
TRANSCRIPT OF PROCEEDINGS

S ECI 2020 02990

SUPREME COURT OF VICTORIA

COMMERCIAL COURT

MELBOURNE

MONDAY 17 AUGUST 2020

BEFORE JUDICIAL REGISTRAR MATTHEWS

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

PUBLIC EXAMINATION

MR M.J. GALVIN QC with MS N. PAPALEO appeared on behalf of the
Plaintiffs.

MR P.D. HAY SC appeared on behalf of the Examinee.

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5 system or transmitted without prior written permission of the
6 Authorised Officer.

7 JUDICIAL REGISTRAR: It's Judicial Registrar Matthews here.

8 Could I have the appearances for the plaintiff, please.

9 MR GALVIN: If the court pleases, Galvin here, I appear with
10 Ms Papaleo for the provisional liquidators.

11 JUDICIAL REGISTRAR: Thank you, Mr Galvin. I see that
12 Mr Mawhinney is present. Mr Mawhinney, could you just
13 say - confirm that your present just so that I can check
14 you've got audio?

15 MR MAWHINNEY: Yes, I'm present.

16 JUDICIAL REGISTRAR: Thank you, Mr Mawhinney. And is there an
17 appearance for Mr Mawhinney, please?

18 MR HAY: Yes, there is. If it pleases the court, my name is
19 Hay, initials P.D., counsel instructed by AJ & Co Lawyers
20 on behalf of Mr Mawhinney.

21 JUDICIAL REGISTRAR: Thank you very much, Mr Hay. Are there
22 any other appearances? It doesn't appear so. I note
23 that we have a number of observers present this morning.
24 I will just remind everybody, please, that if you're
25 observing the proceeding, you should make sure that you
26 have your camera off, which you all do, and your
27 microphone off, which you all do.

28 If I could, please ensure that there is to be no
29 recording other than by the transcript service and my
30 associate of this hearing. Are there any preliminary
31 matters, Mr Galvin?

32 MR GALVIN: No, Registrar. Actually, just one matter: I've
33 been instructed to seek an undertaking from Mr Mawhinney

1 and his counsel and solicitors that the examination book
2 be, insofar as it's electronic, be deleted and, insofar
3 as it may be in hardcopy form, be destroyed at the
4 conclusion of the examinations, which would be -
5 obviously, we're in different circumstances here,
6 ordinarily, the court book or examination book would be
7 provided to the witness and returned to the examiners at
8 the end of the examination.

9 JUDICIAL REGISTRAR: Yes. Thank you, Mr Galvin. Mr Hay, is
10 there any problem with that?

11 MR HAY: I have instructions on behalf of my instructing firm
12 and Mr Mawhinney that the undertaking sought is provided
13 - sorry, I should say: the undertaking is to - as I
14 understand it, to delete the court book upon the release
15 of Mr Mawhinney from the summons. Is that - - -

16 JUDICIAL REGISTRAR: Yes.

17 MR HAY: Is that correct, Mr Galvin?

18 MR GALVIN: Not quite correct in that the examination is likely
19 to be adjourned for a period of three or six months, or
20 thereabouts. So we would want the book terminated at the
21 end of Thursday's examination.

22 MR HAY: Right. Could I - if I just may take a moment to
23 clarify. That shouldn't be a problem but I should just
24 confirm - - -

25 JUDICIAL REGISTRAR: All right. Thank you - - -

26 MR HAY: - - - that that's - - -

27 JUDICIAL REGISTRAR: Thank you, Mr Hay.

28 MR HAY: Thank you. Thank you, Judicial Registrar. Yes, I
29 have instructions to provide an undertaking in those
30 terms. Can I just clarify that the undertaking that was
31 sought was from my instructing firm and from

1 Mr Mawhinney. I don't have a copy of the court book. As
2 I understand it, it has been sent to my instructing firm.
3 So I'm not giving the undertaking, at this stage, on
4 behalf of myself. If I do, in the course of proceedings,
5 need to have a copy uploaded for my own purposes,
6 Mr Galvin, I will let you know and a similar undertaking
7 can be given.

8 JUDICIAL REGISTRAR: Thank you for that. That all sounds very
9 sensible. Is there anything else either of you want to
10 raise before we start?

11 MR HAY: There's just one matter, Judicial Registrar, really
12 for clarification, I think. In the summons it refers to
13 the examinable affairs of the defendants. That's, with
14 respect, apt to - creates some confusion at least on -
15 for my client in the sense that I can't see anywhere else
16 in the summons that the defendants (indistinct) actually
17 identified and that - I'm referring to paragraph 1 on the
18 first page of the actual summons, Judicial Registrar.

19 JUDICIAL REGISTRAR: Yes, I can see that. I would suspect that
20 that's an error in the way the summons was drawn up
21 because these sort of proceedings aren't usually issued
22 with defendants. Mr Galvin, can you please clarify? I'm
23 assuming that it's - that the defendants, that is
24 referred to in the summons, are the various companies
25 that were placed into provisional liquidation by Justice
26 Robson.

