
TRANSCRIPT OF PROCEEDINGS

S ECI 2020 02990

SUPREME COURT OF VICTORIA

COMMERCIAL COURT

MELBOURNE

THURSDAY 20 AUGUST 2020

(3rd day of hearing)

BEFORE JUDICIAL REGISTRAR MATTHEWS

IN THE MATTER OF IPO WEALTH HOLDINGS NO 2 PTY LTD
(ACN 620 610 157) (IN PROVISIONAL LIQUIDATION)

PUBLIC EXAMINATION

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1 MR GALVIN: Good morning, Judicial Registrar. Galvin here
2 again with Ms Papaleo for plaintiffs.

3 JUDICIAL REGISTRAR: Thank you, Mr Galvin. Mr Hay, you're
4 here?

5 MR HAY: Good morning, Registrar. I am indeed. Hay, H-a-y,
6 initials P.D., counsel for Mr Mawhinney.

7 JUDICIAL REGISTRAR: Thank you, Mr Hay. And, Mr Mawhinney, I
8 can see you there. Can you just confirm that you can
9 hear and that we can hear you, please.

10 MR MAWHINNEY: Good morning, Registrar. I can hear you loud
11 and clear. Thank you.

12 JUDICIAL REGISTRAR: All right. Thank you. All right, then.
13 Are there any preliminary matters before we resume
14 Mr Mawhinney's examination?

15 MR HAY: Yes, there are, Registrar. I understand that a number
16 of further documents have been sent to the court and,
17 indeed, to Mr Galvin's instructors. I'm instructed they
18 relate to item 11B of the schedule to the summons.
19 Registrar, you will recall there were - Mr Galvin raised
20 some questions in relation to due diligence documents
21 yesterday.

22 JUDICIAL REGISTRAR: Yes.

23 MR HAY: And that has caused us to review and just check what
24 was provided. The further documents that have been
25 provided weren't produced in the original bundle to the
26 court. Can I just provide the explanation to that
27 because I just want to make it clear that it wasn't
28 anything to do with a non-compliance by Mr Mawhinney. As
29 best as I can explain it myself - I'm not a computer
30 expert but there was a technical glitch in converting
31 documents provided to my instructors on a Google drive

1 system into the court Dropbox system.

2 In that process a number of the documents fell out.
3 We were unaware of that and we've now acted to correct
4 that as soon as possible. And so that is why there's a
5 number of further documents that have now been provided.
6 The error or the problem occurred in the systems of my
7 instructing solicitors and I just wanted to convey to the
8 court our apologies in relation to that and make it clear
9 that it was nothing to do with any non-compliance by
10 Mr Mawhinney with the summons.

11 JUDICIAL REGISTRAR: Thank you, Mr Hay. Mr Galvin, did you
12 want to raise anything about that?

13 MR GALVIN: No. I haven't had an opportunity to review the
14 documents. I can't really comment on them at the moment.

15 JUDICIAL REGISTRAR: No. I mean, obviously because of what's
16 occurred with them they're not in the examination book
17 either so it's a matter for you, Mr Galvin, how you wish
18 to deal with that, but I suppose it depends on how far we
19 get with Mr Mawhinney today.

20 MR GALVIN: Yes.

21 JUDICIAL REGISTRAR: Can I indicate, Mr Galvin, that the - I
22 have had some days next week freed up through another
23 examination no longer going ahead so if there is a need
24 to go beyond today that may be a possibility. I don't
25 need the response on that now. I'm just putting it out
26 there for the parties so that they're aware that that is
27 a possibility whereas it wouldn't have been up until
28 recently.

29 MR GALVIN: We're grateful for that indication. I'll
30 definitely take it up with my client and my instructors.
31 Thank you.

1 JUDICIAL REGISTRAR: Yes. And are there any other matters that
2 either of you wish to raise?

3 MR HAY: There also was - my learned friend will likely raise
4 this in any event. There also was the question of the
5 document which I'll describe as the complaint to the
6 Taxation Institute.

7 JUDICIAL REGISTRAR: Yes.

8 MR HAY: My instructions are that Mr Mawhinney is not able to
9 or willing to voluntarily produce that document for two
10 reasons, Registrar Matthews. The first being it's a
11 document - by its nature is a complaint to the Taxation
12 Institute in relation to a firm of accountants and
13 certain persons at that firm. It's not a document that
14 is intended or was ever intended for general public
15 consumption and it is simply a complaint that will no
16 doubt engender a confidential investigation process at
17 the Taxation Institute in response to the complaint.

18 So Mr Mawhinney doesn't wish to compromise for his
19 benefit, or for any other reason, such a process by
20 sharing it voluntarily, if you like. Secondly, the
21 document itself refers to another document which
22 Mr Mawhinney claims legal professional privilege in
23 respect of and so I wanted to make clear that he claims
24 privilege in relation to that document and there's no
25 waiver arising at all, and the appropriate course then,
26 in my submission, is that if he's to produce this
27 document he should be directed to.

28 The third thing I would say about - if there is to
29 be - if he is to be directed to produce the document,
30 Registrar, we would seek some limited form of orders to
31 keep it as confidential as possible. I'm conscious that

1 Mr Galvin's clients have their own job to do and so the
2 form of orders that I'd be seeking would not seek to
3 impinge on that, but they just relate to the fact that
4 this document is prepared for a confidential complaint
5 process in another forum and to accommodate that as much
6 as possible.

7 To that extent, if there was to be a direction that
8 he produce the document we would also seek directions
9 that only certain persons be at liberty to inspect and
10 take a copy of that document, and those persons would be
11 people that Mr Galvin considers would reasonably be
12 necessary to view the document for the purposes of the
13 liquidators doing their job, but that the document
14 otherwise be placed in a sealed envelope and marked "Not
15 to be opened without an order of the court".

16 JUDICIAL REGISTRAR: The notion of documents in sealed
17 envelopes these days is not quite how it works when the
18 documents are produced electronically. The court has a
19 form of orders that would achieve the same result and
20 that is that it not be available for inspection without
21 further order of the court other than to the court and to
22 certain persons that are (indistinct) in the order.

23 MR HAY: Indeed, and thank you for raising that.

24 JUDICIAL REGISTRAR: Yes.

25 MR HAY: I'm not a technical person when it comes to the
26 electronics these days, but, yes, that's the end to which
27 we would be seeking without wishing - without seeking at
28 all to impact on the job that Mr Galvin's clients have to
29 do.

30 JUDICIAL REGISTRAR: All right. Thank you, Mr Hay. Mr Galvin.

31 MR GALVIN: Yes, Registrar. As I apprehend the submission it

1 is that the document won't be produced voluntarily, but
2 it will be produced if the court makes a direction to
3 that effect which is what we've sought.

4 MR HAY: Yes.

5 MR GALVIN: And I don't understand there to be an objection or
6 an opposition to the direction. Only a suggestion that
7 there should be certain constraints imposed if a
8 direction is made - constraints imposed on the production
9 or access to the document. There's no question - we
10 don't seek the document for the purposes of general
11 public consumption - to use Mr Hay's expression - and we
12 don't seek to have him or rather his client waive any
13 legal profession privilege, but until we see the document
14 as liquidators, or provisional liquidators, of these
15 companies we can't say one way or another what will be
16 appropriate to be done with them and there shouldn't be
17 any constraint at this stage.

18 My clients are court officers and they'll act
19 accordingly and that should be expected. The reference
20 to the privilege document I'm not sure whether that
21 document is enclosed with the complaint. If it's a
22 document that has been provided to The Tax Institute then
23 it would follow obviously that any privilege has been
24 waived, but I take it from what I've heard that the
25 document hasn't been produced. It just - - -

26 MR HAY: No. I don't believe it has, no.

27 MR GALVIN: So it's simply been referred to and if it's been
28 referred to unless its content has been revealed in some
29 way then the privilege hasn't been waived and I don't
30 insist on its production. I understand that.

31 JUDICIAL REGISTRAR: I would have thought that in respect of

1 that now that we've had clarified that the document over
2 which privilege is claimed has not been produced to The
3 Tax Institute, but is a reference - there's a reference
4 to it in the complaint letter, whether or not privilege
5 has been waived in respect of that document can only be
6 determined by seeing the letter - the complaint letter
7 itself.

8 I think the point here is that in - what Mr Hay is
9 saying is that if the court makes a direction for the
10 production of the complaint letter Mr Mawhinney in
11 complying with that direction is not waiving privilege
12 over that document. Whether or not the privilege has
13 already been waived is a separate question.

14 MR GALVIN: Yes.

15 JUDICIAL REGISTRAR: That's how I see it.

16 MR GALVIN: Yes. With respect, I agree. Thank you.

17 JUDICIAL REGISTRAR: I would have thought that an order that
18 the document - it's the same with all of these documents
19 that the plaintiffs and their solicitors get access to as
20 part of the examination process. They're only able to be
21 uplifted by the plaintiffs and their solicitors. They're
22 produced under a compulsive process of the court and the
23 Harman undertaking would apply.

24 MR GALVIN: Yes, that's right, and that's why an order is
25 not - - -

26 JUDICIAL REGISTRAR: And I don't think there's anything
27 different here.

28 MR GALVIN: Yes. With respect, I agree with that, Registrar.

29 JUDICIAL REGISTRAR: Yes, thank you. I mean, the other thing
30 is that Mr Mawhinney has chosen to refer to this letter
31 on numerous occasions during the course of his evidence

1 and he's the one that brought it out there as it were.
2 MR GALVIN: Its content obviously goes - Mr Mawhinney has
3 concentrated a great deal on the imperfections in the
4 performance of Pinnacle Accounting and we would expect
5 this letter would shed some more detailed light on the
6 nature of those complaints and they're of fundamental
7 importance to the provisional liquidations.

8 JUDICIAL REGISTRAR: Yes. Yes, I accept that. All right,
9 then. Does anyone wish to say anything further about
10 that?

11 MR GALVIN: No.

12 MR HAY: Simply that reference to the complaint itself is one
13 thing, but there hasn't been reference to the document
14 that is then of itself referred to in the complaint, the
15 second document if you like.

16 JUDICIAL REGISTRAR: (Indistinct words) Mr Hay, yes. Yes,
17 thank you. All right, then. I will make the direction
18 that Mr Mawhinney produce to the court - - -

19 MR HAY: Registrar, before you do - - -

20 JUDICIAL REGISTRAR: Yes.

21 MR HAY: - - - do you want me to just give you a description
22 for use in the order of the document?

23 JUDICIAL REGISTRAR: Yes, please. Thank you.

24 MR HAY: It's entitled - this is on the basis that you're about
25 to order the production of the document - Complaint
26 Against Member of The Tax Institute. It bears a date of
27 14 August 2020.

28 JUDICIAL REGISTRAR: The Taxation Institute, is it?

29 MR HAY: The Tax Institute.

30 JUDICIAL REGISTRAR: Right. Thank you. Dated 14 August?

31 MR HAY: Correct.

1 JUDICIAL REGISTRAR: All right, then. When will that be
2 produced?

3 MR HAY: Subject to the court's direction, in compliance with
4 such direction we could produce it to the court very
5 shortly, electronically of course.

6 JUDICIAL REGISTRAR: Yes.

7 MR HAY: We have it available to provide. We would then be in
8 the court's hands and, indeed, Mr Galvin's hands, if he
9 wanted to take a moment to at least have an inspection of
10 the document so he can then decide or take instructions
11 as to how he wants to proceed.

12 JUDICIAL REGISTRAR: Thank you, Mr Hay. I'm just formulating
13 the direction. All right, then. So I'll make a
14 direction that Mr Mawhinney produce to the court the
15 complaint against a member of The Tax Institute dated
16 14 August 2020. The plaintiffs and their solicitors have
17 leave to uplift, inspect and copy the document.
18 Otherwise, and subject to further order of the court, the
19 document is not to be inspected by any other person.

20 So, Mr Hay, if your instructors could send that
21 through to my associate now. Given that I've made an
22 order that - now that the plaintiffs can uplift it, as a
23 matter of convenience it would probably assist if your
24 instructor could copy the plaintiff's solicitors on the
25 email. Because all that would happen otherwise is that
26 my associate would then forward it to them.

27 MR HAY: Yes, as the more efficient process of them uplifting
28 that document that would be fine. Thank you.

29 JUDICIAL REGISTRAR: Yes. Let there be no doubt that this
30 document is being produced at the direction of the court.
31 It's just mechanically giving effect to it in that way.

1 MR HAY: Yes, thank you. Well, we're in the process of doing
2 that now. So that should be with both the court and
3 Mr Galvin's instructors in a brief moment. It's really
4 up to my learned friend then as to whether he wishes to
5 stand down briefly or proceed.

6 MR GALVIN: I think it would be better to proceed and I'll have
7 a look at it over the break perhaps or at lunch. I
8 assume we'll have a break midmorning, Registrar, so it
9 might be then that I'll look at it - - -

10 JUDICIAL REGISTRAR: Yes.

11 MR GALVIN: - - - but I'll (indistinct words).

12 JUDICIAL REGISTRAR: Yes. That's fine, Mr Galvin. You're
13 ready to start then with Mr Mawhinney.

14 MR GALVIN: Yes.

15 JUDICIAL REGISTRAR: Thank you. All right, then.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 JUDICIAL REGISTRAR: Mr Mawhinney, I'll just remind you that

3 you are still under oath and that if you wish to claim

4 the privilege available to you under s.597(12) (a), which

5 is the privilege I explained to you in detail on Monday,

6 you'll need to say the word 'privilege' before you answer

7 the question. Now, can I confirm, please, Mr Mawhinney,

8 that you're alone in the room from which you're giving

9 evidence?---Yes, that's correct, Registrar, I am.

10 Thank you. And that you don't have any documents available -

11 open or with you?---That's correct, Registrar.

12 Other than, of course, the ones on your laptop that you've not

13 got open, yes?---That's correct.

14 All right. Thank you. Yes, thank you, Mr Galvin.

15 MR GALVIN: Thank you, Registrar. Mr Mawhinney - - -

16 JUDICIAL REGISTRAR: Sorry, Mr Galvin, there's one thing I

17 forgot. I'll just indicate for the benefit of the

18 observers present that if they could please keep their

19 microphones on mute and their cameras off, and also that

20 there's - with the exception of the transcript services

21 and my associate, there's to be no recording of the

22 examination. All right. Thank you, Mr Galvin.

23 MR GALVIN: Thank you, Registrar. (To witness) Mr Mawhinney,

24 you've mentioned KPMG during the course of your evidence

25 and your having engaged them to provide some advice in

26 relation to transaction of the IPO Group; you recall that

27 evidence?---Ah, privilege. Ah, I advised the nature of

28 their engagement was a secondment. Ah, it wasn't to

29 provide advice specifically in relation to the IPO Wealth

30 Group; however, the nature of that secondment, ah, meant

31 that we did obtain feedback from them in relation to

1 transactions relating to the IPO Group.
2 Have they put any of that feedback in writing?---Ah, privilege.
3 MR HAY: Objection. The objection is as to legal professional
4 privilege. He's not obliged in this process to answer
5 questions that would cause him to divulge information
6 that is so privileged, and these questions are pursuing
7 that line of investigation.

8 JUDICIAL REGISTRAR: Mr Galvin, I was a bit distracted by
9 finishing in my own notes the direction that I gave
10 before, and I didn't hear the beginning of that sequence
11 of questions.

12 MR GALVIN: What I was asking Mr Mawhinney was whether the
13 observations or comments that had been made by KPMG in
14 relation to Pinnacle's performance have been expressed in
15 writing. Obviously that's not asking him to give up any
16 legal professional privilege in anything. I've just
17 asked him whether information has been expressed in
18 writing, and it's not even, as I understand it,
19 information of a legal nature. If it is, I haven't asked
20 him for the substance of it.

21 JUDICIAL REGISTRAR: Yes, I accept that. That question is
22 allowed.

23 MR GALVIN: Mr Mawhinney, have the views of KPMG that you just
24 mentioned been expressed in writing to your
25 knowledge?---Privilege. I'm not across all the
26 correspondence between our finance team and KPMG, so I -
27 I can't answer the question specifically.

28 So there is written correspondence, is there, with KPMG on the
29 subject matter of the accounting processes of the IPO
30 Group?---Um, privilege. There is correspondence with -
31 ah, in relation to transactions that relate to the IPO

1 Group, yes.

2 And who are the parties to that correspondence? What are their
3 names?---Ah, privilege. Do you mean KPMG parties
4 or Mayfair parties?

5 Both?---Ah, privilege. At KPMG, um, ah, Belinda Cheesewright
6 is their tax partner. Andrew Mascara - - -

7 I'll just ask you if any of these people that you name is a
8 lawyer, would you please indicate so?---Privilege.

9 Certainly. The names I'm providing, I don't believe, to
10 the best of my knowledge, are lawyers. So Belinda
11 Cheesewright is the tax partner. Andrew Mascara, I
12 believe, is a partner, as well. Ah, we have had, ah,
13 Tiffany Lee, ah, and Sam Benedict, ah, all from KPMG. Ah,
14 and - sorry - there was a fifth one, Kate. I just can't
15 remember Kate's surname. My apologies. On the Mayfair
16 side, ah, the information was provided to - ah, depending
17 on the email, of course, not everyone was necessarily
18 copied in on that correspondence, ah, but it was provided
19 to Lydia Lee, ah, provided to Bridgette Pennetta, I
20 believe to Cindy Huang, ah, myself, and, I believe, Greg
21 Wallace, ah, was copied in on some but limited
22 correspondence.

23 What is Greg Wallace's role again? I know you've said that,
24 but I've forgotten. Could you please repeat
25 that?---Yeah. Privilege. Mr Wallace - ah, his role in a
26 business development capacity.

27 I call for production - I'll seek a direction (indistinct)
28 production of the correspondence that's just been
29 referred to.

30 JUDICIAL REGISTRAR: Yes. Thank you, Mr Galvin.

31 MR GALVIN: (Indistinct) specific, perhaps. It's all

1 correspondence between KPMG and the Mayfair Group
2 relating to the accounting affairs of IPO Group.

3 JUDICIAL REGISTRAR: Mr Hay, I'm not sure if you wish to say
4 anything about that, but such documents would seem to be
5 me to plainly go to the examinable affairs of the
6 companies.

7 MR HAY: As my learned friend has described them, we would need
8 the opportunity - as in, my instructing solicitors would
9 need the opportunity to review all such documents first.
10 I'm aware of the precise way Mr Galvin has called for
11 production of the documents; however, my client has a
12 right to ensure that there's no documents that are of the
13 nature of legal advice included in such documents, and we
14 would need to review them for that purpose.

15 JUDICIAL REGISTRAR: Yes. Well, in the usual way, if there are
16 any documents over which privilege is claimed, they
17 should be identified separately - - -

18 MR HAY: Yes.

19 JUDICIAL REGISTRAR: - - - and a list provided so that the
20 plaintiffs have an opportunity to test that if they wish
21 to do so.

22 MR HAY: Indeed.

23 JUDICIAL REGISTRAR: Yes. All right.

24 MR HAY: That process may take some time. I have no idea of
25 what volume of documentation is contemplated in this
26 process, so I'm - - -

27 JUDICIAL REGISTRAR: Well, perhaps over the - - -

28 MR HAY: - - - (indistinct) we can do that.

29 JUDICIAL REGISTRAR: - - - course of a break in the
30 examination, Mr Hay, your instructions could get some
31 instructions from Mr Mawhinney which would then enable me

1 to put a timetable in relation to that.

2 MR HAY: We'll endeavour to do that. If we're at liberty to
3 speak with Mr Mawhinney about that, that would be
4 conducive to providing some estimate.

5 JUDICIAL REGISTRAR: Yes. I don't have an issue with that. Do
6 you, Mr Galvin?

7 MR GALVIN: No, Registrar.

8 JUDICIAL REGISTRAR: All right. Thank you.

9 MR GALVIN: (To witness) Mr Mawhinney, Pinnacle, I think,
10 describes itself as an accounting and a legal provider;
11 is that your understanding?---Privilege. My
12 understanding - it's accounting, tax and legal advisory
13 firm.

14 Can you tell me how many partners there are in the firm?---Ah,
15 privilege. To the best of my knowledge, there are two.

16 That's Ms Fairbanks and Mr Van Wegen; is that
17 correct?---Privilege. That's correct.

18 And do you know how many staff work in the firm apart from
19 them?---Ah, privilege. I, ah, have not met all of them,
20 ah, and I don't know them all by name. Ah, I don't know
21 the exact number, but I would assume that it's at least
22 eight to 10.

23 Well, what's the basis for that assumption? Is that just a
24 guess, is it?---No. Privilege. Based on correspondence
25 that I've had from various staff members over the - the
26 two years or so that we've been engaged with them, ah, I
27 roughly estimate that there would be around eight to 10.

28 Now, the other day - I can't recall if it was yesterday or
29 Monday, but I think it Monday, actually - you mentioned
30 that the Dye & Co report - and I think you might've been
31 referring to the second report - reported that about \$42m

1 had gone from IPO Wealth Holdings Group into the Mayfair
2 Group and almost exactly \$42m had been returned by
3 the Mayfair Group to the IPO Wealth Group. Do you recall
4 giving that evidence?---Ah, privilege. I do.

5 Could I ask the associate, please, to bring up the court book
6 and go to page - I'll just see what it is - p.394, I
7 think. No, that's not the right one. Just bear with me.
8 Maybe Ms Papaleo can help me. I'm looking for the
9 receiver's second report. I can't quite put my finger on
10 it at the moment.

11 MS PAPAEO: It's p.461.

12 MR GALVIN: Thank you. Could we go to p.462. Just scroll
13 through that, please. Now, just pausing there, please,
14 what I'd like you to do, Mr Mawhinney, please, as the
15 associate scrolls through the document, identify the
16 section that you had in mind where there was a reference
17 to 42m going in and 42m going out?---Privilege. No
18 problem. It is a page with a table on it.

19 All right?---Privilege. That is the table there.

20 I see. And where is the 42m coming in and 42m going
21 out?---Privilege. If you sum the rows that are not
22 highlighted, ah, you'll find that, ah, both those, in
23 'receive money' and in 'spend money' - ah, they're
24 calculated to, I believe, about \$43.3m.

25 So you added that up yourself, did you?---Privilege. Ah,
26 correct.

27 All right. Now, some documents have been provided, Registrar,
28 to the court this morning. There's a PDF version of a
29 spreadsheet which I'd like to have put up, if I may.

30 JUDICIAL REGISTRAR: Yes. My associate has some of these
31 documents that were forwarded.

1 MR GALVIN: There's probably only six or seven documents. I
2 don't know if it's a single page or a couple of pages,
3 but it's a spreadsheet. If the associate could identify
4 that document, please, and put it on the screen.

5 JUDICIAL REGISTRAR: Thank you.

6 MR GALVIN: Yes. That's the document. (To witness) Now,
7 Mr Mawhinney, what the receivers and provisional
8 liquidators have done is they have been through all of
9 the records of the IPO Group to identify the cash
10 transactions as between IPO Wealth Group, IPO Wealth
11 Holdings, which is the entity that had the bank account
12 in the IPO Group, and, on the other hand, Eleuthera
13 Group, which I think you said was the treasurer entity of
14 the Mayfair Group; is that correct?---Privilege. That's
15 right.

16 And when one goes to this table, you'll see that on 26 April
17 2017 there was a transfer to Eleuthera Group's bank
18 account of \$475,000. Do you see that?---Privilege. Yes,
19 I can see that.

20 There's no reason to doubt the accuracy of that, is
21 there?---Ah, privilege. Without seeing the bank
22 statement, I can't confirm that.

23 All right. You'll see that, over time, the running balance in
24 the far right-hand column rises and falls. If we could
25 just scroll slowly through, please, Mr Associate.

26 JUDICIAL REGISTRAR: Can you see the column with the rising
27 balance, Mr Mawhinney?---Yes, I can, Registrar.

28 So I think I described it incorrectly, but you know what I
29 mean?---I do.

30 MR GALVIN: Just pausing there for a moment, you can see that a
31 peak is reached on 25 September 2019 when the amount owed

1 by Eleuthera or the case paid to Eleuthera - the netting
2 of accounts between the entities results in Eleuthera
3 owing the IPO companies \$20.329m. Do you see
4 that?---Privilege. I see that; however, that relates to
5 that one entity. It doesn't net the total across
6 the Mayfair Group versus the IPO Wealth Group.

