ETOs clients (in paragraphs 228–232 below); and
 - (e) the state of the Liquidators' knowledge about the identity of the clients in respect of whom the Post-appointment Margin Receipts were received (in paragraphs 241–251 below).
211. BBYL used a checklist document entitled "Task List: ETO Clearing" (the **ETO Task List**) to manage and track the daily tasks required to be performed in connection with its ETOs product line. A copy of the ETO Task List for 15 May 2015 is **Appendix 132**.

Daily business cycle for Equities and ETOs product lines

212. In paragraphs 213–225 below, I refer to various documents forming part of the books and records of BBYL. Based on a review and analysis of those documents by my staff, and information provided by former employees of BBYL as to the daily operation of BBYL's Equities and ETOs businesses, I set out what those documents appear to record.

Start of day ETO reporting

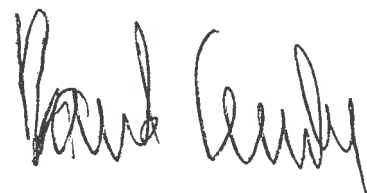
213. A "**Start of Day Report**" entitled "Trust Fund Requirements (SOD)" was generated from GBST DCA at about 9.30 pm each evening, setting out client account numbers and names together with the following information:
- (a) *Ledger Balance*, being the balance of that client's account on the ETO Ledger;
 - (b) *Cash Margin*, being the cash collateral required in respect of ETO margin, after accounting for non-cash collateral already pledged to ASX Clear, for that client the following trading day; and
 - (c) the *Trust Amount* for that client, being the cash required to be held by BBYL for that client, equal to:
 - (i) any surplus *Ledger Balance* after subtracting the *Cash Margin*; or
 - (ii) otherwise nil. If the *Ledger Balance* was less than the *Cash Margin*, the client would become a debtor to BBYL in an amount equal to the difference when BBYL called margin the next day. In that circumstance the amount required to be held on trust by BBYL for that client in respect of ETOs would be nil.

Example Start of Day Reports are set out in the table below.

Table 5: Start of Day Reports

Date generated	Title date	Records	Document at
After COB 15 May 2015	18 May 2015	ETO Ledger at COB 15 May 2015 and ETO cash margin for 18 May 2015	CE 3
After COB 18 May 2015	19 May 2015	ETO Ledger at COB 18 May 2015 and ETO cash margin for 19 May 2015	CE 121

214. An "**Excess/Shortage Report**", also generated from GBST DCA at about 9.30 pm each evening, set out BBYL ETO client account numbers and names (grouped by advisor) together with the following information for each client:
- (a) the *Cash Margin Movement* being the change in the amount of collateral required for that client for the following trading day (with an arrow indicating whether the client would be margin called or collateral would be returned);

- (b) *Collateral Cover*, being the collateral value of non-cash collateral held by ASX for that client able to be utilised to satisfy the client's margin obligation (refer to paragraph 83 above);
- (c) *B/Fwd Balance* being the ETO Ledger balance brought forward for that client from the previous trading day;
- (d) the *Ledger Balance* for that client after accounting for *User Postings* and *System Postings* (which appear to reflect any changes to the *Ledger Balance* since the previous trading day);
- (e) *Initial Margin* which appears to be the total ETO margin obligation for that client for the following day (and not only the "initial margin" component of the ETO margin referred to in paragraph 81 above);
- (f) *Coll Utilised* being the amount of *Collateral Cover* that will in fact be utilised to satisfy the *Initial Margin* the following day;
- (g) *Cash Margin* being the amount (if any) by which the *Initial Margin* exceeds the *Collateral Cover* and is therefore required to be paid as cash collateral to ASX Clear; and
- (h) the *Net Balance* being the difference between the client's *Ledger Balance* and any required *Cash Margin* (and which, in the absence of other transactions, would match the *Cash Margin Movement*).
215. At the end of the Excess/Shortage Report, subtotals for *Net Balances* of debits and credits were set out, together with a net figure. The *Total Net Balance (Credits)* represented the total amount of cash collateral to be returned to clients the following day. The *Total Net Balance (Debits)* represented the total amount of cash collateral to be called from clients the following day.
216. If a client had a *Cash Excess*, BBYL would return cash collateral equal to the *Cash Excess* on the trading day following generation of the Excess/Shortage Report. If a client had a *Cash Shortage*, BBYL would make a margin call for an amount equal to the *Cash Shortage* the following day and initiate a drawing from the client's CMA. Example Excess/Shortage Reports are set out in the table below.

Table 6: Excess/Shortage Reports

Date generated	Title date	Records	Document at
After COB 14 May 2015	14 May 2015	Cash collateral to be paid/returned on 15 May 2015	CE 122

Date generated	Title date	Records	Document at
After COB 15 May 2015	15 May 2015	Cash collateral to be paid/returned on 18 May 2015	CE 4
After COB 18 May 2015	18 May 2015	Cash collateral to be paid/returned on 19 May 2015	CE 123

217. A "Daily Financial Statement" was automatically circulated by email to various BBY Group staff late each evening (or early the following morning). It set out:

- (a) *Carried Forward Ledger Balance*, being the aggregate amount of cash collateral held by ASX Clear for BBYL clients;
- (b) *Margin*, being that day's ETO margin requirement for BBYL clients; and
- (c) *Utilised Collateral*, being the aggregate collateral value of non-cash collateral held by ASX which could be utilised to satisfy the ETO margin obligation of BBYL clients (this is less than the market value of that collateral, as explained in paragraph 83 above); and
- (d) *Cash Excess* (in the case of a positive value) or *Cash Shortage* (in the case of a negative value) being the difference between:
 - (i) the aggregate of the *Carried Forward Ledger Balance* and the *Utilised Collateral*; and
 - (ii) that day's *Margin*.

Example Daily Financial Statements are set out in the table below.

Table 7: Daily Financial Statements


Date generated	Title date	Records	Document at
After COB 15 May 2015	COB 15 May 2015	Cash collateral held by ASX Clear and the aggregate ETO margin to be called on 18 May 2015	Appendix 133
After COB 18 May 2015	COB 18 May 2015	Cash collateral held by ASX Clear and the aggregate ETO margin to be called on 19 May 2015	Appendix 134

218. The "**Trial Balance**" entitled "Current Trial Balance" was generated from GBST DCA at about 8.00 am the morning after the relevant trading day and listed each account in the ETO Ledger (including but not limited to client accounts) and recorded the balance for each account (that is, a debit or credit amount). That amount was equal to the *Ledger Balance* recorded in the Excess/Shortage Report for each client account. The Trial Balance also included the account "ACH". This is a reference to "Australian Clearing House", the former name of ASX Clear. The balance for the "ACH" account should reflect the value of cash collateral held by ASX Clear for all BBYL clients. The credit balances of individual client accounts recorded on the Trial Balance should represent the amount of cash collateral held by ASX Clear referable to those clients. BBYL commission is accounted for by the "COM" accounts. Example Trial Balances are set out in the table below.