27 MR GALVIN: That's correct. Yes.

28 JUDICIAL REGISTRAR: Yes.

29 MR HAY: Thank you for that. For clarity, we don't - we don't
30 oppose the amendment of the summons to include the word
31 'Companies' with capital C as defined in the summons,

1 Mr Galvin.

2 JUDICIAL REGISTRAR: Yes.

3 MR HAY: If that's - that makes things clear.

4 JUDICIAL REGISTRAR: Yes, I have no objection to that. All
5 right then. I will include in the orders that are made
6 that the summons issued 21 July 2020 be amended so that
7 it reads 'Companies' in paragraph 1 of the summons rather
8 than 'defendants' and that summons is amended forthwith.

9 I would ordinarily make directions at the start of
10 the examination as to examinees not communicating with
11 each other about the examination but we only have the one
12 examination - the one examinee, I beg your pardon, and I
13 will also make the usual orders that the questions asked
14 of the examinee and the answers given by the examinee be
15 recorded and later transcribed.

16 So I will include those usual transcript orders as
17 well. I'm assuming your instructors have placed an
18 actual order with the transcript service, Mr Galvin, but,
19 if they haven't done so, if they could do so as a matter
20 of some urgency.

21 MR GALVIN: I think they've done that, Registrar. Thank you
22 very much.

23 JUDICIAL REGISTRAR: Thank you. All right. Yes, my associate
24 is confirming that that has been done. All right then.
25 Is there anything further?

26 MR GALVIN: Not from - - -

27 MR HAY: Registrar - sorry, Mr Galvin. Registrar, forgive me,
28 I'm not familiar with the practice in Victoria, do you
29 propose to provide Mr Mawhinney with any instruction in
30 relation to s.597(12) (A)?

31 JUDICIAL REGISTRAR: I usually do, Mr Hay, and I'm happy to do

1 so here unless you're confident that it's not necessary.

2 MR HAY: I appreciate, with respect, if you would, Judicial
3 Registrar.

4 JUDICIAL REGISTRAR: Yes, that's fine. I would normally do
5 that. Thank you. All right. I will have Mr Mawhinney
6 sworn in. Mr Mawhinney, there was - can I just confirm -
7 actually, I will have you sworn in first.

1 <JAMES PETER MAWHINNEY, sworn and examined:

2 JUDICIAL REGISTRAR: All right. Thank you. Mr Mawhinney, I
3 will begin by making some opening remarks. The - and
4 these are the information for you in respect of the
5 examination this morning. You're summonsed here today to
6 answer questions relating to the affairs of IPO Wealth
7 Holdings Proprietary Limited and a number of other
8 companies. The liquidator's counsel, Mr Galvin, will be
9 asking you questions. I may also ask you some questions.
10 The answers given by you will assist the liquidators in
11 performing their statutory functions under the
12 Corporations Act. My role is to ensure that this process
13 is conducted fairly. Can I just indicate for everybody:
14 when I refer to 'liquidators' here, I am referring to the
15 provisional liquidators. Force of habit is leading me to
16 'liquidators' every now and again. You will have an
17 opportunity at the end of the examination to make a
18 statement, if you wish to do so, Mr Mawhinney. Your
19 counsel may also wish to ask you some further questions.
20 You are giving sworn evidence and you must provide
21 truthful answers. Your testimony is being recorded and
22 will later be transcribed and I've already made
23 directions that the questions put to you and the answers
24 given by you at this examination be recorded in writing
25 and, depending on the order that Mr Galvin seeks, you're
26 likely to be required to sign each page of the
27 transcript. It is important that you listen to each
28 question carefully and answer it as directly as possible.
29 If you do not understand the question, please say so. If
30 you do not know the answer to the question, it is
31 acceptable to say that you don't know. Generally

1 speaking, you are required to answer all questions put to
2 you unless I rule otherwise. You may be entitled to
3 object to answering a question. Mr Hay may object to a
4 question on your behalf. If that happens, please wait
5 until I have considered the objection and ruled on it
6 before answering, if that is what you are directed to do.
7 You may not be obliged to answer a question where such an
8 answer would be the subject of a proper claim of legal
9 professional privilege. In general terms, legal
10 professional privilege has the effect that you're not
11 required to give evidence which discloses a communication
12 made between you and a lawyer for the dominant purpose of
13 obtaining legal advice or for use in litigation. The
14 next part is very important: you are not excused from
15 answering questions put to you on the ground that the
16 answer you give may tend to incriminate you or make you
17 liable to a penalty. The Corporations Act does, however,
18 provide you with the protection in that you may claim a
19 privilege against incriminating yourself. I will explain
20 to you what that means: if you think that an answer to a
21 question may tend to incriminate you or expose you to a
22 penalty, you can say the word 'privilege' and
23 (indistinct) question. For example, if your answer to a
24 question is 'yes', you would say, 'Privilege. Yes'. It
25 is not possible to make a blanket claim of privilege. It
26 can only be done on a question-by-question basis. So
27 what that means is: that if you do want to claim the
28 privilege, Mr Mawhinney, you need to say 'privilege'
29 before you answer each other for which you're claiming
30 the privilege. It is not my responsibility to prompt you
31 to make a claim of privilege. It is up to you whether or