7 Yes, but it does deal with all payments between the Eleuthera
8 and IPO 1, doesn't it?---Just - in terms of cash
9 transfers, yes. In terms of accounting treatment, ah,
10 all the other entities within the Mayfair Group that lent
11 or borrowed money from IPO Wealth Group, ah, in the
12 accounts are recorded through that one Eleuthera loan.

13 All right. Can we scroll down further please. And you can see
14 at the end there that the - as at 14 May 2020 on a cash
15 basis - cash analysis - Eleuthera Group was indebted to
16 IPO or Eleuthera - yes. Eleuthera Group was indebted to
17 IPO in the sum of \$3.658m. Do you see that?---Privilege.
18 I can see the number there, yes, but, as I said, that's
19 just cash transactions. It doesn't account for the full
20 picture.

21 Now, I think you said that Eleuthera paid for their cloud
22 shares. Is that right? From when they were transferred
23 by IPO 3?---Privilege. That's correct.

24 Can you - if we scroll back through this please, Mr Associate,
25 through to about October 2019, which is about there. Can
26 you identify for the court which payments were payments
27 made by Eleuthera? Which cash payments were payments
28 made for the cloud shares?---Privilege. Certainly. The
29 - as you'll see on the right-hand side, the running
30 balance is reduced from 20 down to about three. As I
31 said, there are other Mayfair Group entities that cash

1 was paid from as well that concluded the clouds share
2 sale.

3 I'll just repeat the question. Could you please identify which
4 transactions represent payments for the cloud
5 shares?---Privilege. It will be the transactions from
6 the - around 4 October onwards including payments prior.

7 All of them? All of them?---Privilege. That's correct.

8 All right. Thank you. Now, I'll move to another topic, if I
9 may, Registrar. Just bear with me for a moment please.

10 Yesterday I asked you some questions about IPO 1's
11 investment. We could probably take that document down,
12 Mr Associate, if that's convenient. I asked you some
13 questions about IPO 1's investment in TF Global Markets.
14 Do you recall those questions?---Privilege. Ah, vaguely,
15 yes.

16 There were 800,000 shares which the company acquired in - which
17 IPO 1 acquired in TF Global Markets. Do you recall
18 that?---Privilege. Ah, I don't know if it was 800,000
19 shares. I know it was \$800,000 that was invested in the
20 company.

21 All right. Well, if we could go please to the - p.2637 of the
22 court book, Mr Associate. Thank you. And just scroll
23 through please that. That's your report, Mr Mawhinney,
24 in relation to your (indistinct) affairs in relation to
25 IPO 1. Now, I should say that there is a list of the
26 assets of this company which you provided in this report,
27 Mr Mawhinney, but I don't have - and I think that's
28 sideways in this document, but it's the correct way
29 around in the supplementary examination book. I wonder
30 if Mr Papaleo - Ms Papaleo could tell us exactly where in
31 the supplementary examination book you'll find that

1 table. In the meantime we'll just scroll through and
2 fine the page here.

3 MS PAPAEO: Could I speak to Mr Galvin briefly offline?

4 MR GALVIN: Yes.

5 JUDICIAL REGISTRAR: Certainly, Ms Papaleo.

6 MS PAPAEO: Thank you, Judicial Registrar.

7 MR GALVIN: The associate can stop scrolling at this point.

8 Thank you. Sorry about that, Judicial Registrar. Could
9 I ask the associate please to go to p.1597 of the
10 supplementary examination book.

11 JUDICIAL REGISTRAR: Yes. Thank you. Mr Galvin, can I just
12 indicate that my associate tells me that he has worked
13 out how to rotate individual pages without crashing the
14 7000-odd pages of the court book. So please let us know
15 if that assists.

16 MR GALVIN: Thank you. I'm very grateful. (To witness) Now,
17 Mr Mawhinney, do you see there - this is p.1597 of the
18 supplementary court book which is part of the ROCAP
19 (indistinct) R-O-C-A-P, for the transcript, you prepared
20 in relation to IPO 1 and included amongst the assets you
21 identified were 800,000 shares in TF Global Markets,
22 which I think you described as ThinkMarkets. Does that
23 ring a bell?---Privilege. Yes, it does.

24 And I asked you yesterday what became of the 800,000 shares.
25 Do you recall what you said in answer to
26 that?---Privilege. No, I can't recall.

27 Well I'll just read back to you from the transcript. You said
28 that, 'The company is going exceedingly well'. You're
29 talking about ThinkMarkets. 'It's a dividend paying
30 company. We have received dividend payments for that
31 particular business, and my understanding is just prior

1 to the receivers and managers appointment we sought to
2 divest ourselves of those shares to create some
3 liquidity, so that we could meet the loan repayments back
4 to the IPO Wealth Fund, and my understanding is the
5 receivers and managers then subsequently went ahead and
6 collected that in at the same price that we put the money
7 in. So there unfortunately was no uplift that took place
8 as a result of that had the shares been obviously held
9 longer'. Now, the decision to sell the shares was made
10 by you, wasn't it, before the receivers were
11 appointed?---Privilege. That's correct.

12 And you exercised an option to do that. Is that
13 right?---Privilege. It wasn't an option, no.

14 What was it?---Privilege. I made contact with, ah,
15 ThinkMarkets. Um, if I recall correctly, ah, I believe
16 one of the brokers representing them, ah, indicated that
17 if we needed to, ah, obtain some liquidity for the group,
18 then they might be interested in buying them back, um,
19 and that was the agreement that we struck.

20 And what agreement did you strike in relation to the price for
21 the shares?---Privilege. We agreed that it would be the
22 price that we put in would be what they would pay, given
23 the circumstances of wanting to get it turned around
24 quickly.

25 Now, that was a deal that you struck, wasn't it? Not the
26 receivers?---Privilege. Ah, I agreed with the company to
27 sell the shares back to them. Um, I executed the
28 paperwork, um, and I believe, subsequently, the money was
29 collected by the receivers because it was - - -

30 That's why - - -?---(Indistinct words.)

31 I suggest to you that the implication in your evidence

1 yesterday was that the receivers had sold the shares at
2 some sort of an undervalue. Is that what you were trying
3 to suggest yesterday when you said, 'My understanding is
4 the receivers and managers then subsequently went ahead
5 and collected that in at the same price that we put the
6 money in so there unfortunately was no uplift'? Do you
7 see that? That's what you said yesterday, isn't
8 it?---Ah, privilege. But that doesn't meant that I
9 alleged that the receivers sold that. If you listened
10 carefully to what I said yesterday I stated very clearly
11 that the receivers collected the moneys. I didn't state
12 that they sold the shares.

13 You said, 'And my understanding is the receivers and managers
14 then subsequently went ahead and collected that in at the
15 same price that we put the money in'. The implication is
16 you were trying to convey an impression to people who
17 might be listening that they sold the shares at that
18 price, weren't you?---Privilege. No, I wasn't. I think
19 my words are very clear.

20 So you agree, don't you, that you were the one who determined
21 the price at which they would be sold? When I say
22 determined, you were the one who reached the agreement
23 with ThinkMarkets?---Privilege. That's correct.

24 Thank you. Now, I was asking you questions yesterday about the
25 investment made by IPO 4 in Laundromat. Do you recall
26 that evidence?---Privilege. Again, vaguely I do.

27 All right. Could we go, please, to supplementary book 1602. I
28 will say, Registrar, that I actually updated my
29 references to supplementary court book references. So
30 I'll do that if it's not inconvenient because otherwise
31 we'll be wasting time for me trying - with me trying to

1 find the tables in the original court book.

2 JUDICIAL REGISTRAR: That's all right. All fine, Mr Galvin.

3 MR GALVIN: Thank you. So you'll see here, Mr Mawhinney, the
4 reference in your ROCAP relating to IPO 4 to Laundromat
5 and the estimated asset value - I think we determined
6 that these were shares that were held in Laundromat, not
7 a loan; is that right?---Privilege. Yes, they were
8 shares.

9 And your estimate of their value at the time you made this
10 report was \$395,629; is that right?---Privilege. That's
11 what the form says, yes.

12 Yes, but it was your estimate at that time; is that
13 right?---Privilege. That's correct, yes.

14 And that was also your estimate at the time of the March
15 quarterly investment portfolio summary?---Privilege.
16 That's correct. That's what it says on the form.

17 Do you recall how much of the money that was paid for these
18 shares - sorry, I withdraw that. Do you recall what the
19 price was that was paid for the shares?---Privilege. No,
20 I don't.

21 Was the purchase price paid for, or paid rather, with money
22 advanced by IPO 1?---Ah, privilege. Yes, it would have
23 been money borrowed from the IPO Wealth Fund. It was
24 subsequently invested/transferred to Laundromat in
25 exchange for those shares.

26 Yes, I understand you say that. Thank you. Now, could we go,
27 please, to the - I'm not sure if I asked you this
28 yesterday, but can you explain how the value of those
29 shares has been estimated by you in the quarterly
30 investment portfolio summary and in the ROCAP?---Ah,
31 privilege. The information entered into the ROCAP, ah, I

1 believe aligns with what's in our quarterly investment
2 portfolio summary, ah, to determine the estimated asset
3 value. The information that goes into the quarterly
4 investment portfolio summary follows our own industry
5 standard, um, valuation methodology for valuing unlisted
6 shares. Um, one way to describe that, if I may, is, ah,
7 with the likes of the Australian Stock Exchange you have
8 an active daily market. Um, in some instances minute by
9 minute a security is changing hands. Ah, the difference
10 between listed an unlisted securities, the timing between
11 which, um, those transactions take place can in some
12 instances be months compared to potentially minutes or
13 seconds. Where if - on the ASX, for example, a share
14 price is determined based on active buyers and sellers at
15 that particular point in time and the most recent
16 transaction will generally point to what the share price
17 is at that particular point in time. Ah, the nature of
18 unlisted securities is the transactions may be few and
19 far between, um, however, the price at which those - the
20 most recent transaction took place is generally one of
21 the best indicators of value of that particular security.

22 Thank you for that. Now, could you just listen to this
23 question, please. How did you reach the figure of
24 \$395,000 for these shares in the March quarterly
25 investment portfolio summary?---Ah, privilege. I believe
26 we would have referred to, ah, the most recent share
27 prices.

28 I'll just interrupt you. I don't want you to say what you
29 think you would have done. I'm asking you to say what
30 you remember actually doing?---Privilege. I recall there
31 being an email from Laundromat advising what price they

1 did a recent investment or the most recent investment
2 (indistinct) and that would have flowed through to our
3 quarterly portfolio summary.

4 I seek a direction for the production of that email, Registrar.

5 JUDICIAL REGISTRAR: So that's the production of the
6 email - - -

7 MR GALVIN: From Laundromat.

8 JUDICIAL REGISTRAR: From Laundromat.

9 MR GALVIN: How would you describe the email,
10 Mr Mawhinney?---Ah, privilege - sorry. Sorry, can you
11 hear me okay?

12 JUDICIAL REGISTRAR: Yes?---Yes. Privilege. Again this was
13 some time ago, but to the best of my recollection there
14 was an email from, ah - it was either Laundromat
15 themselves or their acting corporate advisers, um,
16 advising that, ah, they had either undertaken or were
17 undertaking a capital raising round and it mentioned the
18 share price in there. I can't remember exactly what that
19 share price was however.

20 All right, then. I'll make a - Mr Hay, did you want to comment
21 on that?

22 MR HAY: I'm still not clear on the descriptor of the email for
23 which production is sought. There was a bit of
24 background noise, sorry, just at our end when some
25 answers were given about that. To whom was the email
26 addressed?

27 WITNESS: Privilege. I can't remember who it was addressed to.
28 Ah, I believe it was a relatively generic email out to
29 their investor list. Again to the best of my
30 recollection this would have been easily probably 12
31 months ago now.

1 JUDICIAL REGISTRAR: Well, I think it's fairly - I've fashioned
2 a description and that is: the production of the email
3 from Laundromat or their corporate advisers regarding a
4 capital raising round and the share price. That should
5 be a sufficiently clear definition of what's required to
6 be produced for Mr Mawhinney. He clearly understands
7 which document it is that he's referring to. He probably
8 just needs time to locate it.

9 MR GALVIN: May I make a suggestion, Registrar? Before making
10 that direction I might be able to make this process a bit
11 simpler if I just ask Mr Mawhinney one further question.

12 JUDICIAL REGISTRAR: Yes.

13 MR GALVIN: Mr Mawhinney, apart from that email, is there any
14 other information or documentation on which you relied in
15 setting upon that figure of \$395,000?---Privilege. I
16 mentioned that - that figure, I believe, came from the
17 quarterly investment portfolio summary spreadsheet which
18 we record what we estimate the assets to be worth at that
19 particular point in time.

20 All right. Just one more (indistinct) from him. (To witness)
21 The figure in the quarterly portfolio summary was that -
22 what documents, apart from the email, did you rely upon
23 in reaching that figure?---Ah, privilege. It's the
24 figure that was entered into the quarterly portfolio
25 summary that we provided to Vasco which Vasco relies on,
26 ah, and, therefore, it's what we determine the asset to
27 be worth at that particular point in time.

28 I'm sorry, perhaps you didn't understand my question. My
29 question was what document did you rely upon in reaching
30 the number that was put into the March quarterly
31 investment portfolio? What documents and what

1 information?---Ah, privilege. We were relying on the
2 information provided by Laundromat on that email that I
3 referred to. Or am I not understanding your question,
4 sorry?

5 No. I think you're saying that you relied on that email; is
6 that right?---Ah, privilege. To the best of my
7 recollection that's right, yes.

8 Was there anything else that you relied upon for the purposes
9 of putting that figure in the investment portfolio
10 somewhere?---Ah, privilege. Off the top of my head, no,
11 I can't remember anything else that was factored in for
12 that particular valuation.

13 Thank you.

14 JUDICIAL REGISTRAR: Did you want to call for the document,
15 Mr Galvin?

16 MR GALVIN: I do. Yes, I will call for that document.

17 JUDICIAL REGISTRAR: All right, then.

18 MR GALVIN: In fact, what I might do is say all documents
19 relating to or evidencing the figure or supporting, I
20 suppose, the - no. Let me say that again. All documents
21 that are relied upon in support of the figure of
22 \$395,629.26 entered in the March quarterly investment
23 portfolio summary. That would be including but not
24 limited to the email that Mr Mawhinney's referred to.
25 Now, in fairness to Mr Mawhinney, it may be that that
26 document has already been produced, but I'm not in a
27 position to say so.

28 JUDICIAL REGISTRAR: Yes.

29 WITNESS: I believe it has already; however, we can provide
30 another copy.

31 MR GALVIN: Thank you, Mr Mawhinney.

1 JUDICIAL REGISTRAR: All right, then. Thank you. I'll make
2 that direction for the production of the documents as
3 described by Mr Galvin.

4 MR GALVIN: Thank you, Registrar. Could I ask the associate,
5 please, to go to examination book p.1236, please.

6 JUDICIAL REGISTRAR: Mr Galvin, I think you're on mute.

7 MR GALVIN: No, I'm terribly sorry. Mr Associate, I'm sorry.
8 I meant 1236 in the principal book, the first book. Can
9 I ask you, Registrar, if you've encountered or if,
10 Mr Hay, you've encountered any feedback issues with me
11 this morning? Because it's easier for me if I don't
12 switch on and off the mic, but if I do switch it on and
13 leave it on and it causes feedback, of course, I will
14 switch it on and off.

15 JUDICIAL REGISTRAR: I haven't noticed it this morning,
16 Mr Galvin, so why don't we try it - - -

17 MR GALVIN: Yes.

18 JUDICIAL REGISTRAR: - - - with you leaving your microphone on.
19 Mr Hay, have you noticed it this morning?

20 MR HAY: No, the sound has been surprisingly good this morning.

21 JUDICIAL REGISTRAR: Yes.

22 MR GALVIN: All right. Thank you for that. We'll see how we
23 go with that. (To witness) Mr Mawhinney, you see that is
24 a balance sheet as at 22 May 2020 for IPO 4. Do you see
25 the third entry, 'equity investments, FV adjustment,
26 Laundromat'? I take it that 'FV' means 'fair value
27 adjustment'; is that right?---Privilege. Yes, it does.
28 Do you know how that adjustment was made and how it was
29 calculated?---Ah, privilege. I believe that the email
30 that we referred to a moment ago indicated that the
31 subsequent funding rounds, ah, that is referred to in the

1 email was what is down as a down round. Pardon me. It's
2 what is known as a down round, where the company raises
3 money at a lower price than it may have done previously;
4 hence, we made a fair value adjustment in our books.

5 Who's 'we'? Who made that decision?---Privilege. When I say
6 'we', ah, our finance team, ah, including myself.

7 What experience does Cindy Huang have in relation to the
8 valuation or assessment of values of
9 investments?---Privilege. Cindy Huang has nothing to do
10 with the IPO Group. She only joined the group, I
11 believe, in the last two or three months, so she had no -
12 nothing to do with this particular group.

13 And who were the other persons involved with this revaluation
14 or fair value adjustment exercise?---Ah, privilege. It
15 was typical Lydia Lee, ah, in conjunction with, ah,
16 Pinnacle Advisory Group.

17 And what experience does Lydia Lee have in that regard, fair
18 value adjustment of assets?---Ah, privilege. I don't
19 have her CV in front of me, but it's a concept that she's
20 very familiar with.

21 Would it be fair to say that, really, it was you who fixed the
22 fair value adjustment?---Privilege. Ah, no, I don't
23 believe it was. I believe this information was provided
24 to Ms Lydia Lee, ah, and an adjustment was made
25 accordingly. Ah, again, the Xero logs will show, ah, who
26 - who made the adjustment.

27 Yes, that will show who entered the adjustment. It won't show
28 who fixed upon the adjustment, though, will it?---Ah,
29 privilege. We have a process to follow where if there's
30 an indicator of value, whether that's up, down or no
31 change, ah, then that information naturally gets fed back

1 into, ah, financial records and also the quarterly
2 portfolio - ah, investment portfolio summary that we
3 provide Vasco.

4 Could you describe the process you just mentioned?---Privilege.

5 Certainly. Um, if there's an indicator of value, ah, in
6 line with our, ah, investment valuation methodology, as
7 outlined in our company manual, um, then, ah, that
8 particular indicator, um, would be provided to our
9 finance team, um, and then an adjustment made in, ah, the
10 books, ah, either upwards or downwards depending on, ah,
11 obviously the information to hand.

12 Could you look at the second line, please: 'equity

13 investments, capitalised expenses, Laundromat, \$46,629'.

14 What are the capitalised expenses?---Privilege. As part

15 of our methodology, ah, we have a policy - ah, Expense

16 Allocation Policy, I believe, is the title of the

17 document - um, where expenses associated with, ah,

18 running and operating and managing, ah, even identifying

19 investments, making investments, raising capital, et

20 cetera, et cetera, are allocated over the SPVs, um, and

21 that is an allocation of expenses, ah, relative to the

22 proportional size of the investments held by a particular

23 SPV. In this instance, it's a smaller investment holder,

24 and, therefore, the allocation of expenses is lower.

25 So the expenses that are incurred in relation to Laundromat are

26 estimated to be \$45,629; is that right?---Privilege.

27 That's correct.

28 And what sort of expenses did they include, to your

29 knowledge?---Ah, privilege. General operating expenses,

30 um, so general overheads associated with, ah, operating

31 the IPO Group.

1 Now, why would an expense increase the value of an asset?---Ah,
2 privilege. Ah, as a private equity-style group, um, when
3 we make an investment, we don't just, ah, release funds
4 and - and do nothing with the investment. We are
5 generally hands-on with that investment, and so things
6 like operating overheads - um, that contributes towards
7 developing the value of that investment and, in this
8 instance, the particular SPV, um, so that's why our
9 expense allocation policy is what it is, because it
10 correctly attributes the fact that we are adding value to
11 these investments as opposed to simply holding them
12 without, ah, really doing anything to create value with
13 them.

14 But not all expenses will actually increase the value of the
15 asset, will they?---Ah, privilege. There are certain
16 directly - ah, I mean, expenses that can be directly, ah,
17 relating to a particular SPV, ah, and there'll be other
18 more general, so, for example, um, if I may use the
19 example of office space, um, a team needs an office to
20 operate within, ah, and by virtue of having that office
21 the ability for the team to work together. Um, the team
22 is therefore able to add value to its investments.

23 Yes, but the rent that you pay for that office space doesn't
24 increase the value of the shares in Laundromat, does
25 it?---Ah, privilege. I disagree.

26 You disagree, do you? What's the basis for your disagreement
27 with that frankly obvious proposition?---Privilege. I
28 disagree because, ah, as I said, we're a private equity
29 firm where we don't just support capital but we deploy
30 human capital to create value for the companies, um, in
31 this instance - - -

1 How would paying a certain amount of rent each week for an
2 office space increase the value of the Laundromat
3 shares?---Privilege. Because the office houses the team
4 of people that, um, provide their services to develop the
5 value of the investments in the IPO Group.

6 Sorry. You haven't explained how that increases the value of
7 the shares in Laundromat?---Privilege. Ah, we worked
8 closely with Laundromat, ah, in relation to identifying
9 listing opportunities, um, and provided them advice and
10 guidance on ways that they could, ah, further increase
11 their footprint, not just within Australia, overseas.
12 These are all steps that go towards creating value within
13 a company, which is, again, the nature of our business.

14 How does IPO number 4 or any other IPO entity renting office
15 space increase the value of Laundromat's
16 shares?---Privilege. It's because of the intellectual
17 property and the value that we add to that particular
18 company, not just through the allocation of capital, but
19 through the human capital, um, and expertise that we
20 provide businesses to create value. We think it's a -
21 it's a fair methodology. It's a methodology that Vasco
22 has been aware of since it - ah, since it was - - -

23 Did I ask you if Vasco was aware of it?---Privilege. No, you
24 didn't.

25 No. So why did you say that? What's the point of volunteering
26 that? You're trying to avoid the question, Mr Mawhinney.
27 Is that what's going on here?---Privilege. No, you've
28 asked me the same question, I feel, a couple of times,
29 and I've provided a very similar answer each time.

30 Thank you. All right. Well, I should just direct your
31 attention to one further thing. The Equity heading - do

1 you see that there in the references? We might need to
2 scroll down a little bit further, please, Mr Associate.
3 The unissued capital - 45,629 - that equals that amount
4 of capitalised expenses. Why is there unissued capital
5 to IPO 1 as a result of expenses being capitalised?---Ah,
6 privilege. My understanding is that it's an investment
7 made from IPO 1 in IPO 4, I believe it is, um, and,
8 therefore, there are shares that, ah, need to be issued
9 to IPO 1 to account for that investment in that SPV.

10 Why is that so, and where did you get this understanding
11 from?---Ah, privilege. I'm reading the balance sheet
12 that's in front of me which explains it.

13 You began your answer with, 'My understanding is'. I'm asking
14 you where you got that understanding from. A document or
15 a person or persons?---Ah, privilege. It's the process
16 that we've following for the accounting treatment of the
17 IPO Group.

18 Is that the expense allocation policy you referred
19 to?---Privilege. Ah, yes, it's the expense allocation
20 policy which relates to the treatment of expenses, but,
21 more broadly speaking, as we covered on Monday, um, the
22 investment or the relationship between IPO 1 and the SPVs
23 is one of equity going into those SPVs in exchange for
24 shares.

25 Now, the operating expenses that are incurred here by - these
26 operating expenses - 45,629, for example - they're
27 expenses incurred in the operation if IPO 4; is that
28 right?---Privilege. That's correct.

29 And the funding was supplied by IPO; is that
30 right?---Privilege. That's correct.

31 Now, IPO 1 is insolvent; is that correct?---Ah, privilege. Ah,

1 I haven't made that determination.

2 Well, you've agreed that it can't pay its debts, and you've
3 said that the other day. Do you recall that?---Ah,
4 privilege. I recall that.

5 Yes. Now, without the support of IPO 1, this company can't
6 meet its ongoing expenses, can it?---Ah, privilege. Ah,
7 I disagree.

8 And why do you disagree?---Privilege. Because the company has
9 no creditors.

10 I'm sorry. Let's forget about creditors existing at the
11 moment. It will incur debts in the future, won't it,
12 because it will continue to incur expenses, presumably;
13 do you agree?---Privilege. That sounds like a
14 hypothesis.