Table 8: Trial Balances

Date generated	Title date	Records	Document at
Morning of 15 May 2015	15 May 2015	ETO Ledger account balances prior to Daily Journaling	CE 124
Morning of 19 May 2015	19 May 2015	ETO Ledger account balances prior to Daily Journaling	CE 125

219. The difference between the *Cash Excess* or *Cash Shortage* reported in the Daily Financial Statement and the overall *Net Balance* recorded in the corresponding Excess/Shortage Report produced from GBST DCA is attributable to brokerage, commission and fees which have been debited by BBYL to its clients' ETO Ledger accounts resulting in a greater *Cash Shortage*, or lesser *Cash Excess*, being reported in the Excess/Shortage Report than the Daily Financial Statement.
220. Debits for brokerage, commission and fees also appear in "**Trading, Position and Financial Statements**" generated from GBST DCA daily and provided to ETO clients by mail or email. Among other things, this document sets out for the relevant client:
- the particulars of ETOs bought or sold during the course of the previous trading day, beneath the heading "*Trading Confirmation*";
 - the particulars of open option positions held by that client, beneath the heading "*Current Open Position Details*"; and
 - beneath the heading "*Financial Details*":




- (i) the *Brought Forward Balance* which, as a result of the journaling process described in paragraphs 221–224 below, will equal the client's ETO margin obligation for the prior trading day;
- (ii) where the client executed a trade on that day, the premiums payable by or to the client for those ETOs and the GST and fees payable in respect of them;
- (iii) *Cash In/Out* reflecting the *Cash Postings* since the previous statement (i.e., amounts that have been "transferred" to the Equities Ledger as part of the Daily Journaling process described in paragraph 221 below);
- (iv) the *Carried Forward Balance* being the *Brought Forward Balance* after accounting for premiums, fees, commissions, GST and *Cash In/Out*;
- (v) the *Initial Margin* being the client's ETO margin obligation for the following trading day;
- (vi) *Utilised Collateral* being the amount of non-cash collateral to be utilised to secure the *Initial Margin*;
- (vii) *Cash to Cover Margins* being the amount of cash collateral (if any) required where there was insufficient non-cash collateral to meet the *Initial Margin* requirement; and
- (viii) *Excess/Shortage* being the *Carried Forward Balance* less any *Cash to Cover Margins*. If this was a debit amount, it represented the amount of cash collateral to be called the following day. If this was a credit amount, it represented the amount of cash collateral to be returned the following day. It can be seen, for example, that the Trading, Position and Financial Statement for client account 141389 (CE 127) records a *Shortage* of \$1,137.00, equal to the *Net Balance* for that account reported in the Excess/Shortage Report generated on 15 May 2015 (CE 4).

Example Trading, Position and Financial Statements are set out in the table below.

Table 9: Example Trading, Position and Financial Statements

Date generated	Title date	Records	Document at
After COB 14 May 2015	14 May 2015	Summary of an ETO client's open positions, ETO Ledger balance and ETO margin to be called on 15 May 2015	CE 126




Date generated	Title date	Records	Document at
After COB 15 May 2015	15 May 2015	Summary of an ETO client's open positions, ETO Ledger balance and ETO margin to be called on 18 May 2015	CE 127
After COB 18 May 2015	18 May 2015	Summary of an ETO client's open positions, ETO Ledger balance and ETO margin to be called on 19 May 2015	CE 128

221. The *Cash Postings* set out on clients' Trading, Position and Financial Statements generally include an item that includes the words "*DCA to SHARES*". This is because each morning at about 10.00 am the previous trading day's *Excess/Shortage* was cleared from the ETO Ledger account in GBST DCA for each client and "transferred" to the corresponding client's account in the Equity Ledger in GBST Shares (the Daily Journaling). If a client's ETO Ledger account was in an *Excess* position, the *Excess* was debited from the client's ETO Ledger account and credited to the client's Equities Ledger account. If a client's ETO Ledger account was in a *Shortage* position, the *Shortage* was credited to the client's ETO Ledger account and debited from the client's Equities Ledger account. This process, shown diagrammatically in section 3.2.2 of the CSA Report, was undertaken because:
- (a) GBST DCA received a data feed from the ASX which allowed it to calculate the value of open option positions and equipped it to calculate ETO margin obligations; however
 - (b) GBST Shares was able (and GBST DCA was not able) to generate the CMA File required by the CMA Banks to process deposits to, and withdrawals from, CMAs.
222. In order to transfer the *Excess* or *Shortage* from the ETO Ledger to the Equities Ledger, GBST DCA generated a file containing the journal entries to be posted which was then "loaded" into GBST Shares.
223. A summary document known as the "**Worksheet Postings Batch Proof List**" was generated from GBST DCA which also listed the journal entries to be posted to GBST Shares by client account number. Because it is the *Excess* or *Shortage* that is "transferred" to the Equities Ledger, the Worksheet Postings Proof List records the *Excess* (as credits) or *Shortage* (as debits) for each client account. Example Worksheet Postings Batch Proof Lists are set out in the table below.

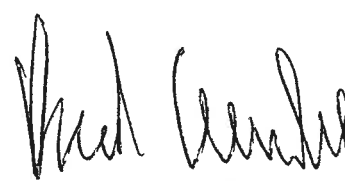
Table 10: Worksheet Postings Batch Proof Lists

Date generated	Title date	Records	Document at
Morning of 15 May 2015	15 May 2015	Entries to be journalled to GBST Shares as part of Daily Journaling on 15 May 2015	Appendix 135
Morning of 19 May 2015	19 May 2015	Entries to be journalled to GBST Shares as part of Daily Journaling on 19 May 2015	Appendix 136

224. After the Daily Journaling process occurred, the balance of each client's account in the ETO Ledger would equal the client's cash collateral obligation in respect of ETO margin. This is because the *Excess* or *Shortage* had been "transferred" to the Equities Ledger. Any obligation for BBYL to return cash collateral, or for the client to pay additional cash collateral, would thereafter be recorded in the Equities Ledger as a "*Derivative Journal*" entry for that day. Debt collection activities (including withdrawals from client CMAs) would subsequently occur if a client's Equities Ledger account had a debit balance.
225. A document entitled "**Statement of Transactions**" generated from GBST Shares recorded the list of transactions on a client's Equities Ledger account. An example Statement of Transactions is **CE 112**. This document is akin to an account statement. Among other things, it records:
- BBYL's obligation to return cash collateral for ETO margin (as "*Derivative Journal*" credits);
 - the client's obligation to pay additional cash collateral for ETO margin to BBYL (as "*Derivative Journal*" debits);
 - BBYL's obligation to pay clients the proceeds upon settlement of equities sales (as entries beginning with the word "*Sold*" and indicating the ASX symbol for the sold instrument and the number and price of instruments sold);
 - the client's obligation to pay BBYL upon settlement of equities purchases (as entries beginning with the term "*Bght*" and indicating the ASX symbol for the purchased instrument and the number and price of instruments purchased); and
 - deposits to and withdrawals from client CMAs (as entries beginning "*Dep*" or "*Wdl*" respectively).