1 not you do so. If you do claim privilege in this way, it
2 will protect you against the use of your answers in
3 criminal proceedings and in proceedings for the
4 imposition of a penalty, except for proceedings which are
5 brought against you for giving a false answer to a
6 question put to you at this examination or, for example,
7 for failing to comply with your obligation to answer a
8 question which I have directed you to answer. I need to
9 point out that a claim for privilege does not prevent
10 questions and answers being used in civil proceedings,
11 only criminal proceedings of the type that I have
12 described. So just to emphasise, Mr Mawhinney, if you
13 want to invoke the privilege, you must do so in response
14 to each question. Do you have any questions about
15 that?---No, that's very clear.

16 All right. Thank you. I might just deal with a couple of
17 housekeeping matters and then we will get started. Can I
18 just indicate that if any of - if counsel or Mr Mawhinney
19 at any point need a break, then please let me know so
20 that we can stand down for a short period. I would -
21 with having the one examinee, my - I would probably have
22 a short break around the middle of the morning session
23 and then break for lunch at 1, resume around 2, or 2.15,
24 we will clarify that time when we get there, and go
25 through until 4.15. So if any - but if anyone wants a
26 break apart from those, if you need a break, then please
27 let me know. Just a couple of other housekeeping
28 matters. Mr Mawhinney, do you have anyone else in the
29 room with you?---One other person.

30 Right. Mr Galvin, did you want me to go through this or did
31 you want to deal with it?

1 MR GALVIN: Go through what, I'm sorry?

2 JUDICIAL REGISTRAR: My practice when taking evidence like in a
3 virtual hearing is to find out if there's anyone else in
4 the room with the witness and what material they have
5 them.

6 MR GALVIN: Yes, I'd be grateful.

7 JUDICIAL REGISTRAR: Or what devices they have available.

8 MR GALVIN: I would be grateful if you would make that inquiry.

9 JUDICIAL REGISTRAR: All right. Thank you. Mr Mawhinney, you
10 said you had one other person with you; who is that,
11 please?---It's a consultant that has only joined our
12 group as of a couple of days ago. So that - this is all
13 very fresh for them.

14 Right. Do you have - apart from the - what device are you
15 using to participate in the hearing, Mr Mawhinney?---Ah,
16 I'm using a laptop with a phone, ah, sorry, with a camera
17 connected to it.

18 Thank you. And do you have any other electronic devices with
19 you such as a phone or a desktop computer
20 or - - -?---Ah - - -
21 - - - an iPad?---Ah, I have my laptop directly in front of me
22 and I have my mobile phone which I'm using for internet
23 access at the moment. That's it.

24 Right. Thank you. All right, then. Mr Galvin.

25 MR GALVIN: Thank you, Registrar. Mr Mawhinney, would you just
26 state your full name again, please?---James Peter
27 Mawhinney.

28 And what's your occupation?---Ah, managing director.

29 And your address?---73 McIntyres Road, Park Orchards, Victoria.

30 And you said there's a consultant in the room at the moment;
31 who is that?---Ah, Mr David Walker.

1 And who's Mr Walker?---Ah, Mr Walker has joined, ah, our group
2 in an advisory capacity literally late last week.
3 And when you say 'our group', what do you mean?---Privilege.
4 Ah, I mean the Mayfair 101 Group.
5 Does that include the IPO Group of companies?---Ah, privilege.
6 Ah, we no longer, ah, operate the IPO Wealth Group of
7 companies, so, no.
8 I see. So why is Mr Walker with you at the moment?---Ah,
9 privilege. He is simply observing today's proceedings.
10 Yes. All right. The IPO Group is a group of companies which
11 was established in connection with a thing called the IPO
12 Wealth Fund; isn't that right?---Privilege. That's
13 correct.
14 What does IPO stand for?---Privilege. Ah, Initial Public
15 Offering.
16 And what does that have to do with the - why was that name
17 chosen?---Ah, privilege. It was the name chosen because
18 it related to a selection of the investments that we
19 sought to make with the IPO Wealth Holdings Group.
20 A selection of investments in what?---Privilege. Various
21 businesses.
22 What businesses?---Privilege. Ah, a range of businesses that
23 the provisional liquidators, ah, are now, ah, ah,
24 overseeing. Ah, he businesses have been provided and
25 that information has been provided to Vasco on an ongoing
26 basis.
27 You mean the businesses that are currently owned by the - what
28 we call the SPVs?---Privilege. IPO Wealth Holdings
29 borrowed money from the IPO Wealth Fund, ah, and invested
30 it in its SPVs.
31 Yes. When you say that the - no, I'll withdraw that,

1 Registrar. I should say Registrar that when I refer to
2 'SPVs', I'm referring to the subsidiaries of IPO Wealth
3 Holdings Proprietary Limited, just so that's clear. You
4 understand that, don't you, Mr Mawhinney?---Privilege. I
5 do.