15 It sounds like a hypothesis. You think that it's possible for
16 this company to continue without incurring, say,
17 accounting fees?---Ah, privilege. The balance sheet
18 demonstrates that it hasn't incurred any liabilities.

19 I'm talking about expenses, Mr Mawhinney?---Yeah. Privilege.
20 Whether it will incur expenses in the future?---Privilege.

21 Again, those expenses are incurred, I believe, in IPO 1
22 and then allocated out across the SPVs in line with our
23 policy.

24 Mr Mawhinney, what I'm asking you is whether you would expect
25 this company in the future continues to incur
26 expenses?---Privilege.

27 (Indistinct words)?---Privilege. I don't have a copy of our
28 policy in front of it, but I believe that that covers
29 that answer.

30 I would seek a direction, Registrar, that Mr Mawhinney answer
31 this question. It's a very simple question.

1 JUDICIAL REGISTRAR: Yes. Please answer the question,
2 Mr Mawhinney?---May I have the question again?
3 MR GALVIN: This company is likely to continue to incur
4 expenses to operate, isn't it?---Privilege. Do you mean,
5 ah, likely as in from today onward or previous?
6 From today onwards?---Ah, privilege. Ah, yes, if it was - if
7 our policy was followed. I think I mentioned a minute
8 ago that, ah, SPV 1 incurs those expenses on behalf of
9 the SPVs and then allocates those expenses out. However,
10 they don't incur the expenses directly themselves.
11 So just coming back to the question, you agree that a company
12 like this - in fact, all of these SPVs, insofar as they
13 hold assets, they'll have to engage accountants to
14 prepare tax returns and things like that? Did you hear
15 that question?---Apologies, Mr Galvin, no, I didn't. The
16 internet just dropped out.
17 This company, like the other SPVs, will continue to incur
18 expenses insofar as they own assets such as engaging -
19 the expenses associated with engaging accountants for
20 bookkeeping services and for preparing tax returns,
21 management accounts and so forth?---Ah, privilege. In
22 the future they may. Um, I don't - I'm not across the
23 current status because we're no longer (indistinct) these
24 companies.
25 Can you tell me the reason why. The companies continue to hold
26 these assets, don't they?---Ah, privilege. Again I'm not
27 across the current status of those companies. I - I
28 would assume that they do continue to hold those assets.
29 And if they hold those assets they're bound to incur expenses
30 in administering the assets or managing them?---Ah,
31 privilege. Again it would depend on the application of

1 an expense allocation policy, whether that's done by the
2 parent company or done by the SPV. We had our way of
3 doing it. I can't comment on the current way of doing
4 that under Dye & Co's watch.

5 Registrar, I don't think I can take this question any further.

6 I'm probably flogging a dead horse so I'll move on.

7 JUDICIAL REGISTRAR: Thank you.

8 MR GALVIN: Now, could I ask you, please - ask the associate,
9 please, to go to supplementary court book 1603. If we
10 could just scroll down to the next page, please. And the
11 next. And the next. Sorry, go back up again, please. I
12 think - yes. So that's - I just wanted this page. I'm
13 sorry, Mr Associate. This relates to IPO No.6. Do you
14 see that, Mr Mawhinney?---Privilege. Yes, I can.

15 It's part of your ROCAP prepared in relation to that and it
16 records that IPO 6 has \$11,568 - sorry - 11,568,877
17 shares in Northvale Capital Partners, doesn't
18 it?---Privilege. Again that's what the document says.

19 All right. Actually I've missed one. I've missed IPO 5.

20 Could we go back up one, please. Yes, this one first,
21 please. Mr Mawhinney, sorry, this relates to IPO No.5.
22 This is part of your ROCAP for that company and it
23 records that there is an interest in a company called
24 Fast Mark Ltd trading as Booqed, B-o-o-q-e-d. Do you
25 recall that investment?---Privilege. Yes, it's Booqed.

26 Booqed?---Yes.

27 That company Fast Mark Ltd is a Hong Kong company; is that
28 right?---Ah, privilege. If I recall correctly it was. I
29 do know that they were swapping their share structure for
30 a Cayman structure if I'm not mistaken. Um, however, I
31 just can't recall the status of that - that transaction

1 itself.

2 All right. And the shares are estimated to be worth \$678,221;

3 is that right?---Privilege. Yes, that's correct.

4 Can we go back to the page - sorry - go to the page ahead of

5 this one, please, page - yes, thank you, Mr Associate.

6 (To witness) This is another investment by IPO 5 in that

7 entity in the nature of convertible notes; is that

8 right?---Privilege. That's correct.

9 Valued at \$394,691. Now, what does this company Fast Mark

10 do?---Privilege. Ah, Booqed is a technology company.

11 The best way to describe it is it's like Airbnb, ah,

12 except for commercial space rather than residential

13 properties, for example. So it's often short-term office

14 leasing, the likes of a boardroom for an hour in a city

15 that you're visiting in, say, Hong Kong. I believe

16 they've rolled out into Shenzhen, Singapore, and they

17 have been assessing rolling out into Australia as well.

18 Who are the directors of the company?---Ah, privilege. David

19 Wong and Charles Oh.

20 Is that spelt O-h?---Privilege. That's correct. Privilege.

21 There may be other directors, however, those are the two

22 that we've always been dealing with for some years now.

23 The convertible notes, how much was paid for those?---Ah,

24 privilege. I can't recall. It was, I believe, in 2016.

25 So it was before the IPO or before IPO 5 was

26 incorporated?---Privilege. That's correct.

27 How did the convertible notes find their way into this

28 entity?---Ah, privilege. They were acquired into the IPO

29 Group.

30 And did the IPO Group or IPO 5 pay for them?---Ah, privilege.

31 If I recall correctly, which is some years ago now, I

1 believe that they - they did or they would have, yes.

2 Well, how much did they pay for them do you think?---Ah,
3 privilege. It would have been, ah, at the market price
4 at the time I believe.

5 And the funds that were used to pay for them came from IPO 1;
6 is that right?---Privilege. The funds to acquire the
7 shares not in the first instance but into the IPO - IPO
8 Group it would have come from the IPO Wealth Fund that
9 were loaned into IPO 1 and IPO 1, ah, therefore invested
10 them in IPO 5, I believe it is, for the purposes of
11 acquiring those shares.

12 Now, what about - if you can go back to the next page, please.

13 What about - sorry, I meant - yes, that one. Thank you,
14 Mr Associate. This is p.1604. (To witness) These
15 shares, estimated to be worth \$678,000, were they also
16 acquired in 2016 by an entity first?---Ah, privilege. I
17 can't recall. I do know that there is at least two
18 transactions that we did with Booged, um, where, if I
19 recall correctly, some of those or one of those
20 transactions, at least, was an equity investment or
21 became an equity investment if we converted the note. I
22 just recall off the top of my head given it was some time
23 ago, but there were - were at least two separate
24 investments in that company.

25 And the funds that were used to - used by IPO 5 to acquire
26 these shares, were they - did they come from IPO 1 as
27 well?---Privilege. That's correct.

28 How has the value of \$678,221 been reached in the quarterly
29 investment portfolio summary?---Ah, privilege. Again
30 similar to the other transactions that I've referenced.
31 There was an investment round that was undertaken in the

1 last 12 months or very close to that, um, and again that
2 provided an indication of value given that there was a
3 third party transaction that took place that we could
4 point to as being the - the best indicator of value.

5 Were there particular documents you looked at when the figure
6 was set in the March quarterly investment portfolio
7 summary?---Yes - privilege. Yes, I do recall that there
8 was a spreadsheet provided by - quite a detailed
9 spreadsheet at that that was provided by Booqed which
10 outlined their capitalisation table, ah, and included the
11 share price in there.

12 When was that provided?---Privilege. Off the top of my head it
13 was close to 12 months ago.

14 Just pardon me, Registrar.

15 JUDICIAL REGISTRAR: Certainly. Mr Galvin, actually, while you
16 pause I'm just wondering if now would be a convenient
17 time just to have a five-minute break.

18 MR GALVIN: Yes, of course.

19 JUDICIAL REGISTRAR: Unless anyone needs longer.

20 MR HAY: No, thank you, Registrar.

21 JUDICIAL REGISTRAR: Thank you. Mr Mawhinney, is that suitable
22 to you?---Ah, privilege. Do you mind if we just have 10
23 minutes because I'd like to speak to Mr Hay with respect
24 to one of the directions if that's okay?

25 Yes, that's fine. All right. We'll come back just after
26 12 o'clock. Thank you?---Thank you.

27 <(THE WITNESS WITHDREW)

28 (Short adjournment)

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 JUDICIAL REGISTRAR: Yes. Thank you, Mr Galvin.

3 MR GALVIN: Thank you, Registrar. Could I ask the associate,
4 please, to go to supplementary court book 1416. (To
5 witness) You know what that document is. That's
6 your March portfolio summary, Mr Mawhinney; is that
7 right?---Ah, privilege. Yes. I don't know if that's the
8 restated one or not, but, um, yeah, it's part of that
9 document.

10 Do you see the references to 'booked', I think, 'equity 5.1' or
11 'E 5.1', and debt is 5.1 - that's 'D 5.1' in the second
12 half of that?---Yes, I can. Just.

13 And could you expand those a little, please, Mr Associate.

14 Now, in relation to the equity investment, in June 2019,
15 the value ascribed to it is 600,000, although it seems to
16 increase in the next column to 678,000 - or July, rather,
17 2019, it increases. So in July 2019, it's valued at
18 678,000; you agree with that?---Sorry. I'm just moving
19 my video off the screen so I can see it. I can see that.

20 Now, I just want to see, is that the amount that you ascribe to
21 that in your ROCAP? If we could just go back to the
22 ROCAP, please. I'll just see if I can tell the associate
23 where that is. That's at supplementary court book - - -

24 MS PAPALEO: Sixteen-O-four.

25 MR GALVIN: Yes, 1604. Thank you. Yes. That seems to be the
26 figure there; is that right, Mr Mawhinney? The
27 678,000?---Privilege. The figure there has been
28 transposed from the carrying value part of that
29 spreadsheet, which is part of what you just had up on the
30 screen a moment ago. Yes.

31 And that was the value as at July 2019?---Ah, privilege. Ah, I

1 don't have the full spreadsheet in front of me, so I
2 can't comment on it.

3 Could we go back to court book 1416, please - supplementary
4 court book 1416. Do you see that equity investment E
5 5.1, and do you see July 2019 - it's the same figure,
6 isn't it, \$678,221?---Privilege. Yes, I can see that's
7 the same figure; however, there is also a fair value
8 column to that spreadsheet which isn't on the screen
9 currently, so I don't have the full picture.

10 So the value that was ascribed to these shares in the ROCAP was
11 the same value as ascribed in July 2019; is that
12 right?---Ah, privilege. It's the same number, yes.

13 Yes. So when you prepared the ROCAP, all you did was you
14 relied on the valuation as at July 2019?---Ah, privilege.
15 In this instance, I can see it's the carrying value. I
16 can't see what the fair value amount was, so I can't
17 comment completely.

18 You used the carrying value at July 2019?---Privilege. I don't
19 see what the fair value is, so I can't comment if it's
20 the same or not.

21 In entering that number in the ROCAP, did you rely - sorry. I
22 withdraw that. In reaching the number that you've
23 reached here in the portfolio summary, did you rely on
24 any documents or information in July 2019?---Privilege.
25 Ah, do you mind repeating the question? Sorry.

26 You see how the value increased from 600 to 678,000
27 from June - - -?---Privilege. Yes, I do. If I may
28 explain that, you'll see at the top of the column - of
29 both of those columns, for a start, it says 'carrying
30 value' - - -
31 Yes?--- - - - which is cost price plus allocated expenses.

1 Yes?---The column 'June 2019' says 'excluding yearly allocated
2 expenses', and then the following column, 'June 19', says
3 'including yearly allocated expenses', so it - this is in
4 line with our expense allocation policy for that
5 particular investment.

6 That's the policy that says expenses, whatever they are, that
7 are allocated to a particular entity increase the value
8 of that entity's assets pro tanto, that is, by the same
9 amount?---Privilege. That's correct.

10 Right. Now, for the purposes of completing your ROCAP, did you
11 have regard to any other document apart from this
12 spreadsheet?---Ah, privilege. My recollection is that we
13 relied on the spreadsheet given that that's our master
14 document for recording, ah, investment valuations.

15 All right. And in reaching that figure of \$678,221, at the
16 time that that was entered in the spreadsheet, do you
17 know what document you relied upon? Can you
18 recall?---Ah, privilege. No, I can't, and because I
19 can't see this full spreadsheet, ah, I can't state
20 whether it was the June or July 19 figure that was relied
21 on. Indeed, it's the same number; however, without
22 seeing what the March valuation was, I can't comment on
23 it.

24 All right. Thank you. Now, in relation to this company, it
25 holds what you would say would be valuable assets; is
26 that right?---Privilege. Which company are you referring
27 to?

28 We're talking about IPO (indistinct)?---Privilege. Ah, IPO 4,
29 is that?

30 Sorry. IPO 5. I'm terribly sorry. IPO 5?---Privilege. Ah,
31 IPO 5 - yes, I believe that to be the case.

1 So your answers in relation to the ongoing expenses of IPO 5,
2 they would be the same as the answers you gave in
3 relation to IPO 4; is that right?---Privilege. Yes, it
4 was a uniform policy across all the SPVs.
5 No, I'm not talking about the expenses allocation policy. I'm
6 talking about the incurring of expenses in the
7 future?---Ah, privilege.
8 IPO 5 would incur expenses in the future, won't
9 it?---Privilege. I can't comment, because we don't
10 control the companies any more.
11 All right. Let's say you did control it. Would it incur
12 expenses?---Ah, privilege. Isn't that a hypothetical at
13 the moment?
14 Thank you for that. And would your answer be the same in
15 relation to all of the IPO subsidiaries, all of the
16 SPVs?---Privilege. Yes, it would be the same.
17 Thank you. Could I ask the associate, please, to go to
18 supplementary book 1605. (To witness) Now, according to
19 this document, IPO 6 acquired shares in Northvale Capital
20 Partners Private Limited; is that right?---Privilege.
21 That's correct.
22 And that was a company that acquired shares in Accloud, didn't
23 it?---Privilege. Ah, do you mean IPO Wealth Holdings
24 No.6 or Northvale Capital Partners.
25 I meant Northvale?---Privilege. Ah, I don't believe Northvale
26 Capital Partners ever held any Accloud shares.
27 I'm sorry. All right. Now, it's a company, is it, Northvale,
28 registered in India?---Privilege. No, it's registered in
29 Singapore.
30 Singapore. Sorry. And who are its directors?---Ah, privilege.
31 Baljit Singh, ah, and, if I recall correctly, Jack Smit.

1 Jack Smit?---Privilege. Yes. I - if I - I just can't recall
2 whether he was on the board or not; however, ah, he and
3 Baljit were effectively leading the company.
4 Is Jack Smit based in Australia?---Privilege. Yes, he is.
5 Have you met him?---Privilege. Yes, a number of times over the
6 years.
7 Yes. How did you meet him?---Privilege. I can't recall. I
8 believe it may have been to do with the Accloud
9 investment back in - when we first started evaluating it
10 back in 2014, if I - if my memory serves me correctly.
11 And what association have you had with him since that time? In
12 relation to what matters?---Ah, privilege. It's been
13 very limited. Um, the matters have related to obviously
14 Accloud in a very limited way, um, and, when I say more
15 recently, it was to do with the Northvale Capital
16 Partners transaction, which I believe was nearly - close
17 to two years ago now.
18 Where did you meet Mr Smit? Sorry. At what locations have you
19 met him from time to time?---Ah, privilege. This is
20 going back five years ago, but, ah, I believe when I met
21 Accloud in 2014, ah, Jack Smit, ah, was at that meeting.
22 Off the top of my head, I may have only had two or three
23 meetings with him since then.
24 What does Northvale do?---Privilege. Northvale Capital
25 Partners is an investment holding company, um, that owns
26 shares in the Vadodara, or VSC Ltd, as it's now known,
27 ah, but it's - was formally known as the Vadodara Stock
28 Exchange, which is a former stock exchange that is now a
29 financial services company in India.
30 And the value of the shares is suggested - or the estimated
31 value is \$144,919. How did you reach that figure? Was

1 that by reference to the spreadsheet, the portfolio
2 summary?---Ah, privilege. Yes, I believe it was.
3 Could we just go to that, please, at supplementary court book
4 1416. Can you see it there?---Privilege. Yes, I can see
5 it.
6 And you'll have to help me with it. Which line is it in?---Ah,
7 privilege. It's - I can't quite see.
8 JUDICIAL REGISTRAR: Do you need it to be made bigger,
9 Mr Mawhinney?---I see it. Ah, I can - I can just make it
10 out. Yes.
11 Do you want it make a bit bigger?---Privilege. If you don't
12 mind. Thank you, Registrar.
13 Something like that, Mr Mawhinney, if you could just indicate
14 it, my associate will attend to it. Thank you?---Thank
15 you.
16 MR GALVIN: If we could just scroll, Mr Associate, a centimetre
17 to the left so we can see the numbers at the far left,
18 the letter and the number. (To witness) So I think it's,
19 yes, E 6.1; is that right?---Yes, that looks like it.
20 If we move to the right a bit, we can see it starts out in June
21 2019 with 128,000. Then it becomes \$144,919, which is
22 the date which appears in the - the (indistinct) which
23 appears in your ROCAP, isn't it?---Privilege. It's the
24 same number, yes.
25 So when you prepared your ROCAP, did you make any independent
26 check on the value of this investment?---Ah, privilege.
27 Again, in line with our valuation procedure, ah, we
28 followed the most recent valuation, ah, assessment that
29 we produced, again, for Vasco on this particular report,
30 so we relied on the valuation that we had only undertaken
31 a matter of weeks prior.

1 Well, what valuation did you conduct? Weeks prior to the
2 ROCAP, you mean?---Privilege. Ah, in - no. We prepared
3 the quarterly investment summary at the end of April, I
4 believe, for the provision to Vasco. You may recall we
5 subsequently updated that and issued the court with a
6 restated document, and if I recall we relied on that
7 restated document for the preparation of the ROCAP forms.

8 Well, the figure was the same from June 2019 all the way
9 to April 2020. Is that right?---Privilege. That's
10 correct.

11 Yes. And what did you do in - when you prepared your ROCAP to
12 check that that was still the value of the - the proper
13 value of the - this asset - this investment?---Privilege.
14 Ah, we - the last time I spoke with Baljit Singh, the
15 founder of the company - - -

16 Who's we? Who's we?---Privilege. Sorry?

17 Who's we? You are the one who prepared the ROCAP, aren't you?
18 What do you mean by 'we'?---Privilege. Lydia Lee
19 prepared the ROCAP for me to review and execute.

20 Okay. So what did she do to check the value of the asset at
21 the time of the preparation of the ROCAP?---Privilege.
22 The ROCAP was prepare off the basis of our quarterly
23 investment portfolio summary that had been prepared, ah,
24 at the end of April and restated, I believe, in
25 early June. The ROCAPs were provided not long after
26 that, probably within a week or two.

27 What was done to assess the value of the - this asset for the
28 purposes of the restated portfolio summary?---Privilege.
29 We were the last investor in that particular company, ah,
30 at that valuation. Um, we give them - - -

31 What valuation are you talking about? What valuation are you

1 talking about?---Privilege. Ah, we made an investment of
2 - I believe it was 111,000 - sorry - ah, yeah. It was
3 US\$111,000. Converted to Australian dollars I believe
4 aligns with the June '19 amount of \$128,000. Um - - -

5 Did you ever value the company?---Privilege. Pardon?

6 Did you ever value the company?---Privilege. No, we didn't.

7 Did you ever see a valuation of the company?---Privilege. No,
8 we didn't. The nature of this investment wasn't heavily
9 focused on the value of, ah, Northvale Capital Partners.
10 The nature of the investment was that this investment,
11 ah, was tied to the purchase of six million cloud shares.
12 This was, effectively - I wouldn't describe it quite as a
13 freebie, but, um, an allocation of shares, ah, made in
14 that particular entity, um, in exchange for us going
15 ahead with the purchase of the cloud shares which enable
16 Northvale Capital Partners to acquire the controlling
17 interest in, ah, the Vadodara Stock Exchange business.

18 So you didn't pay cash for the shares?---Privilege. Yes, we
19 paid cash.

20 Right. So how's it a freebie?---Privilege. It was wrapped
21 with a much larger transaction of US\$3m.

22 It's not a freebie if you paid cash for it, is it?---Privilege.
23 We decided to allocate a small portion of cash towards -
24 ah, and to justify the allocation of shares in Northvale
25 Capital Partners. So we consider that those shares were
26 bought heavily under value, given the company had then
27 just taken control of the North - the Vadodara Stock
28 Exchange business in India.

29 In any event, I take it you agree with the proposition that you
30 never actually made any assessment of the value of the
31 shares?---Privilege. We utilised our internal valuation

1 policy which looked to the most recent transactions. Ah,
2 we were the most recent acquirer of the shares, and so
3 the valuation is in line with that policy.

4 Right. So your assessment of the value of shares is based on
5 what you paid for them?---Privilege. Ah, yes. In that
6 instance it was. Yes.

7 Can we please go to - actually, perhaps we could go to court
8 book - main court book 1238 please, Mr Associate. That's
9 a balance sheet for IPO 6. And there's a - the
10 capitalised expenses there, that's pursuant to the same
11 policy you've given evidence about already. Is that
12 right?---Privilege. Yes. That's correct.

13 Could we please, Mr Associate, go to supplementary court book
14 1606. This relates to or was extracted from your ROCAP
15 for IPO number 7, isn't it, Mr Mawhinney?---Privilege.
16 Yes. It looks to be the case. Yes.

17 And it relates to Bright LED Limited. I think I asked you
18 questions about that yesterday, didn't I?---Privilege. I
19 believe you did, yes.

20 And this entity also invested in Bright LED Limited by way of
21 investment in convertible notes. Is that
22 right?---Privilege. Yes. That's right.

23 This is a company that's registered in Israel?---Privilege.
24 Yes, it is.

25 The estimate amount realisable is the value of the convertible
26 notes, in your opinion. Is that right?---Privilege.
27 Yes. That's right.

28 And that's extracted from the quarterly portfolio summary. Is
29 that right?---Privilege. That's right.

30 Can we go to SEB 1416 please? SEB being supplementary
31 examination book. Can you see that investment there? I

1 think it's D7.1. Is that right?---Do you mind just
2 making it a little bit bigger?

3 Yes. Of course. Thank you, Mr Associate?---I can see that.
4 Thank you.

5 And the figure - if we go to the right please, Mr Associate.
6 You can see the figure, the 603378. Then it becomes
7 682039 which is the amount that ends up in the ROCAP. Is
8 that right?---Privilege. Sorry. The internet dropped
9 out for about 15 seconds, Mr Galvin. Do you mind
10 repeating that?

11 Can you just scroll down a little bit please, Mr Associate, so
12 we can see the heading of the column. No. Up the other
13 way please. Just so Mr Mawhinney can see the column
14 headings. A bit further. Further. Thank you. That's
15 fine. Now, scroll to the right. You see June and -
16 the June column and the July column. If you scroll down
17 now to that investment, you'll see there that the -
18 from June to July it goes from 603,000 to 682,000, and
19 what's the explanation for the increase?---Privilege.
20 Ah, that - the difference between June '19 and June '19 -
21 at the top of that column it explains that it's the
22 allocation of expenses.

23 Yes. Sorry. That's what I meant to ask you. And the July
24 figure is the carrying value including the allocated
25 expenses. Is that right?---Privilege. That's correct.