Daily payment cycle

226. At about 10.30 am on the morning of each trading day, BBYL was required to settle with ASX Clear:

- (a) the net payable or receivable CMM cash collateral for the day;
 - (b) the net payable or receivable collateral for ETO margin for the day; and
 - (c) the net payable or receivable for Equities settlements for the day.
227. BBYL would take steps to recover amounts receivable from clients in respect of ETO margin and Equities settlements which BBYL had settled with ASX Clear and ASX Settlement at about 10.30 am that morning. It appears that:
- (a) CMA Files for each CMA Bank were produced from GBST Shares and communicated to the relevant CMA Banks each day. Those funds would be received by RTGS later that day; and
 - (b) each trading day BBYL would prepare a "DE File". "DE" stands for "direct entry". My understanding is that the DE File was a file similar to the CMA Files (in that it contained instructions to withdraw funds from client accounts), but was uploaded to the St George online banking portal in order for direct debits to be initiated by St George in respect of accounts held at a variety of other banks. It appears that that these funds were generally received the following business day.
228. BBYL managed its ETO margin settlement through a series of daily transfers between:
- (a) the Facilitation Account, in respect of which St George provided an overdraft facility with a limit of \$8,000,000 (to be used by BBYL for clearing purposes);
 - (b) the General Account;
 - (c) the '541 Account; and
 - (d) prior to about February 2015, the ETO Trust Account and the Equities Trust 2 Account into which ETO client monies and Equities client monies respectively were segregated overnight.
229. A copy of a spreadsheet workbook used by BBY Group staff to record payments to and from these accounts (among others) from 1 July 2013 to 31 December 2014 is **CE 114 (the 2013/14 Bank Movements Workbook)**. A copy of a spreadsheet workbook used by BBY Group staff to record payments to and from these accounts (among others) from 2 January 2015 to about 28 May 2015 is **CE 130 (the 2015 Bank Movements Workbook)**.
230. BBYL's daily funding patterns changed in about March 2015, following a review by the ASX of BBYL's dealings with its Equities and ETOs client monies (refer to section 6.2.4 of the CSA



Report). My staff have set out these funding patterns in **Appendices 53–56** of the CSA Report. In summary, it appears that from about March 2015:

- (a) the Facilitation Account was used to settle amounts (whether receivable or payable) for CMM, ETO margin and Equities settlements with ASX Clear and/or ASX Settlement at about 10.30 am each morning;
- (b) amounts payable by BBYL in respect of ETO margin or Equities settlements were transferred from the '541 Account to the Facilitation Account via the General Account. It appears that this transfer occurred at about 2.30 pm each day (i.e., after the settlement referred to in sub-paragraph (a) above). **Appendix 119** contains examples of the emails sent daily by BBYL to St George in respect of daily settlement funding requirements. **Appendix 124** is a copy of a file note dated 13 January 2015 prepared by an employee of ASX which appears to record discussions with BBY Group employees about the daily operation of the Equities and ETOs business; and
- (c) amounts receivable by BBYL in respect of ETO margin or Equities settlements were paid from the Facilitation Account to the '541 Account.

231. BBYL's CMM obligation was met directly from the Facilitation Account from about March 2015. If the CMM obligation had increased from the previous trading day, an additional payment would be made by BBYL from the General Account to the Facilitation Account. Prior to about March 2015, BBYL made a complex series of daily payments of the gross amount of CMM which involved drawing on client monies in the '541 Account. This is explained further in sections 6.2.2 and 6.2.4 of the CSA Report, **Appendix 54** and in paragraphs 3.3.1.1 and 3.3.2.1 of the ASX Interim Report at **CE 1**.

232. My staff and I have been unable to conclusively determine whether CMA funds were always received in the '541 Account prior to reimbursement of the Facilitation Account (via the General Account). I note that:

- (a) BBYL has previously advised the ASX that it receives CMA funds for Equities settlements between 9.00 am and 10.30 am on the day of settlement. **CE 129** is ASX's request for information and BBYL's response;
- (b) the first spreadsheet in the 2013/14 Bank Movements Workbook (**CE 114**, described in paragraph 229 above) refers to a "*File upload*" in respect of CMAs at about 6.00 am each morning. It is not clear whether this is a reference to communication of the CMA File to the CMA Bank, or communication of the actual amount of receipts and deposits by the CMA Bank to BBYL; and




- (c) we were informed by BBY Group employees that Daily Journaling may not occur until as late as 10.20 am, in which case it would be highly unlikely that CMA funds could be received prior to settlement with ASX Clear.
233. In the ordinary course DE File funds would not be received from clients until the following business day.

End of day reporting

234. The reports I describe in paragraphs 235–237 below were generated at about 3.30 pm each trading day and emailed to various BBY Group staff.
235. The "**End of Day Report**" entitled "Trust Funds Requirements" (from GBST DCA) records the same information as the Start of Day Report but is generated after Daily Journaling has occurred. Because in the ordinary course any net obligation has been "transferred" to GBST Shares by this time, the *Trust Amount* for every client is nil in the End of Day Report. Example End of Day Reports are set out in the table below.

Table 11: End of Day Reports

Date generated	Title date	Records	Document at
15 May 2015	15 May 2015	Client ETO Ledger balances for 15 May 2015 after Daily Journaling	CE 131
18 May 2015	18 May 2015	Client ETO Ledger balances for 18 May 2015 after Daily Journaling	CE 40

236. The "**Detailed Trust Position Report**" (also referred to as the "**Equity/ETO client trust report**" in the CSA Report) was generated from GBST Shares. A copy of a document entitled "GBST Shares – Accounting with Shares Course Notes – Trust Processes", provided by BBYL by email to ASX in 2014 and which assists in understanding the Detailed Trust Position Report, is **Appendix 137**. The Detailed Trust Position Report records:
- (a) a list of client accounts in respect of which GBST Shares calculated an overall credit balance (representing an amount required to be held on trust by BBYL). For each such client account, the report shows:
- (i) as separate line items, individual journal entries (i.e., transactions) with a description (for example, "*Sold*" or "*Bght*" entries representing share sales or purchases, or "*Derivative Journal*" entries representing ETO margin payments);

- (ii) a corresponding *Value*, which appears to be the total dollar amount associated with that transaction (a negative value if BBYL was to account to the client, and positive if the client was to account to BBYL);
 - (iii) a *Trust* amount, often equal to the *Value*, which appears to be the *Value* after taking into account any amount standing to the credit of the client account when the transaction occurred (or deposits received thereafter). It appears that where there are multiple "outstanding" transactions, credits are applied against the oldest transaction first;
 - (iv) *Provision Req* ("provision required"), being the amount BBYL regarded itself as required to hold on trust for that client at the end of that trading day. If the client's Equity Ledger account had a credit balance (i.e., a negative value in the report), *Provision Req* is that credit amount. If the client's Equity Ledger account was in debit, *Provision Req* was nil for that client; and
- (b) a total *Provision Req* for clients with an overall credit balance.

Example Detailed Trust Position Reports are set out in the table below.

Table 12: Detailed Trust Position Reports

Date generated	Title date	Records	Document at
15 May 2015	15 May 2015	Amounts required to be held on trust for Equities and ETOs clients at the close of trading on 15 May 2015	CE 132
18 May 2015	18 May 2015	Amounts required to be held on trust for Equities and ETOs clients at the close of trading on 18 May 2015	CE 5

237. The "**Trust Movements Report**" was generated from GBST Shares. This report records information including:

- (a) *Current Balance* being the balance of the '541 Account according to the ledger account corresponding to that bank account; and
- (b) *Required Balance* being the total *Provision Req* (reported in the Detailed Trust Position Report) for clients for that day. This amount was referred to by BBY Group employees as the "**trust obligation**".