6 And when I refer to 'IPO Wealth Holdings No. 1' or 'IPO 1', I'm
7 referring to the holding company of those SPVs; you
8 understand that?---Privilege. I do.

9 Yes, thank you. Can I ask you, please, to - do you have the
10 court book with you?---Ah, I can bring it up, sure.

11 Now, I'll - - -

12 JUDICIAL REGISTRAR: Mr Galvin - - -

13 MR GALVIN: Pardon me.

14 JUDICIAL REGISTRAR: Sorry, were you planning on having
15 Mr Mawhinney navigate the court book himself or the other
16 thing - what we would normally do is have my Associate
17 navigate the court book and share it on the screen.

18 MR GALVIN: That's one way of doing it. The difficulty I found
19 with that, Registrar, is that if the screen is shared,
20 then we don't have access to our screens to look at other
21 documents because the screen-sharing facility, I think,
22 takes up the entire screen; that's the experience I've
23 had in the past. I don't know if that's what would occur
24 this time. It may be easier if everybody just simply
25 navigates it, unless there's a problem with navigation,
26 of course. I was going to next ask Mr Mawhinney how - or
27 if he's able to navigate the examination book.

28 JUDICIAL REGISTRAR: All right. Well, I think - can we try it
29 with the screen sharing first, please.

30 MR GALVIN: Yes.

31 JUDICIAL REGISTRAR: And if that doesn't - if that poses

1 problems, we'll switch.

2 MR GALVIN: Thank you.

3 MR HAY: Judicial Registrar, that would be by far my
4 preference. I understand in Zoom that you can split
5 screens - - -

6 JUDICIAL REGISTRAR: Yes.

7 MR HAY: - - - so a document can be brought up. I'm not the
8 technical person who likes how to do that, but for
9 Mr Mawhinney's sake, so he could follow both the question
10 and the document, it would be much more helpful to him
11 not to have to navigate it himself if that's at all
12 avoidable.

13 JUDICIAL REGISTRAR: Yes. Well, it should be possible. We've
14 done it in a number of other examinations. So which page
15 of the court book did you want Mr Mawhinney to go to,
16 Mr Galvin?

17 MR GALVIN: One-six-zero - sorry, 1060.

18 JUDICIAL REGISTRAR: It takes a few minutes for the first one,
19 but - is that the page, Mr Galvin?

20 MR GALVIN: Yes, it is. I'm afraid this isn't going to work
21 because it's taken up the entirety of my screen which
22 means I can't see my notes and documents.

23 JUDICIAL REGISTRAR: You don't have a second screen?

24 MR GALVIN: Not that I can - it may be possible. I wonder if I
25 could just have a few moments.

26 JUDICIAL REGISTRAR: Certainly.

27 MR GALVIN: Thank you. Well, Registrar, I'll do my best. I
28 think you're on mute.

29 JUDICIAL REGISTRAR: I was, yes, thank you. Thank you,
30 Mr Galvin. All right, then. Let's see how we go and
31 then if you are having difficulties, Mr Galvin, we'll do

1 it the other way. The reason for sending the examination
2 book to the examinee and to his lawyers is in case we
3 have difficulty with the screen sharing.

4 MR GALVIN: Yes, I understand. I'm just going to see if
5 there's some way I can navigate more quickly to the
6 relevant page myself. All right. I have that now.
7 Mr Mawhinney, if we could just scroll slowly through that
8 document so Mr Mawhinney can see what it is. That's a
9 company search of IPO Wealth Holdings Proprietary
10 Limited; you see that?---Ah, no, I don't. I can see the
11 document. I can't see where it says IPO Wealth Holdings
12 Proprietary Limited; do you mind just making it a little
13 bit bigger?

14 JUDICIAL REGISTRAR: Mr Associate, I think that's not the first
15 page.

16 MR GALVIN: I think the first page is 1061, the relevant page.

17 JUDICIAL REGISTRAR: On the PDF of the court book, the first 50
18 pages are the index and then the - and so the page
19 numbers are started, you know, 50, plus. So p.1 is
20 actually p.51 of the PDF.

21 MR GALVIN: Well, the - certainly, in the book I've got, it's
22 p.161.

23 JUDICIAL REGISTRAR: It's - what page number, Mr Galvin?
24 You've given (indistinct).

25 MR GALVIN: Certainly, the book I've been given is it's p.1061
26 of the court book.

27 JUDICIAL REGISTRAR: One-zero-six-one, Mr Associate.

28 MS PAPALEO: Judicial Registrar, if I might just assist, I'm
29 sorry?

30 JUDICIAL REGISTRAR: Thank you, Ms Papaleo.

31 MS PAPALEO: There's a difference the page numbers of the total

1 PDF and the bottom right-hand corner.

2 JUDICIAL REGISTRAR: Yes.

3 MS PAPAleo: The bottom right-hand corner numbers are
4 incorrect. If you enter 1060 into the page numbers at
5 the top of the PDF, that should be the correct number.