26 Yes. Now, can we go please to court book - main court book
27 1239. This is a balance sheet for IPO number 7 as at
28 22 May 2020, and we can see there that the - there's the
29 figure for the Bright LED, 603,000, and then there's the
30 capitalised expenses of 78,000, which I suppose would
31 come roughly to that figure that we just looked at a

1 moment ago, just over 680,000. Is that
2 right?---Privilege. That's correct. Yes.
3 And then there's a fair value adjustment. What's
4 that?---Privilege. I don't know off the top of my head.
5 There's an amount for accounts - there's an accounts receivable
6 amount in the top of this balance sheet, 84,000. Do you
7 know what that relates to?---Privilege. I believe that
8 that would be, ah, interest owing on one or both of those
9 investments, if I recall correctly.
10 And why hasn't it been received?---Privilege. Ah, the
11 business, ah, wasn't in a position to pay it at the time.
12 I see. Is it in a position to pay it now to your
13 knowledge?---Privilege. I don't know. I haven't spoken
14 to them in a number of months.
15 How would you assess the value of this investment without
16 taking into account the fact interest hadn't been
17 paid?---Privilege. Ah, the valuations that were entered
18 were based on, ah, those assets, um, continuing to be
19 developed and maintained and managed, um, by our group or
20 a group like ours, um, and, therefore, we considered that
21 that would be very much collectable.
22 Well, if interest is not being paid there is a reason to
23 suspect that the company can't pay its debts, isn't
24 there?---Privilege. Potentially, yes.
25 Could we go, please, Mr Associate, to supplementary court book
26 1607. That's your - part of your ROCAP for IPO No.8,
27 isn't it, Mr Mawhinney?---Privilege. Yes, it is.
28 The asset described here is convertible notes in a company
29 called Navag8 - that's spelt N-a-v-a-g-8 - Pty Ltd and
30 those convertible notes are in respect of an amount of
31 \$1.69m; is that right?---Privilege. Ah, the debt owed to

1 the company I believe was that amount.

2 What does Navag8 do?---Privilege. Navag8 is a fractional
3 savings app business. Um, so it's a fintech company.

4 What does fintech mean, financial technology?---Privilege.
5 That's correct.

6 What does that mean?---Privilege. It's a business that is a
7 technology-based business that provides financial
8 services.

9 Who are its directors?---Privilege. Ah, Dean Lupton, ah,
10 Marcia Steven, um - ah, at one stage - well, I remember a
11 former director's name if that's of benefit. Um, I can't
12 recall who - if there are any other directors on the
13 board.

14 Who was the first person mentioned, Dean Lupton, is
15 it?---Privilege. That's correct.

16 How do you spell his name?---Privilege. Ah, D-e-a-n L-u-p-t-o-
17 n.

18 Thank you. How did you meet or how did you come into contact
19 with Navag8?---Privilege. It was a business introduced
20 to us by, ah, one of our former staff members, um, who
21 knew of the business, ah, and knew that they were - a
22 team had been assembled to, ah, build what Navag8 is
23 today, um, and, ah, an introduction was made through that
24 channel.

25 All right. Thank you. Registrar, would you give me a moment.
26 I just want to talk to Ms Papaleo, please.

27 JUDICIAL REGISTRAR: Certainly, Mr Galvin.

28 MR GALVIN: Thank you. Thank you, Registrar. Could I ask the
29 associate, please, to go to p.2932 of the main court
30 book. Have you seen this document before? If we can
31 just scroll through it, please. So, Mr Mawhinney, this

1 was a general security agreement that was prepared,
2 apparently, by KHQ in respect of the Navag8 investment.
3 Do you recall that?---Privilege. I vaguely recall it.
4 It was some years ago now.
5 Why wasn't it completed and executed and
6 registered?---Privilege. Um, we didn't consider that it
7 was essential to complete it at that particular point in
8 time.
9 Why?---Ah, privilege. Because we had developed quite a strong
10 relationship with the, ah, people at the business, um,
11 and we were of the view that as the business, ah -
12 sorry. We were of the view that, um, holding a general
13 security agreement over an early stage company, um, would
14 not necessarily render all that much value and,
15 therefore, we did not put much importance on it.
16 You went to the trouble of having one prepared. Why wouldn't
17 you register it - execute it and register
18 it?---Privilege. We didn't consider that it was
19 necessary at the time.
20 Why would it not be necessary? It's security?---Privilege.
21 Um, again we had a strong relationship with the founders
22 of the business and we were working quite closely with
23 them to develop the business.
24 Do you agree that it was in the interests of IPO 1, who you say
25 was the sole shareholder in IPO 8 - it would have been in
26 its interests to have a general security agreement
27 executed and registered?---Privilege. If the business
28 had, ah, significant assets of sort then yes, but, um,
29 given again it was a financial technology business, an
30 early stage one at that, we didn't put much value on it.
31 Okay. So your point is it didn't have much in the way of

1 significant assets?---Privilege. That's correct.
2 If it didn't have significant assets how have you come to place
3 a value of \$1.69m on the convertible notes?---Privilege.
4 Again that's the nature of fintech or financial
5 technology businesses. Um, they can attract quite a
6 significant valuation without holding much by way of
7 tangible assets.
8 So, in fact, you don't - you're not able to say whether that
9 amount is recoverable at all, are you?---Privilege. Ah,
10 I don't see why that would be the case.
11 No, but what would be the basis for saying that if tomorrow you
12 wanted to recover that debt of \$1.69m from Navag8 you
13 could do it?---Ah, privilege. As I said, we have a close
14 relationship with the founders, um, and in terms of
15 recovering moneys if we felt that that was required, um,
16 then we would have helped them arrange financing to
17 effectively finance out that note.
18 I see. So to pay that note they would have to borrow from
19 someone else?---Ah, privilege. That - that's one
20 particular scenario. I believe that there's a conversion
21 ability within that note too if I'm not mistaken.
22 So you could convert it into shares?---Privilege. That's
23 correct.
24 Yes. Well, that wouldn't mean that you could recover cash
25 though, would it?---Ah, privilege. Of course. Only if
26 there was a buyer for those shares.
27 Yes. Could we have a look, please, at court book - sorry -
28 supplementary court book 1416. Can you see this asset in
29 the portfolio summary, please, Mr Mawhinney?---Do you
30 mind just making it a little bit bigger. Thank you.
31 It will be in the bottom half in the debt investments, won't

1 it? I think the third from the bottom; is that
2 right?---Yes, I can see it.

3 As at June - sorry - June 19 its current value is 1.5m. Can we
4 scroll right, please, Mr Associate. (To witness) Then,
5 like the others, in July or in June it's revalued. I
6 presume by capitalisation of expenses; is that
7 right?---Privilege. I believe that to be the case, yes.
8 That's how it comes to a current value of \$1.695m. And then it
9 stays at that figure thereafter, is that right, the
10 current value?---Privilege. I believe - well, I don't
11 have it in front of me so I can't comment.

12 Could you scroll to the right, please, Mr Associate, and just
13 scroll - you can see that's August, September. If we
14 scroll to the next page, please, and to the left, please.
15 (To witness) You can see that the figure remains the
16 same, doesn't it, Mr Mawhinney?---Privilege. Yes, I can
17 see that.

18 (Indistinct words) if we can scroll further to the right,
19 please - March 2020. All right. There's another
20 document, Registrar, which was provided to the court this
21 morning called a loan book funding deed. Could I ask for
22 that to be put on the screen, please. Actually, the
23 document that I took Mr Mawhinney to earlier should be
24 marked for identification, too.

25 JUDICIAL REGISTRAR: What was the description for that earlier
26 one? Well, perhaps if you can identify that for me later
27 for me, Mr Galvin.

28 MR GALVIN: Yes, I'll do that. Thank you.

29 JUDICIAL REGISTRAR: I'll mark this one as MFI 3.

30
31 #EXHIBIT 3 - (For identification) IPO WH and EG cash
32 transaction.

1 And I'll mark this one that you're taking Mr Mawhinney to now
2 as MFI 4. The description for is, what, loan book
3 funding deed?

4 MR GALVIN: Yes.

5 JUDICIAL REGISTRAR: Thank you.

6
7 #EXHIBIT 4 - (For identification) Loan book funding deed.

8 MR GALVIN: If we can just scroll down through this, are you
9 able to recognise this document, Mr Mawhinney?---Ah,
10 privilege. No. I don't know who the parties are. Now I
11 do. Thank you.

12 JUDICIAL REGISTRAR: Mr Galvin, my associate's found a
13 description for that document that would be MFI 3. It's
14 an IPO WH and EG cash transaction.

15 MR GALVIN: Yes. Thank you for that. (To witness)

16 Mr Mawhinney, do you remember this document?---Ah,
17 privilege. Vaguely. Again, it was at least 12 or 18
18 months ago now, probably longer.

19 It's a loan funding deed between ABC Credit SPV 1 Pty Ltd and
20 IPO Wealth Holdings No.9 Pty Ltd, and ABC Credit is the
21 borrower, and IPO Wealth Holdings No.9 is the lender. Do
22 you recall a loan agreement for a loan between those
23 entities?---Privilege. I recall that there was a loan
24 relationship between those two entities, yes.

25 What's the difference between a loan and a loan
26 relationship?---Privilege. Ah, the same thing.

27 Why the word 'relationship'?---Privilege. I describe the fact
28 that there was a relationship between the two companies
29 that are on the screen.

30 What's the relationship apart from loan?---Ah, privilege. Ah,
31 that entity - I believe it was - yeah. It was this - the

1 loan which I believe was governed by this document. I
2 just haven't seen the document in full, so I can't
3 comment on it.

4 Well, we'll take you through it. What's the nature of ABC
5 Credit SPV 1's business?---Privilege. ABC or AB Credit
6 SPV 1 is an entity or special purpose vehicle, per the
7 SPV, that - in the entity name, that is in the business
8 of borrowing from lenders such as IPO Wealth Holdings 9,
9 and, upon lending that capital to business to business -
10 on a business-to-business basis, so business
11 borrowers - - -

12 It sounds a bit like IPO's model; is that a fair thing to
13 say?---Privilege. Um, no, it's - whilst there are some
14 similarities, there are certainly a lot of differences,
15 too.

16 So AB Credit SPV 1 is a subsidiary of another company, AB
17 Credit; is that right?---Privilege. Australian Business
18 Credit Pty Ltd, I believe, is the - the parent of AB
19 Credit SPV 1.

20 Who are the directors of that company? Do you know? That
21 parent company?---Privilege. Ah, Surinder Aghnotari, ah,
22 at the time - - -

23 Can you spell that for the transcript?---Yeah. Privilege. Ah,
24 S-u-r-i-n-d-e-r - forgive me if I get this wrong - A-g-h-
25 n-o-t-a-r-i.

26 Thank you. And who else?---Ah, privilege. At the time that we
27 made this investment, Grant Gibson, ah, was also the co-
28 director.

29 Grant Gibson. How do you know Grant Gibson?---Privilege. Ah,
30 I met Grant - ah, I believe it was - wouldn't been around
31 2013/2014, ah, in Western Australia, in a business - in a

1 business context.

2 Is he how the IPO Group became involved with AB Credit?---Ah,
3 privilege. Ah, yes, I believe he reached out to me, ah,
4 seeking investment, ah, via the IPO Group.

5 Pardon me, Registrar.

6 JUDICIAL REGISTRAR: Certainly.

7 MR GALVIN: There's another document that was provided to the
8 court which is a letter dated 15 July 2020 which was sent
9 by email by Mr Charles Grant. Does the court have that?

10 JUDICIAL REGISTRAR: What was the description, Mr Galvin?

11 MR GALVIN: It's a letter dated 15 July 2020 sent by email to
12 Mr Mawhinney, and it comes from Mr Charles Grant.

13 JUDICIAL REGISTRAR: Is that part of the bundle that was sent
14 this morning?

15 MR GALVIN: I think it was. It may be that it didn't come
16 through. There is it. I think that's it. Yes. Thank
17 you.

18 JUDICIAL REGISTRAR: All right. Thank you.

19 MR GALVIN: (To witness) Do you recognise this letter,
20 Mr Mawhinney? If we could just scroll through it,
21 please?---Privilege. Ah, vaguely, yes.

22 You remember this letter.

23 JUDICIAL REGISTRAR: Do you want me to mark that, Mr Galvin?

24 MR GALVIN: Yes, please, Registrar.

25 JUDICIAL REGISTRAR: I'm just trying to find which one it is.
26 It's a letter from - - -

27 MR GALVIN: Charles Grant, dated 15 July 2020.

28 JUDICIAL REGISTRAR: To Mr Mawhinney, isn't it?

29 MR GALVIN: Yes.

30 JUDICIAL REGISTRAR: Twenty-five July?

31 MR GALVIN: Yes. Fifteen July.

1 JUDICIAL REGISTRAR: Fifteen July. Sorry. Fifteen July 2020.

2 So I'll mark that exhibit MFI 5.

3

4 #EXHIBIT 5 - (For identification) Letter from Charles Grant
5 to James Peter Mawhinney, dated 15/07/20.

6 MR GALVIN: (To witness) You say you recall this vaguely,
7 Mr Mawhinney. Thank you, Registrar. You recall this,
8 but it's only a month ago, though. You don't recall this
9 letter clearly?---Privilege. I have had - not had the
10 opportunity to read - ah, to read the email - or letter,
11 should I say, in detail.

12 Did you have a falling out with Mr Grant, did you?---Ah,
13 privilege. I wouldn't describe it as a falling out, but,
14 um, we - we saw - we saw the world in different ways and,
15 um, parted ways.

16 M12 Global Limited is a company we've previously asked you some
17 questions about. What is it?---Privilege. Ah, it was a
18 business that was set up in the United Kingdom, um, to -
19 ah, to work on the development of a financial product or
20 a suite of financial products that would enable the
21 distribution of, ah, funds to high interest rate
22 environments from low interest rate environments. It was
23 akin to the IPO Wealth Fund.

24 And it was intended to be operated in the United Kingdom; is
25 that right?---Privilege. Ah, we had evaluated multiple
26 jurisdictions, ah, and we settled on the United Kingdom
27 after considerable research.

28 So the idea was to promote investment in a scheme like the IPO
29 Wealth Fund scheme in the United Kingdom?---Privilege.
30 That's correct.

31 And the idea was to attract, what, English investors in the
32 scheme to invest in a fund in the United Kingdom akin to,

1 if you like, the IPO Wealth Fund?---Ah, privilege. Ah,
2 there are similarities and quite some significant
3 differences. Ah, the structure was - ah, that we settled
4 on was not going to be a fund. Ah, it was going to be a
5 retail bond issuing program, ah, that we were well
6 advanced with, um, that would enable both English
7 investors and other investors throughout the European
8 Union and, over time, other countries, um, to invest in
9 fixed income products, given interest rates have
10 obviously been very low in a lot of the first world
11 countries, and given that we had a number of portfolio
12 companies that, um, had significant demand for credit, it
13 was capable of supporting, ah, the rate of interest that
14 we wanted to pay back to the buyer - the lenders.

15 And was that plan realised?---Privilege. No, it wasn't. We
16 didn't have the opportunity, given the way the
17 circumstances have unfolded to realise that plan in full.

18 What circumstances are you talking about?---Privilege. The
19 appointment of receivers and managers.

20 I see. Now, you terminated him by a letter of 12 July as an
21 employee of M12 Global Limited. Is that right? Is that
22 what happened?---Privilege. That's correct, and board
23 member.

24 Are you a director of M12 Global Limited?---Privilege. Yes, I
25 am.

26 And why did you terminate it?---Privilege. The letter
27 explains, um, why, ah - sorry - my termination letter to
28 him explained the reasons. Um, if I recall correctly -
29 um, I would need to have the letter in front of me.

30 Again - - -

31 All right?--- - - - there has been a lot happen in the last

1 handful of weeks. I just can't recall everything off the
2 top of my head.

3 All right. What was his role at M12 Global? Apart from being
4 a director, what was his role as an
5 employee?---Privilege. Ah, he was CEO and managing
6 director, ah, of M12 Global and responsible for the day
7 to day operations of the company.

8 He says in the fourth paragraph down that at a board meeting on
9 1 July, that is, 1 July 2020, presumably, which you
10 attended, the board resolved that he should liaise with a
11 licence insolvency practitioner in the United Kingdom for
12 advice on the solvency position of the company, being M12
13 Global. Is that what happened at that
14 meeting?---Privilege. I don't believe that, ah, I
15 supported that.

16 I'm sorry. Did the board resolve that or not?---Privilege. I
17 can't recall. I don't have the board minutes in front of
18 me.

19 You don't recall whether at a meeting on - in July this year
20 the board of M12 Global made a resolution that an
21 insolvency practitioner be liaised with to consider the
22 position of the solvency, or the solvency position of the
23 company. Is that right?---Privilege. I believe a
24 discussion was had, but I don't believe that there was an
25 actual resolution passed to that effect.

26 You said you - I think a moment ago you said you didn't agree
27 with it or you didn't participate in it. Is that
28 right?---Privilege. I can't recall whether that was a
29 meeting which I attended. Charlie's letter there
30 suggests I did attend. Um, however, any discussion with
31 respect to an engagement with a licensed insolvency

1 practitioner, um, (a), I considered unnecessary and (b),
2 ah, I don't know if the discussion, ah, resulted in a
3 formal resolution actually being passed. I certainly,
4 ah, haven't signed off any board minutes to that effect.
5 Why wasn't it appropriate to consult an insolvency
6 practitioner?---Ah, privilege. Based on, ah, the funding
7 arrangements that the broader Mayfair Group had been
8 working on they were well advanced and we didn't consider
9 it to be necessary.
10 Did that mean that the company could pay its
11 debts?---Privilege. That's correct.
12 How did the fact that there were plans that were well advanced
13 mean that the company could pay its debts?---Privilege.
14 How did Mayfair Group's plans for funding being well advanced
15 mean that this company, M12 Global, could pay its
16 debts - - -?---Privilege. The broader group's refinance
17 and financing arrangements, um, would provide it with
18 more than adequate liquidity to, um, clear its creditors
19 without any issues.
20 Yes, would if they were put into effect, but they weren't put
21 into effect, were they?---Ah, privilege. No, they
22 weren't at that time.
23 They haven't been put into effect at all, have
24 they?---Privilege. What - what - when you refer to they
25 what do you mean?
26 The plans, the Mayfair 101 plans that you've told us
27 about?---Privilege.
28 (Indistinct words)?---Privilege. The plans are well advanced.
29 They're well advanced, but they haven't been put into effect,
30 have they? There is no effective group financing of M12
31 Global's debt, is there?---Ah, privilege. As I said it

1 is well advanced.

2 What does well advanced mean?---Privilege. It means that there
3 are parties currently undertaking due diligence that will
4 enable us to address any creditor, ah, issues with M12
5 Global, ah, in the short term.

6 Do you remember that at the board meeting on 1 July you
7 committed to providing funding to the company of an
8 amount sufficient to clear all outstanding creditors and
9 liabilities by 10 July?---Privilege. I didn't make that
10 commitment. I explained that we were, ah, making
11 considerable efforts to see that that would happen, but
12 it certainly wasn't a firm commitment.

13 So there is, in fact, no firm - there's never been any firm
14 commitment for that to occur; is that right?---Privilege.
15 Ah, we haven't been in a position to provide a firm
16 commitment, hence one was not provided at the time.

17 It's well advanced, but there's never been any firm commitment;
18 is that a fair summary?---Privilege. That's correct.

19 Did you respond to this letter?---Privilege. As I said, I have
20 not even had the opportunity to read the letter a second
21 time. We've just been very exceptionally busy the last
22 few months so I haven't had the opportunity to go back to
23 Charlie as promised.

24 Is your answer to my question no?---Privilege. Repeat your
25 question, sorry.

26 Did you respond to this letter from Mr Grant?---Privilege. No.
27 Now, there was another meeting scheduled for 13 July to review
28 the solvency position of the company and, if appropriate,
29 to place the company into administration. Do you recall
30 that scheduling - that meeting being
31 scheduled?---Privilege. It was scheduled without me

1 being aware that it was to be scheduled.

2 And the meeting didn't take place because you told Mr Grant of
3 your intention to terminate his employment with the
4 company; is that what happened?---Privilege. At the
5 board meeting that, ah, is referred to in this letter
6 that you just pointed to on 1 July, um, we discussed the
7 solvency of the company, um, and, ah, the business, ah,
8 potentially continuing to accrue creditors at the time.
9 Ah, and, therefore, ah, the decision that was made
10 subsequent to that on my part was that I didn't consider
11 it prudent that the company continue to accrue creditors,
12 hence the decision to terminate Charlie's employment.

13 So you do remember attending the meeting on
14 1 July?---Privilege. I can't recall if that was the
15 date. I just don't have the calendar invitation, um, in
16 front of me.

17 How often did the company have board meetings?---Privilege.

18 Sorry?

19 How often did the company have board meetings?---Ah, privilege.

20 I believe it was - ah, we had - in the last probably 12
21 months we, off the top of my head, probably held three or
22 four board meetings.

23 So there's one meeting around early July that you can remember;
24 is that right?---Privilege. Yes, there was.

25 You mentioned in the paragraph numbered two on the second page
26 Opto Holdings Ltd. Do you see that?---Privilege. Yes.

27 Is that the company that one of the IPO entities has an
28 interest in?---Privilege. Yes. IPO 10, I believe, has a
29 loan facility in place for Opto Holdings Ltd.

30 And that's ultimately connected to the island in Venice; is
31 that right?---Privilege. That's correct.

1 If you look at paragraph - the paragraph numbered five he says
2 that his previous acceptance and subsequent non-
3 acceptance of the apportionment of expenses to the
4 company from other groups - he addresses that subject.
5 What's he referring to? What's he referring to when he
6 says 'the apportionment of expenses to the company from
7 other group members'?---Privilege. Ah, this is something
8 I discussed with Charlie, ah, 12 or 18 months, probably
9 more, prior to this letter, um, in relation to the
10 allocation of certain IPO Wealth expenses, ah, to M12
11 Global.

12 He was not satisfied, was he, that some items which were being
13 apportioned were - he was not satisfied that they were
14 appropriately apportioned; is that right?---Privilege.
15 Ah, it had never been raised as being problematic until
16 this point.

17 Right. So you say he raised it for the time. So you say that
18 he's lying when he says he was not aware of - recently of
19 the items that made up the amount of expenses; is that
20 right?---Privilege. He - he and I met in a small café
21 next to our London office at the time no less than 18 to
22 24 months ago and I explained, ah, what were considering
23 by way of the apportionment of expenses. Ah, he has been
24 well aware of that for the best part of two years.

25 Do you recall him stating there that, 'Given the situation now,
26 allocating this type of liability' - perhaps I should go
27 back a bit. He says that, 'I explained at that meeting'
28 - do you recall the meeting that he's talking about
29 there?---Privilege. Do you mind just pointing the - - -
30 (Indistinct words) meeting, is that the - that's the board
31 meeting, isn't it?---Privilege. Ah, sorry, are you

1 referring to line 2 of part 5, is it?

2 Actually to be fair, Mr Mawhinney, we should go through the
3 paragraph more carefully. Sorry about that. He refers
4 to the subject of his previous acceptance and subsequent
5 non-acceptance of the apportionment of expenses to the
6 company from other group members. And then he says, 'As
7 I explained at the board meeting on 1 July 2020, I
8 acknowledge that this topic was discussed in the past,
9 but that it had always been my understanding that this
10 was an intercompany loan that would be moved off the
11 balance sheet of M12 in the future and shared across the
12 other portfolio companies'. Do you know what he's
13 referring to there?---Privilege. I do. His
14 understanding - ah, well, his - his letter suggests his
15 understanding was, ah, incorrect, um, however, he was
16 well across what I took him through some 18 months to two
17 years ago.

18 He says also, 'I was not aware until recently of the items that
19 made up the amount'. That's the amount of expenses he's
20 talking about, is it?---Privilege. That's correct.

21 He says, 'I explained at that meeting that the situation at M12
22 at the time we had discussed the matter previously was
23 very different. At the time it was discussed the company
24 was regulated and had financial forecasts that showed the
25 company generating sufficient income that potentially
26 justified this loan amount'. Do you agree with
27 that?---Privilege. I don't believe that the status of
28 the company had really changed all that much to not
29 justify, ah, the loan amount being in there.

30 'I stated that, given the situation now, allocating this type
31 of liability to M12 would not make any sense whatsoever

1 primarily because doing so would put legitimate creditors
2 of the company in a disadvantaged position.' Do you
3 remember him making a statement to that effect?---Ah,
4 privilege. I do, however, I disagreed with the basis of
5 it because the allocations had already taken place prior.
6 'I explained that I had been working with the group accountants
7 over the course of the last four to five months to agree
8 a significant reduction to the allocation, but that it
9 would now appear that the full amount had been reported
10 to the receivers of the IPO Wealth entities as a
11 liability of M12.' What do you say to that?---Ah,
12 privilege. It was, because that's the way it had been
13 accounted for, um, in head office. He was well aware of
14 that.