Example Trust Movements Reports are set out in the table below.

Table 13: Trust Movements Reports

Date generated	Title date	Records	Document at
15 May 2015	15 May 2015	Surplus or shortfall of the '541 Account compared to <i>Required Balance</i> at COB on 15 May 2015	Appendix 19
18 May 2015	18 May 2015	Surplus or shortfall of the '541 Account compared to <i>Required Balance</i> at COB on 18 May 2015	Appendix 138

238. After the Trust Movements Report was generated, BBYL would become aware (by inspecting the *Movement Required*, being the *Current Balance* less the *Required Balance*) that either:
- (a) the balance of the '541 Account was less than the aggregate amount that BBYL regarded it was obliged to hold on trust for its Equities and ETO clients. In this case BBYL would transfer funds from a House Account to the '541 Account so that the balance of the '541 Account was equal to the *Required Balance* reported in the Trust Movements Report (an **End of Day Deposit**). An End of Day Deposit may be required, for example, to replenish funds paid from the '541 Account to settle an Equities purchase at 10.30 am that day for a BBYL client who had not put BBYL in funds; or
 - (b) the balance of the '541 Account exceeded the amount that BBYL regarded it was obliged to hold on trust for its Equities and ETO clients. In this case the surplus was "swept" (i.e., transferred) to the General Account by way of:
 - (i) return of monies paid into the '541 Account from House Accounts on prior trading days to meet any deficiency in the '541 Account on that day; and
 - (ii) payment of interest, fees, commission and brokerage to BBYL,
 (an **End of Day Sweep**).

Daily Work Packs

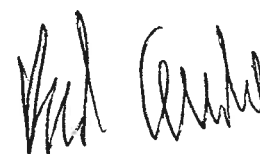
239. Several of the reports referred to in paragraphs 213–225 above were compiled with a variety of other documents into "daily work packs" at the end of each trading day (the **Daily Work Packs**). Compiling the Daily Work Pack was the final task for the day on the ETO Task List. The Liquidators have been unable to locate a Daily Work Pack for 18 May 2015.

Flow of cash collateral for ETO margin

240. In view of the matters to which I depose in paragraphs 212–238 above, I make the following observations about the manner in which BBYL paid cash collateral for ETO margin to ASX Clear (and collected the corresponding amounts from its clients):
- (a) at the time payment was made from the '541 Account to the General Account for the purpose of reimbursing the Facilitation Account for ETO margin paid to ASX Clear that day:
 - (i) it is possible that funds from CMA withdrawals had not been received in the '541 Account; and
 - (ii) in the ordinary course amounts to be directly debited from clients as part of the DE File would not have been received in the '541 Account,
 and in those circumstances:
 - (iii) depending on whether BBYL was a net payer or receiver in respect of ETO margin and Equities settlements that day (and those relative amounts), the balance of the '541 Account may have been deficient when compared to the total amount BBYL was required to hold on trust for its clients, at least until the End of Day Deposit was made; and
 - (iv) accordingly, by making such a payment from the '541 Account, BBYL may be regarded as having drawn on monies belonging to other Equities or ETOs clients, notwithstanding that in the ordinary course the required balance would be restored by an End of Day Deposit at the end of the day;
 - (b) until about March 2015, BBYL also paid funds from the '541 Account in order to meet its CMM obligations to ASX Clear (refer to section 6.2.4 of the CSA Report);
 - (c) settlement of ETO margin with ASX Clear occurred on a net basis so that on certain days no payment would be made from the '541 Account on account of ETO margin (and instead a payment would be made from the Facilitation Account to the '541 Account) notwithstanding that BBYL had made margin calls that day on many of its ETOs clients; and
 - (d) because only the net movement in ETO margin was settled between BBYL and ASX Clear (and between BBYL and its clients) each day, cash collateral held by ASX Clear in respect of a particular client and position was ultimately referable to a long series of payments and receipts from the time the position was opened.

Monies received on and from 19 May 2015 in respect of ETO margin

241. The Receivers and their staff have prepared a document, a copy of which is **CE 31**, which reconciles funds transfers into and out of the '541 Account in the period 18 May 2015 to 31 August 2015 (inclusive) with amounts actually payable or receivable in that period (the **Receivers Reconciliation**). Although this document is marked "draft" I am informed by the Receivers that they do not intend to undertake any further reconciliation work.
242. The Liquidators are informed by the Receivers that the principal sources of information on which they have relied in preparing the Receivers' Reconciliation are:
- (a) the bank statements for the '541 Account for the relevant period; and
 - (b) interrogation of GBST Shares with the assistance of GBST (the vendor), Agility Applications (the provider of third party reporting software) and Fiona Bilton (the BBYL Operations Manager, responsible for the Equities and ETOs product line), in order to determine the nature of amounts paid and received in the relevant period.
243. Based on review by my staff of the Receivers Reconciliation and the books and records of BBYL (including, in particular, the reports referred to in paragraphs 213–225 above), I set out in paragraphs 244–251 below what the Receivers' Reconciliation appears to record and the extent to which the Liquidators have attempted to verify that information.
244. The Receivers' Reconciliation sets out, in the first five columns, transaction information appearing on the bank statement for the '541 Account for that period. Each deposit and withdrawal has, after being broken down into any underlying payments to which it is referable, been allocated by the Receivers to one or more of columns from *Debtor Receipt to Bank Transfers*, each of which relates to a particular category of payment. Those categories of payment include the following:
- (a) *Debtor Receipts* being payments made to BBYL by clients who are debtors to BBYL;
 - (b) *Equity Settlements* being payments made by clients to BBYL of the purchase price for Equities settlements;
 - (c) *Equity Sale Proceeds Return* being payments of the proceeds of Equities sales made by BBYL to clients who had sold equities;
 - (d) *Margin Call (From Client)* being payments made by clients to BBYL, or amounts withdrawn by BBYL from client bank accounts, in respect of ETO margin calls;
 - (e) *Margin Return (To Client)* being returns of excess cash collateral by BBYL to ETO clients; and