6 JUDICIAL REGISTRAR: Right. Thank you. Thank you.

7 MR GALVIN: I'm grateful to Ms Papaleo for that. It's 1061,
8 please. If you would enter that in the - - -

9 JUDICIAL REGISTRAR: Yes, that should be showing on the screen
10 now.

11 MR HAY: I think that's 1060. Registrar, may I - - -

12 JUDICIAL REGISTRAR: Yes, that's it.

13 MR HAY: Registrar, may I just ask - and Mr Galvin, if I may -
14 the numbers that you'll be giving: will they be the
15 actual numbers of the document as opposed to the page
16 numbers on the bottom right-hand side?

17 MR GALVIN: Yes, I - - -

18 MR HAY: That's what I understand.

19 MR GALVIN: I would ask everybody, please, to ignore the
20 numbers in the bottom right-hand corner. The page
21 numbers I'll be referring to are the ones that the
22 associate has just entered in that little square next to
23 the total number of documents or pages in the document
24 (indistinct).

25 MR HAY: Okay. So the hyperlink page numbers in the index
26 won't be correct either, will they?

27 MR GALVIN: I believe they're wrong. That's right. So one
28 needs to go to the page number by - referrable by
29 entering it into the little box that the associate just
30 entered the numbers - the number 1061.

31 MR HAY: Thank you. I understand.

1 MR GALVIN: Hopefully, that - everybody can manage with that.
2 Anyway, that's certainly the page I wanted to go to.
3 Mr Mawhinney, you can see that's a company search for IPO
4 Wealth Holdings Pty Ltd?---I can see that, yes.
5 If you go to the next page, we can see that you are the sole
6 director of that company; is that correct?---Privilege.
7 That's correct.
8 And the ultimate holding company is a company called online
9 investments Pty Ltd; is that right? If you can go down
10 to - - -?---(Indistinct response.)
11 It's just below your name there we can see that. And if we go
12 to the next page, we can see the shareholder or the only
13 member identified is only investments Pty Ltd; is that
14 correct?---Privilege. That's correct.
15 Now, what is - are you able to say whether you hold - or online
16 investments, rather, holds that interest in IPO1, if I
17 can call it that, on trust, or whether it holds it
18 absolutely in its own right?---Privilege. I believe it
19 holds it on trust for the Sunseeker Trust.
20 I see. What is the Sunseeker Trust?---Privilege. It's a
21 discretionary trust.
22 And who are the beneficiaries of that discretionary
23 trust?---Privilege. There's a range of beneficiaries of
24 that trust. I can't recall all of them.
25 Do you know who the primary beneficiaries are?---Privilege. I
26 believe it's myself.
27 If we can go back, please, to the first page of this search,
28 1061, we - it looks like this company was formed in April
29 2017; would that be right?---Privilege. That's correct.
30 And why was it formed?---Privilege. It was established to be a
31 company that would borrow funds from the IPO Wealth Fund

1 that Vasco was the trustee of.

2 Online investments, the shareholder - what does it do? Is it

3 the trustee of the Sunseeker Trust, is it?---Privilege.

4 That's correct.

5 Is it still that - has it always been the trustee of that

6 trust?---Privilege. No, the online investments Pty Ltd

7 was replaced with an alternative corporate trustee, I

8 believe, in the last 12 months or thereabouts.

9 Was that Sunseeker Holdings Pty Ltd?---Privilege. That's

10 correct.

11 Sunseeker Holdings Pty Ltd, though, hasn't been substituted as

12 the owner of the shares in - or the - substituted as a

13 shareholder in this company, though, has it?---Privilege.

14 I don't believe so. That was something that our former

15 tax accountants took care of.

16 Who were the former tax accountants? Pinnacle, you

17 mean?---Yes. Privilege. Pinnacle Advisory Group.

18 What do you mean they took care of (indistinct)?---Privilege.

19 They would take care of a number of the ASIC filings for

20 the group, amongst various other forms of documentation

21 and filings which, no doubt, we'll cover over the course

22 of today.

23 Did you tell them that online investments had been substituted

24 as - by Sunseeker Holdings as the

25 shareholder?---Privilege. I - if I recall correctly, it

26 was actually Pinnacle that arranged that substitute.

27 So on whose instructions would that have been?---Privilege. It

28 would've been on my instructions, based on a

29 recommendation provided by them.

30 What does Online Investments do other than (indistinct) trustee

31 of the Sunseeker Trust?---Privilege. Online Investments

1 Pty Ltd, as the name suggests, was established to make a
2 selection of investments in businesses that were largely
3 technology focused. It is also served as a personal
4 services entity of mine.

5 What do you mean by 'personal services entity'? What's that
6 mean?---Privilege. That entity would have consulting
7 agreements with various other entities within the group.