15 Would that be a convenient time to break, Registrar?

16 JUDICIAL REGISTRAR: Yes, it would, Mr Galvin. I'm just
17 wondering if it would be better to resume at 2.15 rather
18 than 2. It seems there's a little bit of business that
19 the parties need to take care of in the lunch break.

20 MR GALVIN: Thank you.

21 JUDICIAL REGISTRAR: I also do want to give people an
22 opportunity to have a lunch break. So if it's convenient
23 could we please resume at 2.15.

24 MR GALVIN: Yes, Registrar.

25 JUDICIAL REGISTRAR: Mr Hay, is that convenient?

26 MR HAY: Yes, thank you, Registrar.

27 JUDICIAL REGISTRAR: Mr Mawhinney?---Yes, thank you, Registrar.
28 All right, then. Mr Associate, could we please adjourn until
29 2.15.

30 <(THE WITNESS WITHDREW)

31 LUNCHEON ADJOURNMENT

1
2
3 UPON RESUMING AT 2.17 PM:

4 JUDICIAL REGISTRAR: Yes, thank you. Are we ready to continue,
5 Mr Galvin?

6 MR GALVIN: Yes, Registrar.

7 JUDICIAL REGISTRAR: Mr Hay.

8 MR HAY: Yes, Registrar. Before Mr Galvin does proceed, we
9 have a copy of - we've been provided with a copy of the
10 email relating to the Laundromat investment which we can
11 produce to the court.

12 JUDICIAL REGISTRAR: Yes.

13 MR HAY: And we'll do so in the same way we did with the other
14 document by emailing the court and we'll copy Mr Galvin's
15 instructors in.

16 JUDICIAL REGISTRAR: Yes, thank you, Mr Hay. That would be
17 helpful.

18 MR HAY: That's what we're able to produce over the lunch
19 break. There may be some further documentation. I
20 haven't got to the bottom of that yet.

21 JUDICIAL REGISTRAR: Understood. If that document could be
22 produced in the way that you've described and if there
23 are further documents that are identified after the
24 hearing, if there's no objection to them being produced
25 then perhaps they could be produced in the same way,
26 Mr Hay.

27 MR HAY: We will do so. Without further correspondence we'll
28 email the court and copy the solicitors in.

29 JUDICIAL REGISTRAR: Yes, thank you.

30 MR HAY: Thank you. We'll do that now.

31 JUDICIAL REGISTRAR: Thank you, Mr Hay. Mr Mawhinney, you're

1 ready to continue?

2 MR MAWHINNEY: Yes, I am thanks, Registrar.

1 <JAMES PETER MALWHINNEY, recalled and examined:

2 JUDICIAL REGISTRAR: All right, then. Thank you, Mr Mawhinney.

3 And just a reminder that you're still under oath and how
4 to claim the privilege?---I understand. Thank you.

5 And also can I just confirm that you're in the room on your own
6 and without any other documents?---Yes, that's confirmed.
7 Right. Thank you. Thank you, Mr Galvin.

8 MR GALVIN: Thank you, Registrar. Mr Mawhinney, I'd taken you
9 to a loan book funding deed before lunch. I wonder if
10 the associate could please bring that up again. It's one
11 of the documents that was emailed to the court this
12 morning. It's been marked for identification I think. I
13 can't recall the number. It's headed Loan - - -

14 JUDICIAL REGISTRAR: MFI4.

15 MR GALVIN: Thank you. Thank you. No, it's not that one.

16 It's headed - that's the one. Thank you. Now, I think
17 you had some difficulty recalling this document; is that
18 right, Mr Mawhinney?---Privilege. It was from some time
19 ago. I'm familiar with, ah, the idea of the content, but
20 not certainly word for word.

21 If we could go down a couple of pages, please, Mr Associate, to
22 the background section. Yes, just there. (To witness)
23 You'll see that the lender has agreed at the request of
24 the borrower to provide a loan book funding facility to
25 the borrower under which the lender agrees - under which
26 the lender provides trail book loan advances. Do you
27 recall that being the subject of this
28 agreement?---Privilege. Vaguely, yes.

29 What has become of this agreement, this arrangement?---Ah,
30 privilege. The arrangement, ah, was on foot. There was
31 moneys loaned between SPV No.9 and AB Credit SPV No.1 on

1 a fairly regular basis over the last two years or
2 thereabouts since this agreement was implemented.
3 How much money was advanced in total?---Privilege. Off the top
4 of my head it was around eight or nine million dollars
5 that was advanced.
6 Has any interest been paid on that back to IPO 9?---Privilege.
7 Yes, there has.
8 How much interest has been paid back would you
9 say?---Privilege. I - I don't know off the top of my
10 head.
11 All right. Could we please go to - that loan agreement remains
12 on foot; is that right?---Ah, privilege. At the time of
13 the receivers and managers' appointment it was, yes.
14 There's another document, Mr Associate, which is headed - which
15 was provided this morning headed LMA Funded Participation
16 dated 24 February 2010. Thank you. Do you recall that
17 document, Mr Mawhinney?---Ah, privilege. No, I don't.
18 Do you mind scrolling down?
19 Do you recall Ms Madikin?---Privilege. No. The name doesn't
20 ring a bell, no.
21 What's M12 Global Total Credit Return DAC?---Ah, privilege.
22 It's a company incorporated in Ireland which the business
23 or the entity is what's known as a - a vehicle for
24 repackaging debt. I believe it was a subsidiary or it is
25 a subsidiary wholly owned by M12 Global Limited in the
26 UK.
27 If we could go to the next page, please. That's another copy
28 of the first page, but this time with your signature on
29 it, isn't it?---Ah, privilege. It is.
30 To IPO 9; is that right?---Privilege. Yes.
31 Could we go to the next page, please.

1 JUDICIAL REGISTRAR: Mr Galvin, shall I mark this one as MFI6?
2 MR GALVIN: Yes, please. Thank you.
3 JUDICIAL REGISTRAR: Yes, thank you.
4
5 #EXHIBIT 6 - (For identification) Document headed LMA Funded
6 Participation dated 24/02/10.
7 MR GALVIN: Do you see the schedule there? The borrower is AB
8 Credit SPV 1. The lender, as we know, was IPO 9; is that
9 right?---Ah, privilege. In this agreement or what - - -
10 No, in the earlier agreement. It relates to the earlier
11 agreement, doesn't it?---Privilege. The earlier
12 agreement the lender was SPV No.9.
13 Yes. Now, do you see the reference to security on this page
14 and the reference to a general security deed?---I'm just
15 moving the camera out of the way. Um, privilege. Yes, I
16 can see that term.
17 Do you know if a general security deed was
18 executed?---Privilege. I believe that there was one
19 executed between, ah, IPO Wealth Holdings No.9 and AB
20 Credit SPV 1.
21 Was it registered on the PPSR?---Ah, I - at the time the
22 receivers and managers were appointed, ah, I was of the
23 opinion that it was. Subsequent to that I identified
24 that the staff member, Rodney Watson, ah, who was
25 employed at the time, had not actually, in fact,
26 registered it.
27 So that was his fault, was it, that it wasn't
28 registered?---Privilege. Ah, no, not necessarily his
29 fault. Ah, I subsequently found an email where - ah,
30 because he had helped coordinate this transaction. Ah,
31 he had provided me with login details, I believe, to
32 register the PPSR charge, um, however, it was not done.

1 Ah, it was - yeah, it was - our error/my error for not
2 doing that at the time.
3 What made you think that it had been registered?---Ah,
4 privilege. Because I - Rodney, as I said - Rodney Watson
5 at the time had run this transaction, including
6 preparation of documentation, ah, right through to I
7 thought registering the charge which obviously
8 subsequently turned out not to be the case.

9 Mr Associate, there's another document amongst the group which
10 is headed Global Note. Could you please put that on the
11 screen.

12
13 #EXHIBIT 7 - (For identification) Global Note.

14 MR GALVIN: Thank you, Registrar. Go to the second page of
15 that, please. It's headed Global Note Representing Up to
16 Series 220-01 A\$2m Secured Fixed Rate Notes, June 2025
17 issued by M12 Global Total Credit Return DAC. DAC stands
18 for designated activity company, does it?---Privilege.
19 That's correct.

20 Now, what's this transaction all about? How did this come
21 about?---Ah, privilege. Our M12 Global London business,
22 ah, through its Irish subsidiary, the Total Credit Return
23 DAC, designated activity company, sought to repackage a
24 debt relationship between IPO Wealth Holdings No.9 Pty
25 Ltd and AB Credit SPV 1 Pty Ltd for the purposes of
26 listing, ah, the securities there on the Vienna Stock
27 Exchange. The transaction was completed.

28 On which stock exchange?---Privilege. The Vienna Stock
29 Exchange.

30 What did you mean by repackage? What does that
31 mean?---Privilege. Ah, it's a process of taking a - a

1 lending relationship, um, and repackaging it in such a
2 way that it can be subscribed to by institutional
3 investors.

4 A loan relationship means a loan, doesn't it?---Privilege.

5 Correct.

6 If you go to the next page, please, Mr Associate, there's a
7 promise to pay A\$2m there by the issuer. The issuer is
8 the Irish company, that's right, isn't it?---Privilege.
9 I believe so, yes.

10 And the promise is to pay to the registered owner. The
11 registered owner is - who is the registered owner
12 according to your understanding?---Ah, privilege. I
13 would need to reread this document. I can't recall.
14 You can't recall. All right. Could I have that document - I
15 think Your Honour has marked that document, yes. (To
16 witness) Has the \$2m been paid under this document?---Ah,
17 privilege. It has been, yes.

18 When was it paid?---Privilege. I can't recall what date it
19 was.

20 Do you know to whom it was paid?---Ah, privilege. There wasn't
21 an actual transfer of cash that took place. Um, it was
22 an assignment of the debt, if I recall correctly, from
23 SPV No.9 to the Irish designated activity company who
24 then repackaged that debt for the purposes of listing it
25 on the Vienna exchange.

26 So the debt that was owned by IPO 9 was transferred by IPO 9 to
27 this subsidiary; is that right?---Privilege. That's
28 correct. That's my understanding.

29 And what did IPO 9 receive in return for that transfer
30 or - - -?---Ah, privilege. I can't recall. This was a
31 transaction arranged by our London M12 Global team from

1 start to finish again for the purposes of, um,
2 demonstrating the repackaging of a debt arrangement.
3 You have no idea what - there's a debt which has been assigned
4 of, what? How much was the debt assigned?---Privilege.
5 It was \$2m.
6 And you don't know what the consideration was for that
7 assignment?---Privilege. I can't recall, no.
8 It occurred in February 2020, didn't it, a few months ago or
9 six months ago?---Privilege. Ah, I believe so, yes.
10 And you have absolutely no idea what consideration was received
11 by IPO 9?---Privilege. I can't recall the exact
12 relationship. Ah, it is an enormously complex structure
13 and again I'd need to revisit the documentation.
14 All right. Could I ask the associate, please, to bring up on
15 the screen another document provided to the court this
16 morning which is a letter from Aitken Partners to
17 Mr Welling of Kelly Hazel Quill Lawyers, which I'll call
18 KHQ, dated 27 July 2020.
19
20 #EXHIBIT 8 - (For identification) Letter from Aitken
21 Partners to Mr Welling of KHQ dated 27/07/20.
22 MR GALVIN: Thank you. Now, Mr Mawhinney, do you recall seeing
23 this letter at all?---Privilege. Ah, only very vaguely.
24 I haven't had the opportunity to review it in detail.
25 Well, it's only a page long. It was sent on 27 July 2020.
26 When do you think you saw it?---Privilege. I would have
27 seen it come into my inbox when KHQ sent a copy of it to
28 me, which I don't know what date that was.
29 Now, you'll see in this letter that Aitken Partners were
30 seeking further clarification from you regarding matters
31 arising from the business of IPO Wealth No,9. Do you see
32 that in the second paragraph?---Privilege. Do you mind

1 just scrolling up a little bit? I can't see it.
2 Sure?---Thanks. Sorry, down. Thank you.
3 Now, do you recall indicating to Mr McKinnon at a meeting on
4 2 June 2020 that IPO 9 held a security over AB Credit SPV
5 1 pursuant to a general security agreement?---Ah,
6 privilege. Yes, I do, and, further to what I said
7 earlier, ah, the general security charge subsequently
8 identified it wasn't registered.
9 And your explanation for that is that it was an
10 oversight?---Privilege. That's correct.
11 Now, do you see in the last paragraph on that page - if you
12 could scroll up, please. Thank you. (To witness)
13 'Secondly, we're instructed to seek the collapsing of the
14 series notes [the \$2m notes] between IPO Wealth No.9 and
15 M12 Global Limited which would revert the transaction to
16 simply a bilateral loan agreement between IPO Wealth No.9
17 and AB Credit SPV 1.' Do you understand what that
18 concept of collapsing one of these transactions
19 is?---Privilege. I understand the concept generally
20 speaking. I haven't had the opportunity to digest this
21 letter in any great detail at all.
22 Well, would you be willing on behalf of M12 Global to execute
23 the deed that is referred to in that last
24 paragraph?---Privilege. I'd need to get advice on it
25 first.
26 You haven't had advice yet? Have you not had advice already on
27 this subject?---Ah, privilege. Sorry, with respect to
28 this letter; is that right?
29 Yes?---Ah, privilege. No, I haven't.
30 When would you be able to get that advice do you think?---Ah,
31 privilege. What are we? What's the date today, sorry?

1 The date is 20 August?---The 20th. Ah, if you could allow 14
2 days I'd be happy to arrange that.

3 All right. Thank you. If you take that document down now,
4 thank you, Mr Associate. Could we please go to the
5 supplementary court book at 1608. You'll see the
6 reference there to AB Credit SPV 1. There's a reference
7 to convertible notes, a \$7.195m debt outstanding and a
8 reference to the first ranking charge on the PPSR that
9 it's unregistered. That's the transaction we've been
10 talking about; is that right?---Ah, privilege.

11 (Indistinct words)?---Yes - privilege. The loan deed that you
12 referred to earlier, Mr Galvin, I believe that relates to
13 that.

14 And the \$2m which is the next item, M12 Global Total Credit
15 Return DAC, that's the \$2m transaction we most recently
16 referred to or looked at; is that right?---Ah, privilege.
17 I believe it does. Yes.

18 All right. Could we please go to supplementary book 1611,
19 Mr Associate. Now, that's a - relates to the holding
20 base PR or evidences or records the holding base SPV 10
21 of an interest in Octo Holdings by way of a loan; is that
22 right? So IPO 10 lent something in the order of \$20m; is
23 that right - - -?---Privilege.

24 - - - to Octo Holdings?---Privilege. That's correct.

25 And it's - Octo Holdings is not part of the IP Group, is
26 it?---Privilege. No, it's not. Part - it's part of the
27 broader Mayfair Group.

28 Is it? Yes. And the loan of \$20m or more than \$20m, not
29 secured, why is that?---Ah, privilege. Ah, my
30 understanding was that there was a facility agreement,
31 ah, in place. Um, I can't recall if there was a deed of

1 charge or not or if - if there was a charge registered.
2 Are you saying you don't know whether the loan is secured or
3 not?---Ah, privilege. I can't recall. I don't have a
4 copy of it in front of me.
5 Well, when you completed this form you said it was unsecured,
6 didn't you?---Ah, privilege. Yes. That's correct.
7 That's what it says there.
8 Do you think you checked when you've completed this form as to
9 whether the debt was secured or not?---Privilege. Ah, I
10 may well have. I just can't recall at the time.
11 The Octo Holdings entity is registered in the United Kingdom;
12 is that right?---Privilege. Yes, it is.
13 What are its assets?---Ah, privilege. It owns shares in
14 Poveglia SRL and Recta SRL, two Italian companies.
15 Yes. And what's the value of those assets, those shares?---Ah,
16 privilege. That will be determined by the value of the
17 real estate that they own and the project that's underway
18 in Venice.
19 It would also depend on any liabilities, wouldn't it, that are
20 owed?---Privilege. That's correct.
21 Yes. What are the liabilities of Octo Holdings?---Ah,
22 privilege. I can't recall off the top of my head. I
23 don't have the balance sheet in front of me.
24 Right. Could we go, please, to supplementary court book 1612.
25 This is part of the ROCAP relating IPO 11, isn't
26 it?---Privilege. Yes, it appears to be.
27 And it records a shareholding held by IPO 11 in a company
28 called Livin, L-i-v-i-n, Proprietary Limited,
29 shareholding comprising 4.9 million shares-odd with an
30 estimated of 5,200,000 - sorry - 5,200,015; is that
31 right?---Ah, privilege. Yes. Except it's Liven, L-i-v-

1 e-n.

2 Yes. What is Liven?---Ah, privilege. Liven is also a fintech
3 or financial technology company. They are a payments
4 related company that operates within the restaurant and
5 lifestyle payments industry. They're an Australian based
6 company.

7 Lifestyle payments industry, what's that?---Privilege. Ah,
8 it's to do with making payments for lifestyle related
9 goods and services.

10 The - what's the status of that company at the moment? Do you
11 know?---Ah, privilege. Ah, the company has been tracking
12 well. Ah, COVID, ah, like most businesses, has had a
13 degree of impact. Ah, however, they - their margins
14 have, in fact, increased as a result of that.

15 How do you know it's tracking well?---Ah, privilege. I speak
16 to the founder on a regular basis.

17 So it's just from speaking to someone, is it?---Ah, privilege.
18 That's correct.

19 And who is this person that you've been speaking to?---Ah,
20 privilege. One of the co-founders and managing director,
21 Mr William Wong.

22 William Wong. So where's he based?---Privilege. Ah,
23 Melbourne.

24 Any other directors you know?---Privilege. Ah, Grace Wong and
25 David Ballerini are the - I believe the three directors
26 of the company.

27 Have dividends been received from these shares?---Privilege.
28 No, they haven't.

29 Do you have any idea what the company is worth?---Ah,
30 privilege. The most recent round of fundraising, ah, I
31 had seen a copy of the share certificate that was issued

1 to the new investors. Ah, I believe one of the was Coca-
2 Cola, ah, and the other one was, um, the - I can't
3 remember the name, but it was Michael Cannon-Brookes'
4 venture capital organisation, I believe, based out of
5 Sydney that, ah, also made an investment.

6 Have you corresponded in writing at all with Mr Wong?---Ah,
7 privilege.

8 In recent months, I mean?---Ah, privilege. In recent months -
9 when you say recent, what are you referring to?

10 Well, let's say since about February 2020; in the last six
11 months?---Privilege. Ah, I believe we may have, yes.

12 In relation to Liven?---Privilege. Yes. Our communication
13 would've related to Liven, I believe.

14 I call for production of the email - is it email correspondence
15 or hard or letters?---Privilege. I can't recall.

16 Well, I call for - seek a direction that there be production of
17 - of communications between Mr Mawhinney and Mr Wong
18 relating to Liven since February 2020, Registrar.

19 JUDICIAL REGISTRAR: That's communications between Mr Mawhinney
20 and it was a - was Wayne Wong, wasn't it?

21 MR GALVIN: William.

22 WITNESS: It was William.

23 JUDICIAL REGISTRAR: William Wong, sorry. William Wong
24 regarding Liven Proprietary Limited since February 2020.

25 MR GALVIN: Yes. Liven, L-i-v-e-n.

26 JUDICIAL REGISTRAR: Yes. Thank you. All right. Mr Hay, is
27 there any objection to that? Mr Hay?

28 MR HAY: Yes. Sorry. I was just trying to activate my - - -

29 JUDICIAL REGISTRAR: That's all right.

30 MR HAY: - - - microphone. Subject to, again, seeing the
31 documents that are to be produced - otherwise to be

1 produced. I'll have to make an assessment of the
2 documents at that stage, see what they are.

3 JUDICIAL REGISTRAR: All right. Well, I'm assuming that - is
4 that for purposes of reviewing for privilege, is it
5 MR HAY: Privilege and relevance.

6 JUDICIAL REGISTRAR: Well, I think the relevance has been
7 established by virtue of the questions and answers just
8 given, Mr Hay.

9 MR GALVIN: Could I just add that I've only asked for documents
10 that relate to Liven. I haven't asked - - -

11 MR HAY: Yes. No, I understand. And is it communications or
12 correspondence?

13 MR GALVIN: Any written communications which would be
14 correspondence.

15 JUDICIAL REGISTRAR: Well, would include correspondence. Yes.

16 MR GALVIN: Include correspondence. Yes.

17 JUDICIAL REGISTRAR: Well, I will give that direction.
18 Obviously, they can be reviewed for privilege in the way
19 that the other documents that have been called for can
20 be - - -

21 MR HAY: Yes.

22 JUDICIAL REGISTRAR: - - - and, Mr Hay, I'll also ask that they
23 be produced in the same way as we've previously discussed
24 which is by email to my associate copied to the
25 plaintiff's solicitors.

26 MR HAY: Thank you.

27 JUDICIAL REGISTRAR: Thank you.

28 MR GALVIN: Thank you, Registrar. I thought we had a company
29 search of Liven in the court book. I wonder if
30 Ms Papaleo is able to tell us where that might be unless
31 I'm mistaken.

1 MS PAPAEO: Sorry, I've accidentally just closed my
2 examination book. Just one moment.

3 MR GALVIN: Thank you. If Ms Papaleo needs a bit of time,
4 ma'am, I'm happy to move on with the next question. I
5 just invite Ms Papaleo to interrupt me when she's ready.
6 The shares that you have or that IPO 11 has in Liven have
7 been valued by you at \$5.2m; is that right?---Privilege.
8 Ah, yeah. Again, that's what it says on the form there.
9 When I say valued, that's your estimate. Is that - does that
10 come from the portfolio summary of March
11 2020?---Privilege. I believe it does. Yes.
12 Right. Could we go to supplementary court book 1416, please,
13 Mr Associate. If you could expand that so we can
14 identify in that where this investment is. It's an
15 equity investment so it should be in the top half; is
16 that right?---I can see it there.
17 Yes. Liven, 525,000. If you can move to the right, please,
18 Mr Associate. Thank you. The - I thought the valuation
19 you'd given was in the order \$5.2?---Privilege.
20 Am I missing something, perhaps, Mr Mawhinney?---Yeah,
21 privilege. If you'd like to go to the next page.
22 The next page. I see. Yes?---Ah, I believe it's the page
23 after this that has the fair value column in it.
24 Privilege. Yeah, on the left-hand side there you'll see
25 a figure of 5.2.
26 Yes?---Ah, 5.200 and \$15. Ah, if I'm not mistaken, that - that
27 is the same row that corresponds to the Liven investment.
28 So it's gone from 500,000 to 5.2m in value; is that what you're
29 saying?---Ah, privilege. I believe if you check the debt
30 section, you'll find that the convertible note, if I
31 recall correctly, has been converted to equity, hence the

1 value of the overall holdings - equity holds in that SPV
2 have obviously increased.

3 I didn't know - I didn't realise that there were convertible
4 notes. I thought there just shares that were held and it
5 was 7.9 million shares. Where there also convertible
6 notes - a loan facility through convertible note; is that
7 what you're saying?---Privilege. I would need to check
8 this again. It was a number of years ago now. Ah - - -
9 All right?---However, it was ultimately the end result at the
10 time that receivers and managers were appointed was that
11 there was an equity investment held of that value.

12 Registrar, I don't believe we have a balance sheet in the court
13 book so I can't take this matter any further at the
14 moment. But my instructor is emailing a company search
15 of Liven to the court now. I wonder if the associate
16 could please indicate when he's received that and I'll
17 come back to it. I think it's just come through now,
18 actually.

19 JUDICIAL REGISTRAR: Certainly. I'll let you know when we've
20 received it, Mr Galvin.

21 MR GALVIN: Thank you. Well, I have received it which means
22 probably, Mr Associate, you've received it as well.

23 JUDICIAL REGISTRAR: Not quite yet.

24 MR GALVIN: Not quite yet.

25 JUDICIAL REGISTRAR: Did you want to move on to something else
26 while we wait?

27 MR GALVIN: Yes. Yes, I - I will - - -

28 JUDICIAL REGISTRAR: All right.

29 MR GALVIN: - - - come back to that. There it is. Thank you.
30 Can we just scroll that slowly, please. That's the
31 company - a company search of Liven Proprietary Limited.