- (f) *Other Client Related Transactions* being a residual category for payments which the Receivers have concluded are being made to or from clients but which do not fall within another category.
245. The Receivers' Reconciliation lists 197 amounts in the column *Margin Call (From Client)*, relating to the period 19 May 2015 to 31 August 2015 inclusive (the Post-appointment Margin Receipts). Those cells have been shaded red and classified as "invalid margin calls" by the Receivers. We are informed by the Receivers that these payments have been classified in this way because:
- (a) BBYL's ASX market participation was suspended by ASX Clear at about 10.50 am on 18 May 2015 (that is, after settlement of the ETO margin obligation that day with ASX Clear, which was in fact a receivable);
 - (b) the Post-appointment Margin Receipts are referable to ETO margin payments that BBYL would have been required to settle (after netting any collateral to be returned) with ASX Clear at about 10.30 am on 19 May 2015;
 - (c) BBYL did not in fact settle its ETO margin obligation with ASX Clear on 19 May 2015 (or at any time thereafter) despite receiving certain Post-appointment Margin Receipts on 19 May 2015 from certain clients; and
 - (d) other than in respect of clients with account numbers 146356 and 143213 ASX Clear held sufficient collateral to close out all open positions held by BBYL clients (in other words, no additional collateral was required by ASX Clear to close out open ETO positions except for those two clients where the shortfalls were \$3,090 and \$1,676 respectively).
246. I understand from discussions with the Receivers that the list of individual transactions corresponding to gross payments (including in respect of CMA withdrawals and deposits) have been populated by the Receivers using information obtained from GBST Shares which allows them to determine each client's participation in the overall amount of that gross amount.
247. Although the Liquidators have not had direct access to GBST Shares or GBST DCA, my staff have attempted to verify the Receivers' Reconciliation of the Post-appointment Margin Receipts using:
- (a) the bank statements for the '541 Account for the relevant period; and
 - (b) the Excess/Shortage Report generated on 18 May 2015, which shows the *Net Balance* (i.e., cash margin calls or returns) for clients on 19 May 2015.
248. The amount of each of the gross receipts listed in the *Credit* column of the Receivers' Reconciliation (taken from the bank statement) is equal to the sum of the *Totals* corresponding to each of the individual transactions that the Receivers have assigned to that gross receipt in the period 19 May 2015 to 31 August 2015. The *Total* for each line is the sum of the amounts allocated

to each column from *Debtor Receipt* to *Bank Transfers*. This shows that the full amount of receipts in the period 19 May 2015 to 31 August 2015 is accounted for in one of the columns from *Debtor Receipt* to *Bank Transfers* and that each appears to be referable to the underlying transactions set out in the *Transaction Description* column.

249. In the case of 180 of the 197 Post-appointment Margin Receipts, the amount specified in the column *Margin Call (From Client)* for that client is equal to the amount specified in the column *Net Balance* for that client on the Excess/Shortage Report generated on 18 May 2015 from GBST Shares (relating to the following trading day, 19 May 2015). This suggests that these Post-appointment Margin Receipts are in respect of ETO margin.

250. Of the remaining 17 Post-appointment Margin Receipts:

(a) two were received on 19 May 2015 in respect of *Client Account* 159697 in separate payments of \$7,734.30 and \$17,000.00 totalling \$24,734.30. The Excess/Shortage Report generated on 18 May 2015 (CE 123) indicates a debit *Net Balance* of \$22,830 for that client. The fact that two separate payments were made may be explained by:

- (i) the receipt of \$7,734.30 corresponding to withdrawal of the entire balance of the CMA linked to that client account; and
- (ii) an additional deposit by the client of \$17,000.00,

but we are unable to determine what the difference between the *Net Balance* and the total receipt (being \$1,904.30) relates to;

(b) one was received on 19 May 2015 in respect of *Client Account* 159421 in an amount of \$18,000 which the Receivers have allocated as:

- (i) a *Debtor Receipt* of \$4,165.93 (which corresponds to the Detailed Trust Position Report generated on 18 May 2015); and
- (ii) the balance being \$13,834.07 as *Margin Call (From Client)*.

The Excess/Shortage Report generated on 18 May 2015 (CE 123) records the client's debit *Net Balance* as \$10,823.69. That amount relates to ETO margin and I am unable to say what the balance of \$3,010.38 allocated by the Receivers as *Margin Call (From Client)* relates to;

(c) thirteen comprise part of a gross CMA receipt and have been allocated by the Receivers in respect of clients who had debit *Net Balance* on the Excess/Shortage Report generated on 18 May 2015 (CE 123) exceeding the amount of the receipt allocated. The Liquidators are of the opinion that the difference between the amount of the receipt allocated and the *Net*

Balance for these thirteen transactions may be attributable to an insufficient balance in the CMA to permit withdrawal of the entire amount of ETO margin called from each of those clients; and

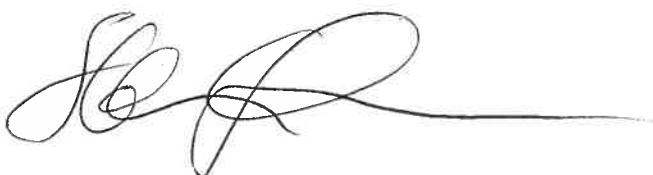
- (d) one was received on 28 May 2015 in respect of *Client Account* 160647 in an amount of \$14.73. This receipt appears, from the bank statement particulars, to have been a direct deposit by that client. The client had a debit *Net Balance* in the Excess/Shortage Report generated on 18 May 2015 of \$127.50. The Liquidators are unable to say why payment of only \$14.73 was made.
251. The Liquidators have not attempted to comprehensively reproduce or verify the reconciliation undertaken by the Receivers in view of the significant cost and expense of doing so (including by reason of the need to obtain access GBST Shares).

K The Martini Proposal

Background

252. On 6 November 2015 Mills Oakley, the solicitors for the Second Defendant, wrote to my solicitors advising that:
- (a) they act for Ms Beatriz Martini;
- (b) Ms Martini requested on 16 May 2015 that her bank transfer \$200,000 from her account to BBYL in connection with an application she had previously made for an allotment of shares in Medlab Clinical Limited as part of its initial public offering;
- (c) those funds were received by BBYL on 19 May 2015, two days after our appointment;
- (d) Ms Martini's position is that, in view of the decision of his Honour Justice Black in *Re MF Global Australia Ltd (in liq)* (2012) 267 FLR 27, it is uncontroversial that the amount of \$200,000 should be returned to Ms Martini as an amount paid in error within the meaning of regulation 7.8.03(6)(a) of the *Corporations Regulations* 2001 (Cth); and
- (e) Ms Martini accordingly requests that the Liquidators make an application to the Court that Ms Martini's claim (and any similar claim) be determined separately from the other issues in this proceeding and as soon as possible (the **Martini Proposal**).

A copy of that correspondence is **Appendix 115**. My solicitors responded by letter dated 23 November 2015, a copy of which is **Appendix 97**.




Identifying clients who may have 'paid in error'

253. In order to ascertain the identity of other clients of BBYL who may have similar claims to Ms Martini, my staff have examined the bank statements for each CSA corresponding to the Futures, FX, Saxo, IB and Other Product product lines in order to identify transactions in the period 18 May 2015 to 16 December 2015 which may be referable to deposits made by other BBYL clients in anticipation of future trading (**Relevant Deposits**).
254. My staff have attempted to determine whether such amounts were referable to deposits in anticipation of future trading (as opposed to, for example, debtor receipts) for the product lines other than Equities and ETOs by:
- (a) first, identifying receipts where the bank statement narrative appears to relate to a client deposit (for example, because it contains a client name or account number);
 - (b) then:
 - (i) in the case of amounts paid into FX and Futures CSAs, reviewing the corresponding Dealer Report for 15 May 2015; and
 - (ii) in the case of amounts paid into the IB Buffer Account, reviewing the IB client summary reports for 15 May 2015 for each of the Consolidated Accounts,

to ascertain whether that client was in a net debit or credit position at close of business on 15 May 2015.
255. In the case of amounts paid into the '541 Account corresponding to the Equities and ETOs product lines, my staff have inspected the Receivers' Reconciliation to identify payments by clients in that period which have been classified as *Other Client Related Transactions* because they are receipts which the Receivers have determined are not:
- (a) *Debtor Receipts*;
 - (b) *Equity Settlements or Equity Sale Proceeds Return*;
 - (c) *Margin Call (From Client) or Margin Return (To Client)*;
 - (d) *Dividends due to Clients*; or
 - (e) *Return of Funds, Bank Interest, Bank Transfers (Trustable) or Bank Transfers (Non-Trustable)*.
256. My staff have relied on the Receivers' Reconciliation but have also:


- (a) made the observations about the Post-appointment Margin Receipts described in paragraphs 249–250 above;
- (b) been informed by the Receivers that *Dividends due to Clients* were classified after reviewing shareholder information obtained through GBST Shares;
- (c) observed that receipts appear to have been allocated to the *Return of Funds, Bank Interest, Bank Transfers (Trustable)* and *Bank Transfers (Non-Trustable)* categories by the Receivers on the basis of the bank statement particulars; and
- (d) in respect of the transactions allocated by the Receivers to the remaining category (*Other Client Related Transactions*) — reviewed the Detailed Trust Position Report for the prior trading day (that is, generated two trading days prior to the receipt) to confirm whether the corresponding client was a net creditor or debtor to BBYL in respect of the Equities/ETOs product line on the trading day prior to receipt of the amount.

257. In a number of cases bank statements did not contain sufficient information to identify the client or clients in respect of whom deposits were made. In such cases my staff requested that St George trace the source of the relevant deposit. In some of those cases sufficient information was obtained from St George to identify the corresponding client account. In other cases we have been able to obtain only a BPAY customer reference number.
258. The Relevant Deposits that my staff have identified are set out in Schedule 2. Where we have identified a client account number corresponding to a receipt we have not included the account name for privacy reasons.

L Determining client entitlements in respect of client monies in particular CSAs

Identifying client monies

259. Based on the Liquidators' investigations, other than perhaps in relation to the Equities and ETOs product lines, it is difficult, if not impossible, to identify money in any particular CSA as belonging to any individual client.
260. First, the Liquidators have not identified any document in the nature of a trust account statement in relation to individual clients recording the contributions and withdrawals in respect of each client to or from a particular bank account. Statements issued to clients do not record the CSA in which any particular client funds are held. Rather, statements record the amount owing by BBYL to the client, or by the client to BBYL.
261. Secondly, other than, perhaps, for the Equities and ETOs product lines (discussed below) we have not identified any process or record of BBYL which constitutes a reliable reconciliation of the contributions and withdrawals in respect of each client with the amounts held in particular CSAs.

The CSA reconciliations performed by BBYL in respect of product lines other than Equities and ETOs, described in section 3 of the CSA Report, did not reconcile the balance of CSAs with the amounts required to be held by BBYL in respect of individual clients. Rather, they reconciled the amounts held in particular CSAs with the BBYL ledger account corresponding to that bank account.

262. In the case of Equities and ETOs, the process adopted by BBYL (described in paragraph 238 above and section 3.2.4 of the CSA Report) sought to ensure that at the end of each day the balance of the '541 Account was equal to the total of the amounts that the Detailed Trust Position Report recorded that BBYL was required to hold for its Equities and ETOs clients.
263. Thirdly, it would be an extremely time consuming and expensive exercise for the Liquidators to attempt to identify and trace funds deposited by each client into each individual CSA, and this would at the very least require the retrieval from banks of all bank statements in respect of each CSA since the establishment of those CSAs, assuming this is possible.
264. Fourthly, given the manner in which BBYL transacted the CSAs, including:
- (a) making payments through multiple bank accounts before the funds reached their ultimate destination;
 - (b) transferring funds between CSAs within product lines;
 - (c) transferring funds between CSAs corresponding to different product lines to meet cash requirements at particular points in time;
 - (d) transferring certain funds from CSAs into high interest bearing term deposit accounts; and
 - (e) making payments out of CSAs to counterparties on a net basis to reflect the net position of all clients' exposures to that counterparty,

it is difficult, if not impossible to definitively identify the client or clients in respect of whom payments were made out of, or into, particular CSAs.

265. I expand on some of these issues in paragraphs 266–270 below.

Deposits and withdrawals

266. The Liquidators' investigations have revealed the following in respect of the routine operations of the CSAs:

- (a) for the Equities product line and the ETOs product line, payments by clients to BBYL were made into the one CSA being the '541 Account (refer to sections 3.2.2 and 6.2.4 of the CSA Report). Other payments to and from that account included:
- (i) payments in respect of ETO margin and Equities settlements (via the General Account and/or the Facilitation Account);
 - (ii) receipts by way of funding from the Facilitation Account (and, in certain instances, from other CSAs) in order to ensure that BBYL had sufficient funds in the '541 Account to meet what BBYL regarded as the amount it was obliged to hold for Equities clients and ETOs clients; and
 - (iii) daily transfers in and out of other CSAs within the Equities and ETOs product lines, including:
 - (A) prior to 7 January 2015, overnight transfers of an amount equal to the "trust obligation" that BBYL determined to be owed to Equities clients and ETOs clients respectively, into separate CSAs (the Equity Trust 2 Account and ETO Trust Accounts respectively); and
 - (B) transfers to facilitate payments to clients from a chequing account;
- (b) for the Futures product line, payments by clients to BBYL were made into the Futures AUD CSA or one of the other Futures CSAs denominated in a foreign currency (see section 6.2.5 of the CSA Report). Payment was made by the counterparty to BBYL or by BBYL to the counterparty on a net basis. If a client closed out a futures contract profitably (see section 3.3.2 of the CSA Report), payment would only be received by BBYL from the counterparty if the amounts receivable by BBYL exceeded the amounts payable by BBYL on that day. Received funds would be deposited into the Futures AUD CSA or one of the other Futures CSAs;
- (c) for the FX product line, payments by clients to BBYL were made in Australian dollars or a foreign currency by direct deposit by the clients into an FX CSA denominated in the relevant currency, or transferred from a CSA designated to another product line, to an FX CSA, and then converted into the applicable currency (see sections 3.4.2 and 6.2.6 of the CSA Report). Following the sale of currency by a client, and after the amount of purchased currency had been deposited by the facilitating bank into the relevant FX CSA, the purchased amount would be transferred to the client from that CSA or transferred into a CSA referable to another product line in which the client intended to trade;
- (d) payments made by Saxo clients and IB clients to BBYL were often made into a "shared" CSA, being the WLP Omnibus Account (see sections 3.5.2 and 3.6.1 of the CSA Report).



In the case of the IB product line (as noted in section 3.6.2 of the CSA Report) payments made by clients to the WLP Omnibus Account were subsequently transferred to another CSA designated to the IB product line (see section 6.2.8 of the CSA Report). It appears that, at least in the majority of cases, payments to both Saxo clients and IB clients were made by BBYL from the WLP Omnibus Account; and

- (e) for the Saxo product line, payments by clients to BBYL were also made into the Saxo Buffer Account (see section 6.2.7 of the CSA Report). As noted in section 6.9 of the CSA Report and in paragraph 156 above, client monies transferred from BBYL to SCMA pursuant to the "1:1 funding agreement" included funds sourced from other product lines. When monies were returned by SCMA to BBYL following termination of the Saxo Agreements, BBYL (in addition to making payments to Saxo clients) deposited certain amounts in a variety of BBYL bank accounts that were not Saxo CSAs.