8 Providing your consultant service; is that what you
9 mean?---Privilege. That's correct.

10 So it would invoice these other entities for your
11 services?---Privilege. That's correct.

12 And which entities are these services provided to?---Privilege.

13 I can't recall all of them. There are a number both in
14 Australia and in the UK group, I believe.

15 What are the entities in Australia that they're provided
16 to?---Privilege. If I recall correctly, the public
17 listing code which traded as Green Horse Australia Pty
18 Ltd, which has since been renamed. I believe Eleuthra
19 Group Pty Ltd, IPO Wealth Pty Ltd. I think one or two
20 others I just can't remember off the top of my head.

21 So you say that your services - consulting services have been
22 provided by you to a company called Eleuthera; is that
23 right?---Privilege. I would need to check the
24 documentation. I believe it was the case, but I just
25 can't recall.

26 Well, what made you think it was the case?---Privilege.

27 Because I had consulting arrangements with a number of
28 the various companies within the group.

29 What made you think it was the case that you had provided
30 consulting services to Eleuthra?---Privilege. Because
31 Eleuthra Group was established before the IPO Wealth

1 Fund. It was a business, ironically, that Thomson Geer
2 had assessed a partnership with. And in that capacity,
3 it was providing professional services to a range of
4 other small businesses.

5 Sorry. What did you say about partnership then?---Privilege.

6 I met with Norman Fry with Thomson Geer Lawyers with
7 respect to Eleuthra Group, and Norman Fry had acted for
8 me previously in relation to another matter that is two
9 of those entities, including Eleuthra Group and Online
10 Investments Pty Ltd who are obviously the subject of this
11 public examination.

12 You say that Mr Fry had acted for Eleuthra, do

13 you?---Privilege. I believe Mr Fry had assessed the
14 partnership on behalf of Thomson's lawyers at the time
15 with respect to Eleuthra Group.

16 Partnership between whom?---Privilege. Between Eleuthra Group
17 Pty Ltd and Thomson's lawyers.

18 Who do you say Mr Fry was acting for?---Privilege. Well, he
19 was acting on behalf of Thomson's lawyers at the time.

20 And I believe he acted for me in a personal capacity when
21 he reviewed a share purchase agreement where Online
22 Investments Pty Ltd was a party to.

23 He wasn't acting for Eleuthra, though, was he?---Privilege. I
24 can't recall. That was in 2014.

25 I see. Is Online Investments a trustee of any other trust or
26 has it ever been a trust of any trust apart from the
27 Sunseeker Trust?---Privilege. No, it hasn't.

28 When I talk about the IPO Wealth Holdings Group, you understand
29 that I mean IPO Number 1 and the SPVs as well as IPO
30 Capital and the investment manager in the IPO Wealth
31 Fund; would that be a fair summary of who - which

1 entities comprise the IPO Wealth Holdings
2 Group?---Privilege. That's incorrect.
3 All right. Can you please name the entities which you regard
4 as forming the IPO Group of companies?---Sure.
5 Privilege. IPO Wealth Holdings Proprietary Limited and
6 its wholly owned subsidiaries, IPO Wealth Holdings Number
7 2 Proprietary Limited right through to IPO Wealth
8 Holdings Number 17 Proprietary Limited and each number in
9 between that. So, for example, IPO Wealth Holdings 5 -
10 Number 5 Proprietary Limited, IPO Wealth Holdings Number
11 6 Proprietary Limited, et cetera, et cetera.
12 So we could call IPO Wealth Holdings Number 5, for example, SPV
13 5 or IPO 5. We would both understand what we meant by
14 that, wouldn't we?---Privilege. Correct.
15 So, in other words, IPO Capital Proprietary Limited is not a
16 company which you would regard as being within the
17 group?---Privilege. That's correct.
18 All right. Thank you for that. Can I ask who your employees
19 have been - or how many employees, perhaps, has the
20 company - or the group, rather, I should say - IPO Group
21 had over the last few years since it commenced
22 operation?---Privilege. Zero.
23 No employees?---Privilege. That's correct.
24 How many directors of the companies in the group have there
25 been?---Privilege. One.
26 You?---Privilege. Yes.
27 Advisors? Who have been the groups' advisors over the last few
28 years? Let's start with accounting
29 advisors?---Privilege. Pinnacle Advisory Group up until
30 6 June this year, Pozzi Finance Services in Western
31 Australia. Those were the two tax accountants acting on

1 behalf of the IPO Group.

2 I missed the second name. What was the second

3 name?---Privilege. Pozzi Finance Services.

4 How do you spell that for the transcript?---Privilege.

5 P-o-z-z-i.

6 And who was it at Pinnacle that you dealt with

7 mainly?---Privilege. Mr Craig Van Wegen was the

8 principal, as was Nora - Ms Nora Fairbanks. They were

9 the two principals of Pinnacle Advisory Group that

10 provided accounting taxation and legal advice to the IPO

11 Group.

12 And what about Pozzi?---Privilege. Pozzi purely acted as the

13 tax agent for the IPO Group.