1 You're satisfied about that?---Privilege. May I see what
2 date it is, please.
3 It's been obtained (indistinct words)?---Date - date
4 extracted - - -
5 JUDICIAL REGISTRAR: Is it 5th of June 2020, Mr Galvin?
6 MR GALVIN: Yes. Thank you. If you scroll through, please, to
7 the share structure. I think you've done that. There
8 are various shareholders and classes of shares. If we go
9 down to the - to p.7 of the document, just back up to
10 share interest holding. That's the one and we can see
11 there's a number of shareholders. If we go to the next
12 page, Eleuthera Group is one of them. SO Eleuthera also
13 holds shares; is that right?---Privilege. Ah, that's
14 correct.
15 And then - - -?---Yeah.
16 Sorry, go on?---Yeah, privilege. Those shares were owned prior
17 to the IPO Wealth Group being established and the IPO
18 Wealth Fund being established.
19 And the shareholding below that is IPO 11s shareholding. It
20 says the number of shares held are 131,560. That's not
21 consistent with what you've indicated in the ROCAP, is
22 it?---I don't know how many shares we indicated in the
23 ROCAP.
24 Could we go back to page - I might just have that marked as an
25 exhibit, please, or marked for identification.
26 JUDICIAL REGISTRAR: Yes. I was going to mark it as MFI9,
27 Mr Galvin.
28
29 #EXHIBIT 9 - (For identification) Company search of Levin
30 Pty Ltd.
31 MR GALVIN: Thank you. Could we go back to the supplementary
32 court book p.1612 and you'll see that the asset

1 description is 7,959,380 shares. I should - just to be
2 clear for the transcript, that's 7,959,380 shares. Do
3 you know what the reasonable discrepancy is?---Privilege.
4 We don't maintain the Liven share register so I can't
5 answer as to why there would be a discrepancy.

6 Well, where did you get the number from in that first column in
7 - on p.1612. It would have been from our internal
8 records to do with that investment.

9 Could we go, please, Mr Associate, to supplementary court cook
10 1613. I think it's the next page. These are - this is
11 extracted from the ROCAP relating to IPO 12; is that
12 right?---Privilege. Yes. I can see that at the top that
13 it is IPO Wealth 12.

14 And it records convertible notes held in Public-Democracy.

15 What's Public-Democracy?---Ah, privilege. Public-
16 Democracy is a data related company that owns shares in a
17 US company with a significant data asset.

18 Have you received a valuation of this company, Public-Democracy
19 Proprietary Limited?---Ah, privilege. Ah, we hadn't seen
20 a valuation of the company previously. We haven't sought
21 to have it valued independently.

22 Could we go to the next page, please, Mr Associate. This is a
23 further investment held by IPO 12 by way of shares in
24 Public-Democracy; is that right?---Privilege, yes. It
25 appears to be, yep.

26 And the shares you've given an estimated value of 17m-odd
27 dollars. Does that come from the Excel spreadsheet which
28 is the portfolio summary?---Ah, privilege. Yes. I
29 believe it would.

30 Who are the directors of this company?---Ah, privilege.

31 Mr Gary Davis and Eric Gyors.

1 How do you spell the latter gentleman's name?---Ah, privilege.

2 Eric, E-r-i-c Gyors, G-y-o-r-s.

3 Now, the purchase of the shares - can you say how much was paid
4 for the shares, 32 million-odd shares?---Ah, privilege.

5 Off the top of my head it was about 6.8 or 6.9m dollars.

6 And on what basis has the value of those shares been increased
7 to 17m?---Ah, privilege. The - our investment went in
8 at, ah, a number of different valuations in line with the
9 company, um, continuing to develop over time. Ah, if I
10 recall correctly, there was also, ah, some third-party
11 share sales that took place that. I believe it was
12 around, ah, 50 Australian cents per share.

13 Is that - I don't think that explains why the shares have
14 increased to \$17m. Can you be clearer about that,
15 please?---Privilege. Um, the, ah, last newsletter from
16 the company that I saw indicated that they, ah, had an
17 indicative offer on the table for around US\$4 per share.
18 Um, so we haven't factored that in, ah, and instead we
19 factored in the most recent price at which we bought a
20 substantial number of shares in line with our valuation
21 policy.

22 Registrar, I seek a direction that Mr Mawhinney produce all
23 documents upon which - all documents evidencing or
24 containing information upon which the estimate value of
25 these shares has been based.

26 WITNESS: Privilege. Mr Galvin, if I may, there is an
27 investment portfolio summary that was provided to Vasco
28 which has a column which outlines the basis for the
29 valuations of each these investments which has already
30 been provided, I believe.

31 MR GALVIN: Thank you.

1 JUDICIAL REGISTRAR: Mr Galvin, I've just noted that as all
2 documents referencing or containing information on which
3 the established value of the shares held by IPO Wealth
4 Holdings No.12 in Public-Democracy Pty Ltd was based.

5 MR GALVIN: Thank you.

6 JUDICIAL REGISTRAR: And I think that should be treated the
7 same way as we've been treating the other calls for
8 production which are that they can be reviewed by
9 Mr Mawhinney's solicitors to see if there's any privilege
10 claim to be made. Otherwise to be - and if there is,
11 that's to be listed and justified in the usual way. If
12 not, they can be sent by email to my associate, copied to
13 the plaintiff's solicitors.

14 MR GALVIN: Thank you, Registrar. Can I ask the associate,
15 please, to go to supplementary court book 1615.

16 JUDICIAL REGISTRAR: While he's doing that, Mr Galvin, I think
17 that the appropriate course after the conclusion of
18 today's hearing is for me to prepare orders recording
19 these directions for production and also the other
20 directions that I made at the beginning of the
21 examination - - -

22 MR GALVIN: Yes.

23 JUDICIAL REGISTRAR: - - - so that there's a clear record for
24 Mr Mawhinney of what he needs to comply with.

25 MR GALVIN: Yes. I'd be very grateful for that. That would
26 be - - -

27 JUDICIAL REGISTRAR: And I'll do that even if the documents
28 have been produced in the meantime.

29 MR GALVIN: Thank you.

30 JUDICIAL REGISTRAR: The parties shouldn't await receipt of
31 that order, but I will include it all there. Like, for

1 example, I know that one of the documents has been
2 produced. That was the complaint letter.

3 MR GALVIN: Yes, yes. Well, the directions have been
4 given - - -

5 JUDICIAL REGISTRAR: Yes.

6 MR GALVIN: - - - have been pronounced, if you like.

7 JUDICIAL REGISTRAR: Yes. That's right. But I'll just - I
8 think it might be - just so that there's no concern about
9 what has to be complied with, I think it probably would
10 be preferable for me to set it out in an order or - - -

11 MR GALVIN: Yes.

12 JUDICIAL REGISTRAR: Set it out in a form of order recording it
13 as directions.

14 MR HAY: We would be very grateful for that just so we're not
15 relying on my own imperfect notetaking.

16 JUDICIAL REGISTRAR: Well, we'll rely on mine, Mr Hay.

17 MR HAY: Well, if there's anything that's not clear, then we
18 have the opportunity to clarify it at that stage.

19 JUDICIAL REGISTRAR: That's all right. I'm happy to get my
20 associate to circulate it as a draft beforehand too.

21 MR HAY: Thank you kindly.

22 JUDICIAL REGISTRAR: Thank you.

23 MR GALVIN: And just before we go on with this, Mr Associate,
24 could we go back to the page we were on a moment ago.

25 The previous page. Yes. Sorry, yes. No, please go to
26 the next page again. Mr Mawhinney, this relates to the
27 assets of IPO 14 which - well, the asset is a loan to
28 MYNT Holdings Limited of \$4,435,636; do you
29 agree?---Privilege. Yes, I do.

30 What's MYNT Holdings?---Ah, privilege. MYNT Holdings Limited,
31 ah, is the holding company for a data related consultancy

1 business which has been established in London.
2 Who are its directors?---Ah, privilege. Samantha Campbell, I
3 believe Haydn Jones and myself.
4 So you're a director as well; is that right?---Privilege.
5 That's correct.
6 Why is the loan unsecured?---Ah, privilege. Because that was
7 the basis on which the moneys were advanced. Again, it
8 was a - that this particular business was an early stage
9 company, again, largely technology based and therefore
10 the value of a security agreement is relatively minimal.
11 How is that a reason for not securing the debt?---Ah,
12 privilege. Because the nature of a security agreement
13 would normally allow, ah, the lender to call upon, um,
14 the repayment of those moneys, ah, and if they were
15 unable to pay them they can call on the security.
16 However, if they're - if the - the business itself is
17 largely made up of, um, intellectual property, ah, and
18 personnel, the value of that is generally, um, not - not
19 as great as say an asset or a business, should I say,
20 that has tangible assets which isn't the case in this
21 instance and - and the money advanced was done so at a
22 price reflective of that.
23 Is your answer that it wasn't worth getting security because
24 the assets didn't have any value at the time of the
25 loan?---Privilege. No, that's not the case. It was, ah,
26 the way that the money was priced to reflect the - the
27 fact that it was unsecured.
28 What do you mean the money was priced? What's that
29 mean?---Privilege. Ah, the interest rate that was
30 charged on the money.
31 Yes. Well, we're talking about a \$4.4m loan. Surely, it

1 would've been wise to secure that debt in the interests
2 of IPO 14. How is it in the interests of IPO 14 not to
3 have security for that debt?---Privilege. This
4 particular agreement has the ability to convert to equity
5 so - - -

6 So it's a convertible note, is it?---Privilege. Yes. The, ah,
7 agreement, ah, from memory it's binding term sheets. It
8 provides for the ability to convert to equity, ah,
9 should, you know, should the lender choose to do so.

10 Where is the documentation that relates to that right or
11 evidences that right?---Privilege. It's in the documents
12 that have been provided to Dye & Co.

13 All right. Can you explain where the money came from. Did the
14 money that was lent to MYNT, did it come from IPO
15 1?---Privilege. Yes. That's correct.

16 Can we go, please, to the supplementary court book 1616,
17 please, Mr Associate. This relates - this is extracted
18 from the ROCAP for No.15 - IPO No.15 and it records an
19 asset - a loan, rather, to Adbit, A-d-b-i-t, Proprietary
20 Limited; is that right?---Privilege. That's correct.

21 It's a loan of \$1.49m; is that right?---Ah, privilege. Ah, the
22 loan wasn't that amount. Ah, the repayable amount,
23 however, is that amount.

24 What was the amount of the loan?---Privilege. It was about
25 \$700,000.

26 And why - when was it advanced?---Ah, privilege. Ah, from
27 memory, close to two years ago.

28 And how is it that the amount of the - the amount repayable is,
29 what, double the amount that was lent, is
30 it?---Privilege. Yes. The agreement specifies that it's
31 repayable at two times face value.

1 That suggests it's a high-risk investment, doesn't
2 it?---Privilege. That's the why the terms were
3 structured the way that they were, so that it would
4 generate a higher return.

5 So what does Adbit do?---Privilege. Ah, it's a - again, a
6 technology company, ah, but in the media industry. It's
7 effectively like a marketplace for buying and selling,
8 um, media such as, you know, billboard advertising,
9 radio, TV advertising, print advertising, that sort of
10 thing.

11 Was the loan agreement in writing?---Ah, privilege. There's a
12 - I believe it was a binding term sheet that was issued
13 and executed between this entity and Adbit Proprietary
14 Limited.

15 Was that provided to the receivers?---Privilege. Yes, it would
16 have been.

17 Are you sure it's been provided?---Ah, privilege. I don't have
18 a copy of what was provided, but I can assure you if it -
19 if you don't have a copy of it, we can provide one, but I
20 believe that it was (indistinct words)

21 Who - sorry, I think I asked you who the directors were, but
22 I'm not sure. Who are they anyway, just in case I
23 haven't?---Yeah, privilege. Ah, it was, ah, Aaron Monk
24 is the, ah, director, ah - - -
25 (indistinct) the surname?---M-o-n-k.

26 Anybody else?---Ah, privilege. I believe it was, ah, Robert
27 Huxtable.

28 How did you meet those gentlemen?---Ah, privilege. I met, um,
29 I - I was referred to brother of Aaron via, ah, Liven,
30 the other portfolio company we mentioned a moment ago,
31 um, and Aaron's brother introduced me to Aaron because he

1 had an advertising agency that we have done some work
2 with previously.

3 Why is this loan unsecured?---Ah, privilege. Ah, again, it's a
4 technology-based business. It's not a heavily asset-
5 based business and therefore given that we were charging
6 a premium for the money, um, it was commensurate with the
7 risk profile in - in my opinion as to why we did it that
8 way.

9 So did you turn your mind to whether or not there should be
10 security, did you?---Privilege. That's correct.

11 Yes. Did you record your resolution about that in writing
12 anywhere?---Ah, privilege. Ah, we don't recall - ah,
13 sorry - we don't record decisions that we make in
14 relation to not structuring transactions in particular
15 ways. We record the decisions associated with how we do
16 structure them.

17 When you say the decisions that we make, do you mean the
18 decisions that James Mawhinney makes?---Privilege. I
19 have a team of people that I bounce these transactions
20 off on a regular basis before making a final decision.

21 Yes, but you make the final decision because you're the
22 director of all these entities; isn't that
23 right?---Privilege. Yeah, privilege. That's correct.

24 Could we go, please, to p.1618 of the supplementary book,
25 please, Mr Associate. This relates to IPO 17. It's an
26 extract from the ROCAP recording the investments held by
27 IPO 17. The investment here is a loan of some 17 and a
28 half million dollars to M12 Global Limited which is a UK
29 company you've already given evidence about; do you agree
30 with all of that?---Privilege. Yes, I do.

31 This loan is unsecured. Why is that?---Privilege. Again, we

1 have a consistent template or structure that we follow
2 for investments of this nature. Ah, the same applied for
3 the previous transaction with Adbit and the same applied
4 for the one before that with, um, ah, MYNT Holdings
5 Limited.

6 So the template includes not seeking security?---Privilege.

7 That's correct. It's an early stage business that's
8 largely technology-based without physical assets, um, we
9 charge a premium for the money, um, in - in lieu of it
10 not being secured.

11 Is the loan agreement, in this case, in writing?---Ah,
12 privilege. Again, there's a binding agreement in place.

13 When's the money repayable?---Privilege. I can't recall. I
14 don't have a copy of it in front of me.

15 Is it repayable within the next decade?---Privilege. I believe
16 it is, yes.

17 What interest is being paid on it?---Ah, privilege. Ah, I
18 can't recall what the interest rate was.

19 What's the - in the case of IPO 15 and the loan to Adbit, when
20 is that loan repayable?---Privilege. I can't recall. I
21 believe that there's a term in the document.

22 What about the loan to MYNT by IPO 14? When is that
23 repayable?---Ah, privilege. Again, I don't recall.

24 Has interest been paid to IPO 14 on the MYNT loan?---Privilege.
25 I believe some interest has been paid, yes.

26 But is all the interest that is due and payable, has it been
27 paid?---Privilege. No, not at this point.

28 I beg your pardon?---Privilege. No.

29 What's the shortfall?---Privilege. I don't know.

30 What about the loan to Adbit? Are the interest payments up to
31 date on that loan?---Privilege. No, they're not.

1 What's the shortfall on that?---Privilege. I don't know.
2 Do you know why these interest payments haven't been made on
3 these cases?---Ah, privilege. The invoices took some
4 time to generate and to get out to be sent, um, and, ah,
5 the subsequent collections of those invoices because the
6 instance of M12 Global and MYNT Holdings Limited being,
7 effectively, related parties, internal group companies,
8 we didn't consider it necessary to be chasing interest
9 payments with respect to those particular companies.
10 How is that in the interests of IPO 1, the shareholder of IPO
11 14 in the case of the MYNT loan?---Yeah, privilege. In
12 both - - -
13 (indistinct words) loans?---Sure. Yeah, privilege. In both
14 instances as the debt accrues the ability to convert to
15 equity remains to be obviously there.
16 Well, that interest, had it been collected, might flow through
17 to the investors in the IPO fund; isn't that right?---Ah,
18 privilege. Ah, that's one potential use; correct.
19 One potential use. Wouldn't it be the only use since the
20 investors are owed so much or since IPO 1 owes so much to
21 the fund?---Privilege. The loan repayments were up to
22 date. The loan had never been in default up until
23 31 March this year.
24 Yes. But the interest payments in these - let's take the MYNT
25 loan, for example. You haven't taken any steps to
26 recover the overdue interest; is that what you
27 say?---Privilege. No. That's correct.
28 What steps have you taken to recover the overdue
29 interest?---Ah, privilege. Um, we have generated the
30 invoices and sent them across the MYNT. Um, I held a
31 meeting with Samantha Campbell, one of the directors of

1 MYNT, in their office probably no more than 12 months ago
2 or thereabouts to hold a discussion with them about them
3 and to have a discussion around what refinancing activity
4 can take place to bring that debt up to date.

5 Is it the case that MYNT simply can't make the payments of
6 interest because it doesn't have the money?---Ah,
7 privilege. At present that's correct.

8 What about in the case of Adbit? Does Adbit not have the money
9 to make the interest payments on its loan?---Ah,
10 privilege. No, I don't believe that's the case.

11 You believe it has the money to pay the interest, do
12 you?---Privilege. I believe so.

13 Well, what makes you believe that?---Ah, privilege. Ah, I'm
14 aware that the company's quite active and they have a
15 potential buyer at the table if not all through - well,
16 they had a buyer at the table that was about to acquire
17 the business. They wouldn't have entered into that
18 transaction if it weren't for the fact that the business
19 was able to, obviously, be in a position to pay its
20 debts.

21 How is that - does that translate into an ability to make the
22 interest payments on this loan? The fact that they had
23 plans that haven't eventuated?---Privilege. It was an
24 indication that there was a transaction of value that was
25 going to provide us with a full repayment of that loan
26 including interest and we wanted to see that transaction
27 through to conclusion.

28 In any event, I take it that you are not aware of the existence
29 of any liquid asset owned by Adbit which could be
30 employed or deployed to pay the interest due to IPO 15 on
31 its loan?---Privilege. Sorry, do you mind repeating

1 that.

2 I take it that you're not aware of any liquid asset of Adbit

3 which could be deployed or realised to pay the interest

4 payments due to IPO 15?---Privilege. No, I disagree.

5 Um, the business, ah, itself, ah, and its technology

6 platform is an asset in its own right and, ah, at the

7 time, ah, Adbit was undergoing a sale, ah, which would

8 have seen all of those interest payments including the

9 loan repaid in full. In fact, had that - - -

10 Yes, but the sale hasn't happened, has it?---Privilege.

11 That sale hasn't happened?---Privilege. Sorry, please repeat

12 the question.

13 The sale has not occurred, has it?---Ah, privilege. I

14 understand that the receivers and managers processes

15 disturbed that.

16 Let me ask you again: the loan - the sale of the - was it the

17 sale of the business?---Privilege. That's correct.

18 Yes. That hasn't occurred, has it?---Privilege. No, it

19 hasn't.

20 All right. Thank you. What about the loan to M12 Global and

21 the interest payable on that loan? What steps have you

22 taken in the last 12 months to recover that

23 interest?---Ah, privilege. We have sent invoices over to

24 the company. Ah, we have discussed with, ah, Charlie,

25 the former CEO, in relation to getting other funding into

26 the business. Um, but more importantly, we're focused

27 on, ah, delivering the retail bond program that would

28 ultimately enable that company to repay that debt

29 including all its interest in full.

30 So you're a director of M12 Global too, aren't

31 you?---Privilege. That's correct.

1 And you're also a director - are you also a director of
2 Adbit?---Privilege. No, I'm not.
3 What about MYNT?---Privilege. Yes.
4 So you would know what assets MYNT has, liquid assets, assets
5 that could be realised relatively easily and quickly to
6 pay debts of MYNT. As a director, you must be aware of
7 those assets if there are any?---Yes, privilege.
8 Correct.
9 Yes. What are the assets of MYNT that are readily realisable
10 into cash?---Yeah, privilege. As I mentioned, the
11 investment strategy of the IPO Group is largely in
12 technology and financial technology-related businesses
13 and therefore the assets that those businesses hold, ah,
14 typically are not tangible, ah, and therefore immediately
15 realisable assets.
16 Yes. They're not immediately realisable, are
17 they?---Privilege. That's correct.
18 In the case of M12 Global Limited, you say you've issued
19 invoices. Why haven't the invoices been
20 paid?---Privilege, ah, privilege. Because M12 Global
21 hasn't been in a position to pay those invoices.
22 What is TPLCUK?---Privilege. Ah, it's - I believe it's an
23 entity that was previously registered in the UK. I can't
24 remember. But the name rings a bell. It was or is part
25 of our group.
26 It's part of the Mayfair Group, is it?---Yeah, privilege. Are
27 you referring to an entity or a trading name.
28 Either. I'm just asking what TPLC means - TPLC or
29 TPLCUK?---Privilege. TPLC stands for The Public Listing
30 Company.
31 And what's that?---Privilege. It's a business that has been

1 part of the Mayfair Group that helps companies towards
2 listing on stock exchanges.

3 I see. Is it still operating?---Privilege. No, it's not.

4 Was it a corporate entity behind it or an
5 individual?---Privilege. A corporate behind it.

6 What was the name of corporate entity?---Ah, privilege. We had
7 one entity in Australia and we had one in - in the United
8 Kingdom.

9 What were the names of those entities?---Ah, privilege. The
10 one in Australia, from memory, was Green Horse Aust
11 Proprietary Limited, um, and subsequently we
12 incorporated Mayfair Advisory Limited, ah, and in the
13 United Kingdom, um, I believe to be - it was called The
14 Public Listing Co Limited, if my memory serves me
15 correctly.

16 What's happened to that company?---Privilege. Ah, the company
17 in the United Kingdom, ah, never really began trading.

18 What about the one - what about Green Horse? It changed its
19 name, didn't it?---Privilege. It has changed its name,
20 yes.

21 To what?---Ah, privilege. If I recall correctly, it was
22 changed to Mayfair Wealth Partners Proprietary Limited
23 and subsequently Australian Income Solutions Proprietary
24 Limited.

25 What does it do now?---Ah, privilege. Nothing at the moment.

26 Could I ask the associate, please, to go to main court book
27 2183. That's a balance sheet for IPO No.17, isn't it,
28 Mr Mawhinney, as at 30 June 2020?---Privilege. That's
29 what it says at the top, yes.

30 Would you know what the interest receivable relates to? Is
31 that the interest receivable from - interest receivable

1 from M12 Global?---Privilege. That's correct.

2 And there's a reference to convertible notes as a non-current
3 asset M12 Global - they're convertible notes which IPO 17
4 holds in M12; is that right? M12 Global?---Yeah, the -
5 privilege. The nature of the agreement is that those
6 loan amounts advanced can be converted to equity in that
7 company.

8 And then the - and at the moment M12 can't pay interest on the
9 debt so its shares must be worthless,
10 surely?---Privilege.

11 Must be (indistinct) value?---Yes, yes. Since, um, Mr Charles
12 Grant is no longer with the company, the company's
13 currently dormant.

14 Now, the - do you see the line that reads 'convertible notes
15 (capitalised expenses) M12 Global 1.6 million'? What's
16 that?---Privilege. I don't know off the top of my head,
17 sorry.

18 Is this - what - capitalised expenses we've seen in other
19 balance sheets. Is this where expenses have been
20 apportioned to SPVs and then, effectively, added to the
21 value of assets?---Privilege. Yes. I mentioned earlier
22 that our group focuses on adding value to investments and
23 that includes, obviously, incurring some costs along the
24 way, ah, but that - that's in line with our consistent
25 methodology.

26 Yes. What's that consistent methodology? Is that the thing
27 called the expense allocation policy you're talking
28 about? Is that what you're talking about?---Privilege.
29 That's correct.