Transactions with House Accounts

267. As explained in section 6.2.2 of the CSA Report, there were many transactions between BBYL House Accounts maintained with St George and CSAs. The General Account was the "flow through" account in respect of ETO margin payments and received funds from the '541 Account and transferred funds to the Facilitation Account for that purpose. The General Account also provided funding to the '541 Account. The BBYL Facilitation Account was used to settle the daily market obligations and provide funding to the Equities and ETOs '541 Account.

Transfers between CSAs

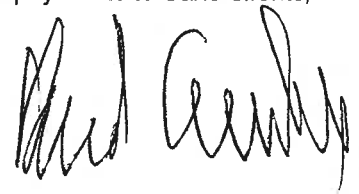
268. Some transfers between CSAs which the Liquidators have identified may be considered to be usual and in the ordinary course of trading. For example, as noted in section 3.3.2 of the CSA Report, clients would often request that funds be transferred from CSAs designated to a "non-Futures" product line to execute Futures trades.
269. However, as noted in section 6 of the CSA Report, the Liquidators have identified transfers of funds between CSAs that appear to have not been referable to the trading position of a particular client (or groups of clients) who originally deposited the funds or in respect of whom the CSA was maintained. Such transfers appear to have been made to meet significant payment obligations that arose from time to time.
270. BBYL utilised different software systems (which, other than for GBST Shares and GBST DCA, did not interact) and different trading and accounting processes for different product lines. Further, Equities and ETO accounting and reconciliation processes were undertaken in the Melbourne offices of BBYL, by the Operations team, whilst the accounting and reconciliation processes for all other product lines were undertaken in the Sydney offices of BBYL by the Finance team.




Accordingly, it is difficult to identify any clear process for tracking and reconciling transfers of funds between CSAs corresponding to different product lines.

Determining client claims

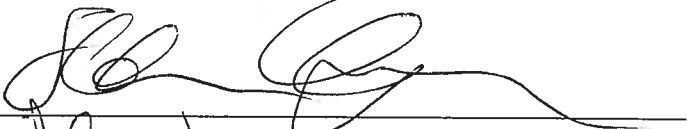
271. As summarised in section 4.1.2 of the CSA Report, the Liquidators have determined that the most reliable sources of information in relation to client claims are:
- (a) the Detailed Trust Position Report for the Equities and ETOs product lines (refer to sections 3.2.2 and 3.2.4 of the CSA Report);
 - (b) the Dealer Reports for each of the Futures and FX product lines (refer to sections 3.3.2, 3.3.4, 3.4.2 and 3.4.4 of the CSA Report);
 - (c) the Outstanding Clients Account file for the Saxo product line (refer to sections 3.5.2 and 3.5.4 of the CSA Report); and
 - (d) the client summary reports maintained by IB for the IB product line (refer to sections 3.6.2, 3.6.4 and 4.2.5 of the CSA Report).
272. In this regard, the Liquidators note that:
- (a) as explained in section 3.2.4 of the CSA Report, a detailed reconciliation was undertaken to ensure that there were sufficient funds in the '541 Account for all Equities clients and ETOs clients, on an aggregate basis, at the close of business each trading day;
 - (b) as explained in sections 3.3.4, 3.4.4, 4.2.2 and 4.2.3 of the CSA Report, the reconciliation process for the Futures and FX product lines was a "bank reconciliation" and not a reconciliation which compared monies held with client obligations. The bank reconciliations undertaken by BBYL matched bank transactions with journal entries in a ledger account which recorded deposits and withdrawals. Those journal entries were made regardless of whether the deposit or withdrawal related to client trading activities. The process did not seek to reconcile journal entries with the Dealer Report which reflected client trading. The Dealer Reports were automatically generated, summarised all client trading positions, and the same data presented in clients statements distributed to clients;
 - (c) as explained in sections 3.5.4 and 4.2.4 of the CSA Report, following termination of the arrangement between SCMA and BBYL (described in paragraphs 150–159 above), SCMA returned the funds it held in respect of BBYL's Saxo clients. As explained in section 3.5.4 of the CSA Report, while BBY Group staff sought to reconcile and track return of funds to clients, it appears that there were unreconciled transactions as at 15 May 2015 totalling over \$30 million. However, BBY Group staff responsible for the return of client monies created the Outstanding Client Accounts file to manually track payments to Saxo clients;



(d) as explained in section 3.6.4 of the CSA Report, BBYL did not maintain a client trust ledger to reconcile transactions affecting the IB CSAs (or the WLP Omnibus Account). However, as noted in sections 3.6.2 and 4.2.5 of the CSA Report, IB maintained records of sub-accounts referable to individual BBYL clients and it appears that the cash and other assets held in respect of client trading in the IB product line is held by IB.

273. My staff have identified, and set out in section 4.2 of the CSA Report, the number of clients within each product line (treating Equities and ETOs as a single product line for this purpose) who appear to have claims of less than \$25 and \$100 respectively. I estimate that the cost to administer each such claim would exceed the value of the claim.

AFFIRMED at Sydney

Signature of deponent 

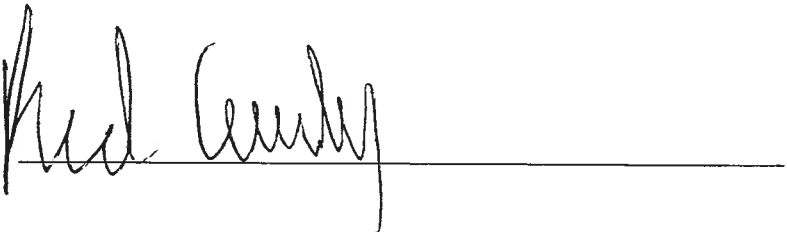
Name of witness David Greenberg

Address of witness Level 11, 5 Martin Place, Sydney

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for over 12 months.

Signature of witness 

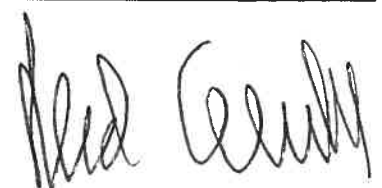
SCHEDULE 1

Counterparty agreements and disclosure documents

Product	Counterparty	Counterparty agreement or disclosure document	Document at
Equities	ASX Clear	ASX Clear Operating Rules	Appendix 86
ETOs	ASX Clear	ASX Clear Operating Rules	Appendix 86
Futures	ADM	Customer Agreement	Appendix 87
	ABN AMRO	Standard Client Agreement	Appendix 89
		Clearing Services Agreement	Appendix 90
		Customer Guidance Regarding Electronic Market Access to U.S. Markets	Appendix 91
FX	CMC Markets	BBYL Application for CFD Account	Appendix 92
	Halifax	Client Service Agreement	Appendix 93
Saxo	Saxo	Institutional Trading Agreement	Appendix 22
		White Label Trading System Agreement	Appendix 23
		ISDA Master Agreement	Appendix 94
		Letter of 9 December 2014	CE 115
		Letter of 19 December 2014	CE 111
IB	IB Account number F1145587	Financial Advisor Agreement	Appendix 98
		Interactive Brokers Arbitration Agreement	
		Product Disclosure Statement for Options Traded on the ASX	
		Product Disclosure Statement for Futures & Futures Options Traded on the Sydney Futures Exchange	
		Business Continuity Plan Disclosure	
		After-hours Trading Risk Disclosure	
		Day Trading Risk Disclosure Statement	