14 Until when?---Privilege. Until Pinnacle's appointment which,

15 if I recall correctly, was late 2018.

16 And law firms. Which law firms have been engaged to act from

17 time-to-time for the IPO Group or any of the entities

18 within it?---Yes. Privilege. KHQ Lawyers in Melbourne.

19 We have utilised the services of a law firm in Rome. We

20 have - I believe that there was an engagement - in fact,

21 it was a Vasco engagement with - I can't recall their

22 name but they helped prepare the loan facility agreement

23 between the IPO Wealth Fund and IPO Wealth Holdings

24 Proprietary Limited. But they weren't directly engaged

25 by us.

26 All right. Well, we might come to that. And what's the name

27 of the firm in Rome?---Privilege. Sorry, do you mind

28 repeating that?

29 Sorry. What is the name of the firm in Rome that you

30 mentioned?---Privilege. I believe it was DMG.

31 DMG is a firm of attorneys in Rome; is that right?---That's

1 correct.

2 And what work did they do for the IPO Group?---Privilege. They
3 are assisting with an acquisition that we were looking to
4 make as a - as part of our broader group.

5 Acquisition of what?---Privilege. Of shares in two Italian
6 companies.

7 What companies were they?---Privilege. Poveglia SRL and Reta
8 SRL.

9 Could you please spell those for the transcript?---Privilege.
10 P-o-v-e-g-l-i-a-space-S-R-L and R-e-t-a-space-S-R-L.

11 So is it DMG? Was that the name of the firm?---If I recall
12 correctly, I believe it was DMG.

13 Do you remember who it was with whom you dealt at that
14 firm?---Privilege. Marco Cassasole.

15 How do you spell his surname?---Privilege.
16 C-a-s-s-a-s-o-l-e.

17 Thank you?---I may have that incorrect but it's very close to
18 that.

19 Yes. Thank you for that. Did - was Mr Cassasole acting for
20 the IPO Group in relation to these possible
21 acquisitions?---Privilege. He was acting for the
22 broader Mayfair 101 Group with respect to the acquisition
23 of those two companies.

24 I asked you for the names or lawyers or firms that had worked
25 for the IPO Group and you mentioned this firm; did this
26 firm act for any entities in the IPO Group?---Privilege.
27 He had dealings with respect to one of the SPVs within
28 the group but I can't recall which entity had his firm
29 engaged.

30 Do you know which entity within the group - within the IPO
31 Group it was that he was acting in relation

1 to?---Privilege. It was in relation to SPV Number 10.
2 Number 10? Thank you. And what is Poveglia SRL?---Privilege.
3 Poveglia SRL is an Italian-based company. It's an
4 investment holding company.
5 Were shares acquired in that company by the IPO
6 Group?---Privilege. No, they weren't.
7 Did any entity associated with you acquire shares in that
8 group?---Privilege - - -
9 (Indistinct)?---Sure. Privilege. The UK-based entity, Okto
10 Holdings Limited acquired those shares.
11 And what's the - how do you spell Octo? Is it
12 A-k-t-o?---Privilege. It's O-k-t-o.
13 Sorry, O-k-t-o?---O-k-t-o.
14 Yes. And who were the directors of that company?---Privilege.
15 I need to check the register. At last check it was
16 myself, Mr Charles Grant and Mr Macklay - sorry, his
17 surname escapes me.
18 All right?---Sorry, my apologies, Macklay Corronte.
19 Registrar, I believe we have a search of that company in the
20 court book. It might be - if I could go to that, if you
21 could just bear with me. Perhaps not. All right.
22 Mr Mawhinney, you mentioned that Poveglia holds certain
23 investments; did I hear you correctly?---Privilege.
24 That's correct.
25 What are the investments that it holds?---Privilege. Poveglia
26 SRL owns real estate in Italy.
27 Where is the real estate?---Privilege. Sorry, I didn't quite
28 hear that.
29 I'm sorry. Where is the real estate that you're referring
30 to?---Privilege. It's in Venice in Italy.
31 Is it an island, is it?---Privilege. That's correct.

1 What's the name of the island?---It's Isola San Spirito, which
2 means the island of the holy spirit.

3 The - so originally the IPO Group was going to invest in
4 Poveglia which had an interest in that island; is that
5 correct?---Privilege. We began the discussions with SPV
6 Number 10 looking at acquiring the particular asset based
7 on advice that we received from Pinnacle Advisory Group
8 and, looking at the future financing prospects of that
9 particular investment, it made more sense to acquire the
10 shares into a UK-based company.

11 Why did it make more sense?---Privilege. Italy is clearly a
12 lot closer to the United Kingdom than it is Australia
13 which would make it easier for our fundraising activities
14 in the future.