30 All right. Could we please go, Mr Associate, to court book -
31 main court book 2201. Now, I think can you turn that

1 around 90 degrees. Thank you. This is headed
2 Intercompany IPO Wealth Holdings M12 No.17 Transactions
3 List. Are these transactions of IPO 17? Well, not
4 transaction of IPO 17. Do they relate to the expenses of
5 IPO 17?---Ah, privilege. I believe so. Um, I haven't
6 had the chance to review all of them.
7 Well, let's have a look at a couple of them. What about the
8 one 1 February 2019 Pollen Melbourne flowers for
9 Christina?---Privilege. Yes. I can see that.
10 What - I know it's only \$100, but what is it exactly? Is it
11 flowers for somebody, is it?---Yeah, privilege.
12 Christina was the group's marketing manager. I would
13 assume it was her birthday or something similar.
14 So that \$100 would have been capitalised, would it? Added to
15 the value of the assets of IPO 17?---Privilege. That's
16 correct.
17 Well, how could giving flowers to someone possibly increase the
18 value of a loan, for example?---Yeah, privilege. It's in
19 line with what I mentioned earlier today.
20 That's not my question. My question is not whether it's in
21 line with something. My question is how logically - for
22 example, if IPO 17 is owed a debt, which it is, by M12
23 Global, how does buying flowers for someone increase the
24 value of the debt? The debt is just what's owed, isn't
25 it?---Privilege. Ah, no, I disagree. Ah, in order to
26 apply human capital to any of our investments - - -
27 Sorry, what was the expression? What was that expression you
28 used? Human what?---Human capital.
29 Human capital. Thank you?---Yes.
30 Yes. So what's that got to do with increasing the amount of
31 money that's being lent?---Yes, privilege. The

1 application of a private equity style firm's resources of
2 an investment. Um, whether that's, ah, the likes, ah,
3 flowers for someone's birthday or, ah, which we would
4 consider is inclusive of making sure that we have a good,
5 happy, devoted workforce, that is how we create value in
6 these investments.

7 But if \$7m, for example, is owed by M12 Global to IPO 17, \$7m,
8 when you buy flowers for Christina, that doesn't mean all
9 of a sudden that M12 Global owes \$7,000,100, does
10 it?---Privilege. That's how we've accounted for this.

11 But it - that's not actually what - it doesn't increase the
12 amount of debt at all, does it?---Ah, privilege. No. We
13 consider that it has.

14 You consider that that means you can recover \$7,000,100 from
15 M12 Global now?---Privilege. At the time, yes, we
16 believed that was the case.

17 You don't believe it now though?---Ah, privilege. We're not in
18 control of the, ah - - -

19 No. I'm asking you what you believe now. Do you still say
20 that by paying \$100 to give flowers to someone the amount
21 that becomes - the amount that is owed by M12 Global to
22 IPO 17 is increased by \$100?---Privilege. That's
23 correct. It's in line with our standard procedure.

24 You understand you're on oath, don't you, Mr Mawhinney? And
25 you're not a silly man. You're a very clever man, aren't
26 you?---Ah, privilege. I understand I'm on oath.

27 And you understand, don't you, that an amount payable under a
28 loan is determined by the terms of a loan agreement, a
29 principal in the interest and any other fees that might
30 be payable?---Privilege. I understand that.

31 And you understand, don't you, that the amount of a loan is not

1 unilaterally increased by the lender simply incurring an
2 expense unless the terms of the agreement provide for
3 that expense being borne by borrower?---Privilege. I
4 understand what you're saying. Um, the group, ah, made a
5 decision to apportion certain expenses to M12 Global, ah,
6 given that M12 Global's objective was to become a
7 structure much larger than IPO Wealth but very much
8 modelled on the IPO Wealth Fund structure.

9 Could I ask the associate, please, to go to court book - well,
10 actually, let's just have another look at - what about
11 the one further down the page for \$223,713, 360 Degree
12 Marketing Group. Is that - what's 360 Degree Marketing
13 Group?---Ah, privilege. It's a marketing agency.

14 Who are the directors of it?---Ah, privilege. Ah, Aaron Monk,
15 ah, Dan someone. I'm not familiar with the - with the
16 rest.

17 Do you or any entity associated with you have an interest in
18 that company?---Privilege. No, we don't.

19 Apart - yes. I'll withdraw that. So this \$223,713 was paid
20 for what services?---Privilege. I don't have the invoice
21 so I don't know.

22 What does 360 Degree Marketing Group do? Presumably, it does
23 some form of marketing?---Privilege. That - that's
24 correct. You can assume that it's marketing services.

25 And did this \$223,000 effectively get added to the value of the
26 IPO 17 investments?---Ah, privilege. I don't know that
27 specific amount did but, um, yes, that was the way that
28 it was treated from time to time. Um, 360 Degree Media
29 Group, ah, sent one of their staff over to London for an
30 extended period to assess - sorry - to work with us in
31 relation to developing the advertising strategy for M12

1 Global in London.

2 So does the \$223,000 in expenses relate uniquely and
3 exclusively to IPO 17 or does it relate to other
4 SPVs?---Ah, privilege. We made a decision to allocate
5 certain expenses to M12 Global, um, given that the
6 success of IPO Wealth in Australia, um, would be, ah,
7 would help determine the success and size and scale, ah,
8 and ability to open doors in the UK with M12 Global. Um,
9 and we didn't - - -

10 That - sorry - does that mean you don't know the answer to my
11 question which is whether the 223,000 relates exclusively
12 to - sorry - to IPO 17?---Ah, privilege. Ah, I - I don't
13 have the invoice in front of me so I can't, you know, I
14 can't specifically tell you, ah, what the answer is.

15 Could we go to the next page, please, Mr Associate, and rotate
16 that 90 degrees, please. If we go down, do you see about
17 halfway down there's an amount of \$2156 and a reference
18 to Oak Room Wines. What's Oak Room Wines?---Privilege.
19 It's a supplier that the group has used to provide, ah,
20 bottles of wine as a thank you gift to new investors that
21 would, um, invest with IPO Wealth. Um, back at that date
22 it would've been IPO Wealth.

23 So that's an expense which gets capitalised and added to the
24 SPV 17 assets; is that right?---Privilege. That's
25 correct.

26 Yes. And so, for example, the amount that's recoverable from
27 M12 Global thereby goes up \$2150?---Privilege. That -
28 that's correct.

29 I see. The - what about the Switzer Financial Group item at
30 the bottom of the page there for 44,000? What's that
31 for?---Ah, privilege. That's for advertising services

1 with Switzer Financial Group.

2 Can we go to the next page, please, and rotate that. Thank
3 you, Mr Associate. If we go about - we'll look halfway -
4 say - sorry. No, go back to that page. I think it's
5 p.2203 of the court book. Thank you. Towards the bottom
6 there's another Oak Room Wines amount of 2348. You'd
7 give the same answers in relation to that, I presume; is
8 that right?---Privilege. That's correct.

9 (indistinct) same questions and then there's - above that -
10 three items above that is a Google Australia amount of
11 \$152,069. What's that for?---Ah, privilege. That's
12 advertising with Google.

13 Advertising with Google in Australia?---Ah, privilege.

14 Advertising with Google Australia. I can't state
15 specifically where in the world those advertisements were
16 run though.

17 You know, don't you, the Google Australia advertisements were
18 for advertisements within Australia?---Privilege. In the
19 Google Adwords platform you can run ads anywhere in the
20 world at the click of a button and they get billed by
21 Google Australia if your business is based in Australia.

22 Yes. But the - all right. No. I withdraw that, Registrar.
23 Could we go, please, to court book 2198. Just pardon me,
24 Registrar. Just before we go to this document,
25 Mr Mawhinney, are you aware when M12 Global was
26 incorporated, roughly?---Ah, privilege.

27 Look, I won't test your memory. I understand we have a company
28 search. Can we go to court book 1178.

29 JUDICIAL REGISTRAR: Mr Galvin, would now be a convenient time
30 for a short five-minute break.

31 MR GALVIN: By all means.

1 JUDICIAL REGISTRAR: All right then. Thank you, everyone.

2 Five minutes.

3 MR GALVIN: Thank you.

4 <(THE WITNESS WITHDREW)

1 (Short adjournment)

2 JUDICIAL REGISTRAR: Yes, thank you. Are we ready to resume,
3 Mr Galvin?

4 MR GALVIN: Yes, thank you.

1 <JAMES PETER MAWHINNEY, recalled and examined:
2 JUDICIAL REGISTRAR: Mr Mawhinney?---Yes, thank you, Registrar.
3 Ms Papaleo?
4 MS PAPALEO: Yes, thank you.
5 MR GALVIN: Mr Mawhinney, I just want to take you back to IPO
6 10 just for a moment, which is the entity that holds the
7 shares in Opto Holdings; is that right?---Privilege. IPO
8 10 doesn't hold shares in Opto Holdings.
9 Sorry, what's its interest in Opto Holdings?---Privilege. It's
10 a loan facility agreement.
11 Loan facility. Sorry, yes, quite right. Now, is that a
12 secured loan facility agreement?---Privilege. I think we
13 went over this earlier. I couldn't recall. If I think
14 about it now I believe there was a signed document that
15 said it was a secured facility on the document but,
16 again, the charge was not registered on that.
17 Okay. Now, I can't recall now if this is the charge which was
18 overlooked, registration which was overlooked; I thought
19 that might have been one of the others but perhaps it was
20 this one, I've lost track now. What's the reason for the
21 charge not being registered in this case?---Privilege.
22 The - - -
23 The charge - I'm sorry. Sorry, where is Opto
24 registered?---Privilege. It's a UK company.
25 So is there a charge registered in the UK, a security
26 registered against it in the UK?---Privilege. No, there
27 isn't.
28 And why was that?---Privilege. It just wasn't registered at
29 the time. Again, these are all, you know, related party
30 group - companies that are all part of the same group so
31 we didn't consider it to be imperative at the time.

1 But a security was given but not registered; is that right?
2 ---Privilege. Yes, the security wasn't registered.
3 All right. You're aware, aren't you, that the solicitors who
4 are instructing me, Thomson Geer, by letter of 13 August
5 2020, sought from you undertakings or via you
6 undertakings from Opto - this is in the letter that they
7 sent to the directors of Opto - undertakings that Opto
8 would not dispose of its assets, including the shares in
9 the two Italian companies, without the provisional
10 liquidators' consent; have you seen that
11 letter?---Privilege. I haven't had the chance to, again,
12 read it in detail but I recall something to that effect
13 coming through.
14 And also there was a request that Opto properly execute a deed
15 of charge in registrable form to secure the loan; are you
16 aware of that?---Privilege. I can't recall if that was
17 part of the letter or not.
18 Do you know if Opto Holdings is taking steps to sell its shares
19 in the two Italian companies?---Privilege. I know that
20 it has had an offer, however, it isn't entertaining
21 offers given that we've got a formal process on foot at
22 the moment.
23 By formal - sorry, it's not entertaining offers, did you
24 say?---Apologies. By formal process I mean these
25 proceedings.
26 So do you know whether Opto is willing to give the undertaking
27 that has been sought by the provisional liquidators that
28 it not deal with its shares in these Italian
29 companies?---Privilege. Opto would need to get its own
30 advice on that matter.
31 Will you seek that advice and inform - and respond to the

1 letter which has been written to Opto Holdings as a
2 director of Opto Holdings?---Yes. Privilege. Of course
3 the board will address that letter. My apologies for not
4 coming back to it sooner.

5 When will it address that letter, do you think?---Privilege.

6 We're happy to do that within 14 days.

7 Do you think you could do it within seven days?---Privilege. I
8 have an exceptionally busy schedule, where due respect,
9 at the moment. I would prefer to have 14 days.

10 Well, all right. I don't have any further questions on that
11 subject at the moment, Registrar. I'm just coming back
12 now to IPO 17, Mr Mawhinney. Could I take you, please,
13 to court book 21 - just before I do that, there is one
14 other matter (indistinct words). Can we go to court book
15 1178, please. This is a company search of M12 Global
16 Limited, the UK company. Can we scroll down through
17 that, please. First of all, it was incorporated on
18 11 July 2018; is that right?---Privilege. Yes, I can see
19 that.

20 Now, the provisional liquidators and their staff have
21 calculated that about two and a half million dollars plus
22 GST of the advertising and marketing expenses that have
23 been charged to IPO 17, if you like, were incurred before
24 that date, before this company's incorporation; what do
25 you say to that?---Privilege. I can't recall
26 specifically. I do know that there have been some
27 advertising expenses allocated to M12 Global Limited.

28 Yes. But it wouldn't be right to allocate expense to it that
29 had been incurred before it was formed,
30 surely?---Privilege. I can't recall how that was
31 undertaken, if it was undertaken at all.

1 Could we go, please, now, Mr Associate, to 2198 of the court
2 book. Do you see what this document is, Mr Mawhinney?
3 Do you understand what it is?---Just bear with me one
4 second. Privilege. Yes, I have a general grasp of it.
5 What do you understand it to be?---Sorry, I'm just moving my
6 camera. Privilege. I believe it could be a copy of the
7 loan balance between IPO Wealth Holdings No.17 and M12
8 Global Limited and the transactions on the screen are
9 manual journal entries.

10 Do you see on 31 December 2018, which is the bottom of the
11 screen at the moment, there is a manual journal entry
12 relating to a recognition of M12 loan for all expenses
13 paid by IPO Wealth Pty Ltd from inception to 31 December
14 2018 to recognise M12 loan for all expenses paid by IPO
15 Wealth Pty Ltd from inception to 31 December 2018 - I
16 don't know why that seems to be set out twice there - and
17 the amount is \$7.144m?---Privilege. Yes, I can see that.

18 So that's \$7.14m incurred by IPO Wealth which has been added to
19 this loan account; is that right?---Privilege. Yes,
20 incurred by IPO Wealth Pty Ltd, the investment manager.

21 And what expenses would they be, the 7.14, would they be
22 marketing and advertising expenses?---Yes. Privilege. I
23 imagine the bulk of them are.

24 So the advertising and marketing was for the benefit of the IPO
25 Group presumably to attract new investors; is that
26 right?---Yes. Privilege. May I explain in some detail?
27 Yes?---Okay. Privilege. So as IPO Wealth began to grow and
28 become quite successful reasonably quickly, we considered
29 that developing a similar structure in a bigger market
30 such as the United Kingdom we thought would make sense
31 given interest rates were so low, there's a lot of

1 businesses seeking access to non-bank finance, and we
2 considered that the success of the IPO Wealth Fund would
3 make it easier for the M12 Global business to grow at a
4 faster rate, so we wanted to get the fund to over \$100m
5 worth of funds under management. That way when we held
6 discussions in the United Kingdom with people that were
7 helping us put together the structure and also with
8 potential portfolio companies that needed access to
9 funding, that the business itself could get taken
10 seriously because the fund in Australia would be at a
11 certain critical amount. So we considered that the
12 allocation of expenses to expand the IPO Wealth business
13 in Australia would, by default, add significant value and
14 help expedite the M12 Global business.

15 When you say 'we considered', you're just talking about James
16 Mawhinney, aren't you?---Privilege. This was something
17 that was decided internally. Pinnacle was involved in
18 the decision, as was our finance team at the time, and
19 obviously M12 Global was aware as well.

20 Can we scroll down to the bottom, please, Mr Associate, of that
21 page, and there's a closing balance of 14m-odd; do you
22 see that?---Privilege. Yes, I do.

23 Now, can we please go to court book 2183. You can see that
24 figure of 14m, precisely 14,024,929, is - appears in the
25 non-current assets part of the balance sheet for IPO 17
26 as at 30 June 2020; is that right?---Privilege. Yes, I
27 can see that.

28 And these expenses - I mean, these are expenses which are being
29 treated as an asset of IPO 17. How do you explain
30 that?---Privilege. They're not being treated as assets
31 of IPO 17. The asset of IPO 17 is the loan to M12 Global

1 Limited.

2 The convertible notes, but it's calculated by reference to, by
3 reference to the expenses, isn't it?---Privilege. That's
4 correct.

5 Can we go, please, to p.2201 of the court book, please. I've
6 taken you to that. What I'll do, Mr Associate, is could
7 you please go to 2283. That's an invoice from Google for
8 \$199,000-odd - if you go more into the bottom of the
9 page, please, Mr Associate. That's Google Australia to
10 IPO Capital Pty Ltd. The account is Eleuthera Group.
11 This is Google Australia, isn't it - if you go to the
12 top, please. But you'll see that TPLC UK is referred to
13 in the first item. What's TPLC got to do with IPO 17, if
14 anything?---Privilege. TPLC is part of the Mayfair
15 Group. It's the business that we use to take companies
16 towards the path of listing; M12 Global is one of those
17 businesses that it was commonly known was on a path
18 towards listing.

19 I should have asked first, Mr Mawhinney, whether this invoice
20 was, this expense is treated as part of the M12 expenses
21 we've been looking at?---Privilege. I don't know. I
22 can't cross-reference it just at glancing at it.

23 Well, certainly TPLC hasn't got anything to do with any of the
24 IPO entities, has it?---Privilege. I disagree entirely.

25 How is it connected to them?---Privilege. TPLC is the business
26 that we use to go and develop the assets to ultimately
27 list them, similar to a couple of the transactions that
28 I've referenced in the last couple of days.

29 Look at the item in the invoice IPO Wealth term deposits; what
30 term deposits are there in connection with IPO
31 Wealth?---Privilege. We have advertised under a

1 selection of different key words that we consider that
2 attract the right type of clientele to IPO Wealth. It's
3 a campaign that we ran, that we had obtained approval
4 from Vasco for, and it ultimately attracted a lot of
5 investment to the fund.

6 What term deposits are there in IPO Wealth Group?---Privilege.

7 There are no term deposits issued; that is simply a label
8 that's used.

9 It's a label but presumably what was advertised was term
10 deposits in IPO Wealth; is that what
11 happened?---Privilege. No, terms deposits were never
12 advertised by IPO Wealth; (a), we would not do that and,
13 secondly, Vasco would never approve of that.

14 Well, why did Google Australia invoice you for - invoice IPO
15 Capital for IPO Wealth term deposits?---Privilege. I'm
16 more than happy to explain how Google Adwords works. The
17 description on the left-hand side there is simply what's
18 known as the campaign name. It is simply a label given
19 to a bucket of key words that are used to trigger
20 different ads to show up - - -

21 Do you mean it's a search term?---Privilege. The campaign
22 would have had literally millions of search terms over
23 time; 'term deposits' would have just been one of them.

24 So the determine, the search term 'term deposit' would have
25 been used in connection with IPO Wealth Investment; is
26 that right?---Privilege. That's correct.

27 Well, how could you do that if there are no term deposits? If
28 people are looking for term
29 deposits - - -?---Privilege - - -

30 - - - (indistinct) at IPO Wealth, are they?---Privilege. It's
31 very simple. We provide an alternative, a range of

1 different types of investment products, of which term
2 deposits is one of them.

3 Well, IPO Wealth doesn't provide them, though, does
4 it?---Privilege. The IPO Wealth Fund is an alternative
5 to a diversion range of different investment products of
6 which term deposits is one of those alternatives.

7 I'm sorry, are you saying that IPO Wealth provides alternatives
8 to term deposits or provides investment in term
9 deposits?---Privilege. I'm saying that it provides an
10 alternative to investing in term deposits. A lot of the
11 investors that invested in the fund were looking for
12 different investment products, including term deposits,
13 including fixed income products, including mortgage funds
14 and a whole variety of different things. It's entirely
15 common practice and industry standards, the advertising
16 using Google Adwords under key words that relate to what
17 you do, even though the business may have a product that
18 might be considered to be an alternative to the key word
19 that you choose to display your ad for. It's a bit like
20 running an ad for a Hyundai out the front of a Daewoo
21 shop.

22 I see. So you're comparing the IPO Wealth products as
23 equivalent to term deposits with banks, are
24 you?---Privilege. Never, never have we done that.

25 Well, that's what you're suggesting. You're proposing that
26 these investments were an alternative to term deposits
27 with banks?---Privilege. There's a very, there's a very
28 clear distinction between an alternative to and a
29 comparison. We never compared these products to term
30 deposits.

31 But you advertised them with a search name 'term

1 deposits'?---Privilege. That's correct. The ad would
2 show up - if someone typed in key words relating to term
3 deposits, as they did many, many other different key
4 words, and it was up to the customer whether or not they
5 wanted to click on that ad, never once did that ad say we
6 provide term deposits, simply because the IPO Wealth Fund
7 doesn't. We never would be allowed to do that under the
8 watch of Vasco and neither did we even do that as the
9 organisation running the ad campaign.

10 Mr Associate, could you please go to p.2246 of the court book.

11 That is profit and loss statement for IPO Wealth Pty Ltd
12 and it includes an M12 loan balance. Is that because IPO
13 Wealth Pty Ltd lent money to M12?---Privilege. I don't
14 recognise this document. Our accounting package would
15 never produce such a document.

16 You see the figure of - these all appear to be expenses and
17 they total up to that \$7m figure which I took you to
18 earlier. Does that help you recall what this document
19 is?---Privilege. I don't know where this document came
20 from because it's - it would seem that someone has tried
21 to put two documents together.

22 All right. Can we go, please, to document, the document at 22
23 - I'll get the number right - 22 - sorry, 2198. I think
24 I've taken you to that all ready. That's the - you see
25 the figure of 7.144m, that's that figure we've just
26 looked at; I've asked you about that?---Yes, I can see.

27 Would you go, please, to 2246. Again, this is - that's a break
28 - I'm suggesting that that's breakdown of the figure of
29 the 7144, that that's how it's made up. If you scroll,
30 please, Mr Associate, to the bottom of that page. That's
31 how the figure is broken down; do you accept that?---Yes,

1 I can see that that's where it's come from.
2 And you can see that of that - if we scroll back to the top
3 half of the page, please - that advertising and marketing
4 comprises almost all of it, it's \$6.09m?---Privilege.
5 That's correct.
6 That seems right to you?---Privilege. The dollar amount seems
7 about right, yes, over two or three years, I think.
8 And these all relate to M12, don't they? That 6m relates to
9 M12, doesn't it?---Privilege. I think the total at the
10 bottom was 7.
11 Yes. But I'm talking specifically about the 6m,
12 6.09m?---Privilege. That's correct. We considered that
13 the advertising and the success really ultimately of IPO
14 Wealth would provide a significant boost to the success
15 of M12 and therefore given M12's prospects were that it
16 would ultimately become a lot larger than IPO Wealth, we
17 considered that that was the reasonable way to apportion
18 those expenses.
19 Can we please go to the supplementary court book at p.1568.
20 Now, Mr Mawhinney, it's a bit difficult to read this
21 document because it's a large document and if you look at
22 the whole thing it becomes impossible to read but just
23 looking at the title there, I'm going to suggest to you
24 that these are the marketing and advertising expenses
25 broken down, if you like, into specific invoices and
26 expenses. If we go to the bottom, you'll see that the
27 amount is not quite the 6m, exact 6m figure that I took
28 you to, 6.090 but you'll see that it's proximate to that
29 - go back to the left, perhaps, a bit further down - it's
30 a few pages down, Mr Associate, I think it's about five
31 pages, four or five pages - that's it there. Thank you.

1 You can see it's about 6.114m?---Privilege. I can see
2 that. I don't know what time period this is for.
3 If you go back to the top, it starts at 10 April 2017, top left
4 corner of the first page of this document?---Whereabouts?
5 What's the last date?
6 And the last date is 31 December 2018?---Yes.
7 So there are a couple of items, for example, on p.1569, these
8 are Google - you see the three - yes, where the cursor is
9 now - you see the three Google Australia items?---Sorry,
10 you'll need to zoom in slightly, please. Just - I can
11 see those, yes.
12 I mean, surely those items relate to advertisements placed in
13 Australia, in the Australian, for Australian market
14 purposes?---Privilege. Yes, I believe they would, would
15 be.
16 So they haven't got anything to do with M12, have
17 they?---Privilege. The relationship again is that we
18 considered that the success of IPO Wealth would directly
19 link to the ability for M12 to be successful, hence that
20 was why we made that decision.
21 But why would - I withdraw that. Can we go, please, to - well,
22 just looking at the right, go to the right, please,
23 Mr Associate; you see the amounts - sorry, just alongside
24 those Google entries. Does this seem (indistinct words)
25 amounts are being charged there. Can we go, please, to
26 court book 2300. That's a Google Australia invoice that
27 relates to the - that's been charged to M12; is that
28 right? For the M12 - not charged to M12 but, rather,
29 charged in relation to M12 advertising; is that
30 right?---Privilege. This tax invoice was IPO Capital.
31 The subsequent allocation of the expense I believe was to

1 M12 Global.

2 Sorry, that's what I meant to say. But, didn't it relate to
3 just advertising in Australia?---Privilege. That's
4 correct. To make the IPO Wealth Fund successful which
5 would directly feed into the success of M12 Global.