Product	Counterparty	Counterparty agreement or disclosure document	Document at
		Risk Disclosure Statement for Forex Trading and IB Multi-currency Accounts	
		Financial Services Guide	
IB	IB Account number I242781	Institutional Services Customer Agreement	Appendix 99
		Agreement for Customers Trading Sydney Futures Exchange Products	
		Interactive Brokers Arbitration Agreement	
		Euronext Client Agreement	
		Disclosure of Risks of Margin Trading	
		CFTC Risk Disclosure Statement for Futures and Options	
		IDA Risk Disclosure Statement	
		OCC Risk Disclosure Statement	
IB	IB Account number I322352	Institutional Services Customer Agreement	Appendix 100
		Agreement for Customers Trading Sydney Futures Exchange Products	
		Interactive Brokers Consolidated Account Clearing Agreement	
		Interactive Brokers Arbitration Agreement	
		Euronext Client Agreement	
		CFTC Risk Disclosure Statement for Futures and Options	
		Disclosure of Risks of Margin Trading	
		Floor/Pit Based Exchanges Risk Disclosure	
		Hong Kong Acknowledgements by Customer	
		Hong Kong Risk Disclosure Statements	
		IDA Risk Disclosure Statement	
		OCC Risk Disclosure Statement	

Product	Counterparty	Counterparty agreement or disclosure document	Document at
		Notice Regarding Pre-Arranged Trading on U.S. Futures Exchanges	
		Required Disclosures and Supplemental Agreement for Security Futures Trading at Interactive Brokers	



SCHEDULE 2

Relevant Deposits

#	Date	Deposit	Client account	Comment
Relevant Deposits into the Equities/ETOs CSA (553452541)				
1.	18/05/15	\$200,000.00	170972	This payment appears to correspond to Ms Martini. The Detailed Trust Position Report generated on 15 May 2015 (CE 132) does not contain any entry for Ms Martini.
2.	20/05/15	\$4,462.36	125598	The Detailed Trust Position Report generated on 15 May 2015 (CE 132) does not contain any entry for this client. This client's Equities Ledger balance appears to have been nil at that time.
3.	25/05/15	\$36.00	149603	The Detailed Trust Position Report generated on 15 May 2015 (CE 132) shows that this client had an Equities Ledger credit balance of \$312.40 and was accordingly not an Equities/ETOs debtor.
Relevant Deposits into the FX AUD CSA (553619268)				
4.	18/05/15	\$19,900.00	77600042	The FX Dealer Report generated on 15 May 2015 (CE 10) shows this client had <i>Withdrawable Funds</i> of \$63,633.77 and was therefore not an FX debtor.
5.	18/05/15	\$443.84	170550	The bank statement description for this deposit includes the reference "EQ170550". The Equities Detailed Trust Position Report generated on 15 May 2015 (CE 132) shows <i>Provision Req</i> of \$443.84 for this client. This deposit may have been in connection with a currency exchange associated with an Equities settlement.
6.	18/05/15	\$100,000.00	N/A	A bank trace was requested and we were informed by St George that this deposit was received from GoodiesFX Pty Ltd. We have been unable to identify an FX client account in this name.
7.	19/05/15	\$38,450.00	30900188	The FX Dealer Report generated on 15 May 2015 (CE 10) shows this client had <i>Withdrawable Funds</i> of \$1,514.21 and was therefore not an FX debtor.




#	Date	Deposit	Client account	Comment
Relevant Deposits into the FX EUR CSA (204226EUR01)				
8.	09/06/15	EUR 8,032.08	164524	My staff were contacted by Chloe Wong, a broker at APP Securities Pty Ltd and a former employee of the BBY Group, and informed that these payments are attributable to client with account number 164524.
9.	07/07/15	EUR 8,032.08		
10.	06/08/15	EUR 8,032.08		
Relevant Deposits into the Futures AUD CSA (553619284)				
11.	18/05/15	\$100,000.00	20500095	The Futures Dealer Report generated on 15 May 2015 (CE 8) shows <i>Total Equity</i> of \$327,511.27 and <i>Initial Margin</i> of \$13,654.27 for this client, the difference being \$13,654.43. It therefore appears that this client was not a Futures debtor.
12.	19/05/15	\$1,000.00	45500007	The Futures Dealer Report generated on 15 May 2015 (CE 8) shows <i>Total Equity</i> of \$4,739.52 and <i>Initial Margin</i> of \$5,321.92 for this client, the difference being -\$582.40. It therefore appears that this client was a Futures debtor for this amount but the balance of the deposit, \$417.60, may have been paid in anticipation of future trading.
13.	22/05/15	\$750.00	46400026	The Futures Dealer Report generated on 15 May 2015 (CE 8) shows <i>Total Equity</i> of \$16,219.45 and <i>Initial Margin</i> of \$13,974.24 for this client, the difference being \$2,607.45. It therefore appears that this client was not a Futures debtor.
14.	19/08/15	\$800.00	BPAY ref 403001316	A bank trace was requested and we were informed by St George that this deposit was received as the result of a BPAY payment by a BPAY customer with reference number 403001316.
Relevant Deposits into the Saxo Buffer Account (553619356)				
15.	18/05/15	\$500.00	BPAY ref 613000009	Bank traces were requested and we were informed by St George that these deposits were each received as the result of a BPAY payment by a BPAY customer with reference number 613000009.
16.	22/06/15	\$300.00		




#	Date	Deposit	Client account	Comment
17.	11/06/15	\$95.00	BPAY ref 616000766	A bank trace was requested and we were informed by St George that this deposit was received as the result of a BPAY payment by a BPAY customer with reference number 616000766.
Relevant Deposits into the IB Buffer Account (553619321)				
18.	18/05/15	\$150.00	U1168686	The IB client summary report for Consolidated Account I322352 for 15 May 2015 (CE 16) shows <i>Available Funds</i> of \$31,951.34 for this client. This client does not appear to have been an IB debtor. It is otherwise not clear what these payments relate to.
19.	19/05/15	\$50.00		
20.	20/05/15	\$50.00		
21.	21/05/15	\$50.00		
22.	15/06/15	\$2,000	U640273	The IB client summary report for Consolidated Account I322352 for 15 May 2015 (CE 16) shows <i>Available Funds</i> of \$10,404.59 for this client. This client thus does not appear to have been an IB debtor. It is otherwise not clear what this payment relates to.

The Receivers additionally classified a receipt of \$93.50 received in respect of client accounts 170308 and 144455 as comprising a *Debtor Receipt* of \$38.50 and an *Other Client Related Transaction* of \$55.00. The Detailed Trust Position Report generated on 15 May 2015 (CE 132) shows a debit balance of \$28,175.51 for account 144455, comprising individual "dishonour" items of \$38.50 and \$28,137.01.