6 Can we go, please, to court book 2304. What's Gravia -
7 G-r-a-v-i-a - Media, what's that?---Privilege. As the
8 name suggests, they are a media agency.

9 These were fees that were, expenses that were charged to M12 as
10 well; isn't that right?---Privilege. I don't have the
11 list of them in front of me but I would imagine that in
12 line with our allocation of those expenses that they
13 would have also been apportioned to M12.

14 These are ads placed on Sydney radio, billboards in Sydney and
15 Melbourne, the Sydney Morning Herald, how could that
16 achieve investment in the United Kingdom?---Privilege.
17 It's very straight forward. We had an objective to get
18 the IPO Wealth Fund over AU\$100m so that when we were
19 discussing with potential funders and potential credit
20 partners for M12 Global, the fund would be at a certain
21 critical mass that would make those conversations a lot
22 easier and ultimately expedite the success of M12. Given
23 the size of the opportunity with M12 Global we considered
24 it could be a prudent decision.

25 You've mentioned a number of times the expenses allocation
26 policy; do you know when that was
27 implemented?---Privilege. The expense allocation policy
28 and what we're referring to here with M12 Global are two
29 separate things - - -

30 I'm sorry, Mr Mawhinney. My question is what - do you remember
31 when the expenses allocation policy was implemented, not

1 what's it connected with or - you know what I'm talking
2 about, don't you?---I do, the expense allocation policy
3 document. I don't remember when it was implemented.
4 From memory, it was late 2018, possibly early 2019.

5 All right. Well, could we - - -

6 MR HAY: Could I just intervene - I apologise, Registrar.

7 Could Mr Mawhinney just be reminded if he wishes to claim
8 privilege under 597(12A) that he needs to say the word
9 'privilege' before his answers.

10 JUDICIAL REGISTRAR: Mr Mawhinney, you've heard your
11 counsel?---Thank you.

12 MR GALVIN: Could we go, please, to - can I just say to you,
13 Registrar, that I think I'll be about another 20 minutes,
14 if that's convenient.

15 JUDICIAL REGISTRAR: That's not a problem for me, Mr Galvin.
16 Is there anyone else who has a problem with us going till
17 then? All right, I'll take it that there's - Mr Hay, did
18 you have a problem with that?

19 MR HAY: No, no difficulty for me, as long as Mr Mawhinney is
20 able to do so.

21 JUDICIAL REGISTRAR: All right. Mr Mawhinney?---Yes, I'm happy
22 to, Registrar, thank you.

23 Yes. All right. Thank you, Mr Galvin. That's fine.

24 MR GALVIN: All right. Thank you, Registrar. Mr Associate,
25 could you please go to p.2609. If you have a look at
26 this document; can you identify it as the investment
27 expenses allocation policy that you've given evidence
28 about?---Privilege. Yes, I can.

29 If you look down the bottom left-hand corner of the first page
30 we can see that it appears to be dated February 2019 - if
31 you can go down there, please, Mr Associate - there we

1 are. Thank you. Bottom left-hand corner. Now, do you
2 say that the taking of expenses and adding them to the
3 value of assets in the balance sheets of the SPVs is
4 something that was promoted or authorised, if you like,
5 by this policy?---Privilege. That's correct.

6 Could you please read through the document and identify for the
7 court what it is in this document that gives that
8 authority or expresses that policy?---Do you mind
9 controlling up, please? Privilege. Allocation method
10 section (a) methodology describes the method by which
11 expenses would be allocated to each of the SPVs.

12 Yes?---Section (b), the basis of the calculation provides for
13 how or using an example how those expenses would be
14 allocated against the relevant SPVs.

15 Yes. Now, where's the part about adding the expenses to the
16 value of the assets in the balance sheet?---Privilege.
17 Are you referring to the balance sheet of the SPVs or of
18 the underlying investment?

19 No, the SP - the value of the asset in the SPV's balance
20 sheet?---Privilege. Are you referring to the entries to
21 do with M12 Global?

22 No, I'm referring to all of the SPVs. I've shown you a number
23 of times where expenses have been capitalised and added
24 to the value of, for example, of shares or added to the
25 value of a loan; do you recall that? I've asked you lots
26 of questions about that?---Privilege. That's correct.
27 That table there - - -

28 Well, where is that authorised or justified or explained in
29 this document?---Privilege. The entire document explains
30 it very clearly. Vasco was - - -

31 This document, Mr Mawhinney, about allocating expenses between

1 the SPVs. It doesn't say anything about then adding
2 expenses to the value of the assets in the balance
3 sheets, does it?---Privilege. No, I disagree. The value
4 - there are two components to the quarterly investment
5 portfolio summary. There's - - -

6 No, no, no. Mr Mawhinney, I'm asking you to identify where in
7 this document there is an acknowledgement that the
8 expenses can be added to the value of assets in the
9 balance sheets of the SPVs?

10 MR HAY: Well, Registrar, Mr Mawhinney expressly responded to
11 Mr Galvin's previous question, he disagreed with the
12 proposition and was in the process, as I understood it,
13 of explaining why he disagreed. If he could be allowed
14 to answer that question.

15 JUDICIAL REGISTRAR: Well, he was referring to another
16 document.

17 MR HAY: Exactly.

18 JUDICIAL REGISTRAR: Which he was not asked about. He was
19 asked where in this document it describes adding the
20 expense allocation to the value of the underlying asset.
21 That's how I understood the question to be.

22 MR HAY: Well, it was put to him that it's not in that
23 document. He said, 'I disagree' and he was in the
24 process of explaining why. In my submission, in fairness
25 to Mr Mawhinney, he should be allowed to give the
26 explanation for why he disagrees.

27 JUDICIAL REGISTRAR: Well, if he disagrees that it's not in
28 this document, he should point to where in this document
29 it is, not by reference to another document, Mr Hay.

30 WITNESS: Privilege. May I just interject. My explanation -
31 the answer for the question is within this document.

1 However, the context of the quarterly investment summary
2 is equally important in explaining the value of the
3 investments or the estimated value of the investments
4 that was entered into the ROCAP forms.

5 JUDICIAL REGISTRAR: Mr Mawhinney, where in this document do
6 you say that it is?---Privilege. At the top, in the
7 methodology it expressly states that investment expenses
8 are incurred by related parties to grow the value of each
9 SPV investment. And then the second sentence says, 'The
10 expenses are allocated by Eleuthera back to each SPV in a
11 way that fairly represents the portion of time and effort
12 applied and allocated by Eleuthera back to each SPV'.

13 MR GALVIN: Yes. But, Mr Mawhinney, that doesn't say that as a
14 matter of accounting the value or the amount of the
15 expense can be added dollar for dollar to the value of
16 the asset, does it?---Privilege. I haven't had the
17 benefit of reading this document in detail, I'm afraid.

18 Thank you. Can I ask you, please, to go to p.2596, please,
19 Mr Associate. This is an email from you to Mr Van Wegen
20 dated 8 January 2019, isn't it?---Privilege. Yes, it is.
21 Now, in this email you requested an, you made an urgent
22 accounting query that you wanted Mr Van Wegen's advice
23 on; is that right?---Privilege. That's correct.

24 You said that, 'We were preparing documents for the IPO Wealth
25 Funds trustee, Vasco, to provide them with a record of
26 how funds had been utilised as at 31 December 2018'.
27 Were you referring there to the portfolio summary, the
28 spreadsheet?---Privilege. The portfolio summary
29 spreadsheet was only really introduced in and around that
30 time, if not in early 2019. It was the first time that
31 they had requested such detailed information.

1 What's the spreadsheet that's referred to in the next
2 sentence?---Privilege. I don't know. It was two years
3 ago.

4 All right. Was it something like the portfolio summary or
5 not?---Privilege. To the best of my knowledge, it was a
6 far more simplified version given that the version that
7 we have seen over the course of today is a far more
8 elaborate version that had evolved over time.

9 All right. The next paragraph reads, 'You will see an inter-
10 company loan to Online Investments, our parent company,
11 sitting at \$12.6m'. Now, when you say 'our parent
12 company', what did you mean by that?---Privilege. Online
13 Investments Pty Ltd at the time was the parent of the
14 various entities including IPO Wealth Group, including
15 IPO Wealth Pty Ltd and others.

16 So there was an inter-company loan to Online Investments, and
17 then you said, 'These funds have predominantly been used
18 for marketing the IPO Wealth Fund and cover some of the
19 Group's operating costs'?---Privilege. - - -

20 'I have drawn less than \$250,000 from this personally over the
21 past 18 months or so'; what was the \$250,000 for?
22 ---Privilege. That was personal services income.

23 Was there a written agreement about that?---Privilege. There
24 are consulting agreements in place with a number of
25 entities as we covered on Monday.

26 'We are concerned that Vasco may have an issue with it, given
27 this amount has grown substantially since our last report
28 to them. Until we have a major liquidity event, I expect
29 this amount will continue to grow.' So, in other words,
30 it was expected that the liability of the fund to Online
31 Investments was going to increase?---Privilege. That's

1 incorrect.

2 Sorry, what do you say that means?---Privilege. The liability
3 from IPO Wealth Holdings was potentially likely to
4 increase, not the fund.

5 I'm sorry. Yes, all right. So that's IPO 1. Its liability to
6 Online Investments; is that right?---Privilege. This
7 document doesn't specify that it was IPO Wealth Holdings
8 Pty Ltd. I could deduce that that might be the case but
9 I don't know for certain because it's not specified.

10 All right. Now, you agree, though, that there was an inter-
11 company loan here between Online Investments, which was
12 sitting at \$12.6m and there was some other borrower which
13 we suspect, I suggest to you, was IPO 1?---Privilege.
14 Yeah, I would like to see the spreadsheet that this
15 refers to.

16 I don't know that we have that, Mr Mawhinney, I'm afraid. Now,
17 we've move to the next paragraph or, sorry, I had read to
18 you, 'We are concerned that Vasco may have an issue with
19 it'. What was the issue that Vasco would
20 have?---Privilege. We provided or this was the first
21 time that Vasco had asked for certain information
22 relating to the IPO Wealth Group and we were concerned
23 that that loan balance with the size that it was may
24 cause Vasco to be concerned in relation to the
25 utilisation of those funds.

26 So you asked whether the inter-company loan could be made an
27 unsecured convertible note?---Privilege. Sorry, where
28 does it say that?

29 You see the word, the sentence beginning, 'I would like your
30 advice as to whether' - towards the bottom, above the
31 bullet points?---Privilege. Yes, I see that, yes. I see

1 that.

2 So you sought advice as to whether you could turn the inter-

3 company loan into an unsecured convertible

4 note?---Privilege. That was one of the suggestions

5 provided.

6 By you?---Privilege. That's my email, yes.

7 Yes. That was your idea, wasn't it?---Privilege. It was one

8 of a number of suggestions, as you can see - on the

9 screen there are only four, I can't see if there are

10 other suggestions underneath that.

11 I've asked you questions in the past about the loan agreements

12 between IPO 1 and the various SPVs and you say that they

13 were never - they never had any affect but really what

14 happened was IPO 1 invested in shares in the SPVs; is

15 that right?---Privilege. That's correct.

16 So is it the case that what actually happened in those

17 instances was like what you were suggesting here, that

18 you just converted the inter-company loans into

19 equity?---Privilege. The Online Investments Pty Ltd sat

20 outside the IPO Wealth Group. This is just ideas on a

21 page for Pinnacle Group to cogitate on, to come back to

22 us with a recommendation.

23 Yes. You weren't going to tell Vasco about this, were you?

24 ---Privilege. At that stage it wasn't required. They

25 had a reporting request and we were in the process of

26 preparing reports for them.

27 Over the next page, the second paragraph, 'If turning the

28 inter-company loan into a convertible note is the best

29 option, would you mind preparing a basic agreement for us

30 urgently. I would prefer to have an independent director

31 signing on one side. Is this serious? So is there

1 someone you can suggest?' Now, did this happen? Was
2 the loan converted into a convertible note?---Privilege.
3 No, it was, was not.

4 You say, towards the bottom, 'There is also an inter-company
5 loan to Eleuthera Group which we would potentially treat
6 in the same way. However, there are some shares we will
7 move across at cost that will reduce a substantial
8 portion of this'. What did you mean by
9 that?---Privilege. Eleuthera Group already owned shares
10 in some folio companies of the groups, of the wider
11 groups, and we proposed that one way to reduce that
12 liability was for effectively the sale of shares to take
13 place.

14 The paragraph above reads, 'I would also want to ensure that
15 they don't have any recourse over our parent company so
16 perhaps it's better we move the loan to a subsidiary of
17 the group'. What's that a reference to?---Privilege.
18 It's basic finance and legal principles which generally
19 it's better to have transactions in operating agreements,
20 loan agreements, et cetera, taking place with
21 subsidiaries rather than parent companies so it was - - -

22 You wanted to move the loan, move the existing loan to a
23 subsidiary of the group?---Privilege. I don't have the
24 benefit of the spreadsheet in front of us that this
25 document refers to so - - -

26 Do you need the spreadsheet to understand what you meant by 'we
27 move the loan to a subsidiary of the group'?---Privilege.
28 Again, the accounts that we were referring to would have
29 been drafted at the time and would have shown a loan
30 balance to Online Investments based on what we've seen or
31 what I've seen in this document.

1 Vasco - do you see the paragraph, the paragraph at the top of
2 this page, 'Vasco won't release process' - sorry, 'won't
3 release process any more drawdowns until we provide them
4 with the report. This is the only remaining item holding
5 us up. Venice settles next week so I need to get this
6 sorted ASAP so we will lose around 3.8m already paid'.
7 What are you referring to there? Just explain all that,
8 please?---Privilege. As you're aware, we were making an
9 investment in acquiring real estate in Venice and
10 therefore to continue funding and settle that transaction
11 we needed to obviously access capital that I believe had
12 been raised into the IPO Wealth Fund at the time. Vasco
13 requested a report. I believe that they hadn't requested
14 previously (indistinct) so we were preparing that
15 information so that we could provide it to them so that
16 ultimately we could complete that investment.

17 What's the item that's - the only item that's holding you
18 up?---Privilege. Based on the context of this email, I
19 believe it was referenced at the top as being that loan.
20 Well, it's providing them with a report. So the interest in
21 Venice is not held by an entity in the IPO Group, though,
22 is it?---Privilege. The loan agreement is held in the
23 IPO Group.

24 Yes, but the interest in Venice isn't?---Privilege. Correct.
25 Now, can we go to p.2595 to see Mr Van Wegen's response. He
26 said, in the second paragraph, 'Essentially if a majority
27 of the 12.6m relates to marketing, promotion, et cetera,
28 of the fund and the SPVs then we propose to take as much
29 as possible of the 12.6m off the balance of Online
30 Investments [that is everything from 1 July 18 until now]
31 entirely including any recourse and distribute this on an

1 appportionment basis to each of the underlying SPVs'.
2 That's a reference to what became the expense allocation
3 policy, isn't it?---Privilege. That's correct. This was
4 the beginning of the preparation ultimately of that
5 expense allocation policy.

6 That's right. Nothing in this about turning expenses into or
7 adding the amount of expense to the value of assets, is
8 there?---Privilege. I - just going back to my reference
9 to the quarterly investment portfolio - - -

10 Sorry. If you just look at this email, there's nothing in that
11 that relates to the adding of expenses to the value of
12 assets?---Privilege. I was explaining, because this is
13 relevant, the quarterly investment portfolio summary has
14 two sections. There is carrying value and there is fair
15 value. The carrying value has the expenses added to the
16 cost; the fair value is the fair market value of the
17 investment. Hence the balance sheets for certain SPVs,
18 some will reflect the fair value; some will reflect the
19 carrying value, particularly the debt investments, where
20 there have been expenses incurred associated with
21 managing, growing, developing those investments.

22 Yes, I understand - that's all tremendous in relation to the
23 spread sheet. Just focusing back on the email, there's
24 nothing in this email where, which suggests that it was
25 appropriate to add expenses to the value of assets and
26 balance sheets?---Privilege. Again, this was beginning
27 of the development of a policy, it wasn't a
28 definitive - - -

29 I'll take that answer as no; is that a fair thing to
30 say?---Privilege. It says at the bottom there, 'Sam and
31 I have discussed doing the appportionment on the basis of

1 fair value of each SPV' and they would be - - -
2 You're talking expenses between SPVs - it's got nothing to do
3 with adding the expenses to assets, has it?---Privilege.
4 My understanding of our internal process was that that
5 was always the case.
6 Do you agree that IPO Wealth paid Online Investments about
7 12.6m for marketing?---Privilege. I don't have a copy of
8 the transaction so I can't comment.
9 Pardon me, Registrar. Mr Mawhinney, do you have an interest in
10 any real estate personally?---Privilege. No, I don't,
11 directly.
12 What's the address of your home?---Privilege. I call home 73
13 McIntyres Road in Park Orchards.
14 Thank you. What entity is the owner of that
15 property?---Privilege. Darryl Lodge Holdings.
16 And is that the trustee of a discretionary trust?---Privilege.
17 Darryl - sorry, my apologies. Darryl Lodge Holdings Pty
18 Ltd is a trustee of a discretionary trust.
19 Do you have any other assets in your own name?---Privilege. I
20 provided a list of those to the court.
21 All right. Do you have an interest in any boats?---Privilege.
22 No, I don't.
23 Have you been connected with the acquisition of a boat by any
24 entity in the Mayfair Group?---Privilege. Back in 2014
25 or 15 I was, yes.
26 What boat or vessel was that?---Privilege. It was a Flybridge
27 Cruiser.
28 And which entity acquired that cruiser?---Privilege. It was
29 under Sunseeker - Sunseeker, the Sunseeker Trust.
30 And how much was paid for it?---Privilege. It was a vendor
31 finance deal. Off the top of my head it was around \$1m.

1 How much, sorry?---Around \$1m.
2 Where's the vessel now?---Privilege. It was sold.
3 I beg your pardon, I missed that?---Privilege. It was sold
4 last year.
5 I see. How much was it sold for?---Privilege. I think it was
6 about \$800,000.
7 And where were the proceeds paid?---Privilege. To Online
8 Investments Pty Ltd - sorry, Sunseeker Trust, I believe.
9 And what did Sunseeker Trust do with those
10 proceeds?---Privilege. Reinvested them into the
11 business.
12 Of Online Investments business?---Privilege. I can't recall
13 which entity they went into but I believe it was the
14 Sunseeker Trust that then utilised those funds to
15 reinvest into the Mayfair Group.
16 What do you mean, reinvest in what sense, lend or purchase
17 shares, what did you do?---Privilege. The boat was held
18 as an asset in the Sunseeker Trust. It was an investment
19 because it was acquired well under market price on a
20 vendor finance deal with a vendor that was - that I'd
21 entered into an agreement to onsell the boat in return
22 for a split of the proceeds and subsequently when the
23 boat was ultimately sold, the proceeds were retained
24 within Online - I believe it was Online Investments or
25 Sunseeker Trust, I just can't recall off the top of my
26 head.
27 Do you recall attending a boat show at some stage in the last
28 few years?---Privilege. I've attended a number, yes.
29 Do you recall paying about \$10,000 to attend a boat
30 show?---Privilege. The company spent money in relation
31 to a yacht show, that's right.

1 Yes. And were funds of the IPO Group used to pay that
2 \$10,000?---Privilege. No, they weren't.

3 Registrar, I don't have any further questions for the time
4 being but I would seek the usual order for an adjournment
5 of the examination to a date to be fixed.

6 JUDICIAL REGISTRAR: Yes. So I take it at the moment you don't
7 wish to use any of those days next week that I referred
8 to?

9 MR GALVIN: That won't be necessary, I don't believe,
10 Registrar. Thank you for making them available.

11 JUDICIAL REGISTRAR: All right. Well, please let us know as
12 early as possible if that is what is sought. Shall I
13 make the usual sunset orders providing for the summons to
14 be adjourned generally with the liquidators having the
15 ability to seek a resumption of the examination, notice
16 to be provided to Mr Mawhinney and then if he doesn't
17 receive - that that's within the next six months?

18 MR GALVIN: Yes.

19 JUDICIAL REGISTRAR: Such that if there's no notice given to
20 Mr Mawhinney within that period, then the examination has
21 been concluded after that six months has expired.

22 MR GALVIN: Yes. If you could add those orders, Judicial
23 Registrar, to the orders you are preparing and otherwise
24 also directions for the deletion of the court book files
25 that have been given to our learned friend's instructors
26 and - - -

27 JUDICIAL REGISTRAR: Yes.

28 MR GALVIN: - - - Mr Mawhinney.

29 JUDICIAL REGISTRAR: Yes. And also the other direction that I
30 would usually make at the end of - - -

31 MR GALVIN: Transcript, I think.

1 JUDICIAL REGISTRAR: At the end of an examination is the
2 transcript. Given the COVID restrictions, I think the
3 best orders are that - Mr Mawhinney, these are orders
4 that are usually made for the transcript to be provided
5 to you and for you to review the transcript, make any
6 corrections and sign each page. By corrections, that's
7 where the transcript has not recorded something
8 accurately that was said in court. So I think in this
9 instance, Mr Galvin, what I will do is make directions
10 that the transcripts be provided to Mr Mawhinney's
11 solicitors and that within 14 days of them being provided
12 they're to be returned signed by Mr Mawhinney by scanning
13 - you know, by electronic means, and the original signed
14 transcript can be returned by post in due course.

15 MR GALVIN: Yes. Yes, thank you for that.

16 JUDICIAL REGISTRAR: All right. Do you understand all of that,
17 Mr Mawhinney?---Yes, I do. Thank you, Registrar.
18 All right. This will all be set out in the orders, in any
19 event, so you'll see a copy of them when they come
20 through.

21 Mr Galvin, I am going to have my associate provide your
22 instructors and also Mr Hay's instructors with a draft of
23 the orders so that you can both check the accuracy of the
24 descriptions that I've given to the documents

25 - - -

26 MR GALVIN: Yes, thank you.

27 JUDICIAL REGISTRAR: - - - that have been called for for
28 production. I'll include that they're to be produced as
29 soon as possible. If there's an issue with that and you
30 need a final date put in there, perhaps you can discuss
31 that and include it in any response to my associate.

1 MR GALVIN: Yes.

2 JUDICIAL REGISTRAR: And also given the nature of the tasks
3 that the provisional liquidators are undertaking, if - I
4 don't imagine there's an issue with them being provided
5 in a piecemeal fashion.

6 MR GALVIN: The documents?

7 JUDICIAL REGISTRAR: Yes.

8 MR GALVIN: No, no. Just as soon as they can be presented.

9 JUDICIAL REGISTRAR: Yes.

10 MR GALVIN: We would expect them to be delivered up within,
11 certainly within seven days (indistinct)

12 JUDICIAL REGISTRAR: Yes. All right. Well, let's work - if
13 there's any problem with seven days, Mr Hay, you should
14 let Mr Galvin know and let my - and if that can't be
15 worked out between you, you can deal with it in
16 correspondence with my associate. So we'll send those
17 orders through when they're prepared.

18 I recollect on the first day of the examination
19 marking an email that Mr Mawhinney sent through - it was
20 an email from Rachel Xu to Greg Hammond dated 29 May
21 2020. At that time I marked that Exhibit A. What I'm
22 going to do is to change that for consistency sake and
23 I'll mark that MFI10.

24

25 #EXHIBIT 10 - (For identification) Exhibit A.

26 MR GALVIN: Thank you, Registrar.

27 JUDICIAL REGISTRAR: Is there anything further?

28 MR GALVIN: Nothing further from us.

29 JUDICIAL REGISTRAR: All right then. Thank you. Mr Hay or
30 Mr Mawhinney?

31 MR HAY: Nothing from me.

1 JUDICIAL REGISTRAR: Thank you.
2 WITNESS: Thank you, Registrar.
3 JUDICIAL REGISTRAR: All right then. Thank you all for your
4 attendance and assistance and, as I said, we'll get those
5 orders out to you as soon as possible. Can we have any
6 comments back expeditiously, please, so that we can
7 finalise them. All right. Please adjourn the court,
8 Mr Associate.
9 <(THE WITNESS WITHDREW)
10 ADJOURNED TO A DATE TO BE FIXED