15 Were any of the funds invested in the IPO Group or lent into
16 the IPO Group by Vasco applied in funding the acquisition
17 of shares in Poveglia?---Privilege. The money that was
18 lent into IPO Holdings by Vasco was invested in SPV
19 Number 10 and SPV Number 10 lent moneys to Okto Holdings
20 Limited which acquired the shares outright for those two
21 Italian companies.

22 So the IPO Group, SPV 10, in other words, lent money to Okto to
23 acquire the shares in Poveglia; do I understand that
24 correctly?---Privilege. That's correct.

25 How much did it lend to acquire the shares?---Privilege. Off
26 the top of my head, it was in and around 18 or \$20
27 million, or thereabouts.

28 Was there a written loan agreement?---Privilege. There is.

29 Who executed the written loan agreement?---Privilege. It was
30 Okto Holdings Limited and IPO Wealth Holdings Number 10
31 Proprietary Limited.

1 And who - which individual executed those documents on behalf
2 of the - - -?---Privilege. I was a director of both
3 companies.

4 So you executed that document on behalf of both
5 parties?---Privilege. That is correct. It was provided
6 by Pinnacle Advisory Group for me to execute.

7 Did you instruct them to prepare that?---Privilege. That's
8 correct.

9 There's another company you mentioned called - I think it was
10 R-e-a-t SRL; is that right?---Privilege. Reta,
11 R-e-t-a, SRL.

12 Sorry, pardon me. Reta. And what does that company
13 do?---Privilege. It is also an investment holding
14 company. It owns shares in Poveglia SRL. So, for the
15 purpose of the investment in real estate in Italy, we
16 were required to acquire both companies into Okto
17 Holdings Limited.

18 I see. And how much was - did Okto pay for the shares in
19 Reta?---Privilege. My apologies, I can't recall.

20 However, the total I provided before of 18 to \$20 million
21 was paid in total for the two companies.

22 I see. And all of that money was borrowed from IPO - sorry,
23 IPO 10; is that right?---Privilege. That's correct.

24 When was Okto formed?---Privilege. I can't recall off the top
25 of my head. But at least probably 12 to 18 months ago.

26 And was it incorporated for the purposes of the acquisition of
27 the shares in Poveglia and Reta?---Privilege. It was
28 incorporated for the purposes of holding the group's
29 international investment portfolio with that being the
30 first - when I say the 'group', I mean the
31 broader Mayfair Group, that being the first acquisition

1 that Okto Holdings Limited made.

2 When you say 'the broader Mayfair Group', if you go back to a
3 time before the provisional liquidators were appointed as
4 receivers, were the - was the IPO Group part of the
5 broader Mayfair Group in your view?---Privilege. That's
6 correct.

7 In what sense was it part of that group?---Privilege. It had
8 in common a director and a common beneficial owner
9 throughout the group.

10 Was that common director you?---Privilege. Yes.

11 And who was the common shareholder?---Privilege. I believe it
12 was Online Investments Proprietary Limited at the time as
13 trustee for the Sunseeker Trust.

14 Thank you. And Pinnacle acted for the IPO Group until its
15 services ceased in, when was it, June 2020; is that
16 right?---Privilege. 6 June 2020, they resigned just as
17 their work came under the microscope.

18 I beg your pardon?---Privilege. 6 June 2020, Pinnacle Advisory
19 Group resigned as our tax agent and advisors to the
20 group - - -

21 Yes?--- - - - because their work came under the microscope
22 following, obviously, the appointment of provisional
23 liquidators - sorry, appointment of receivers and
24 managers to the IPO Group.

25 You say they retired as your accountants or as the group's
26 accountants because their work came under the microscope;
27 what do you mean by that?---Privilege. As a result of
28 the appointment of receivers and managers, we were
29 required to provide copious amounts of documentation,
30 which we did, and a lot of that documentation related to
31 the books and records of the company, which they were

1 largely involved in preparing and maintaining.
2 Yes. So what do you mean by the work - what aspects of their
3 work was coming under the microscope?---Privilege. It
4 was agreements that had been prepared by them, ah, it was
5 advice provided by them, ah, the entries that were made
6 into the accounting package, ah, Xero, that was utilised
7 for the IPO Group, ah, and all entities within the IPO
8 Group. So, ah, all of these various key functions, ah,
9 very much have become, ah, the subject of, ah, review
10 over the recent months since receivers and managers were
11 appointed.

12 And the transactions that you're referring to were all
13 transactions which they were involved in on your
14 instructions; isn't that correct?---Privilege. Ah, the
15 transactions, ah, discussed so far, ah, we - Pinnacle was
16 quite intimately involved in in providing advice, ah,
17 preparing documentation and even recording those
18 transactions in the IPO Group's accounting package.

19 The advice that it gave was in response to your instructions;
20 isn't that right?---Privilege. Ah, correct. I'd take
21 their professional recommendation and, ah, ah, obviously,
22 um, ask them to proceed accordingly, ah, if - if it makes
23 sense.

24 Do you say that their work was, in any sense,
25 deficient?---Privilege. Absolutely.

26 Could you say how it was deficient?---Privilege. Ah, we have
27 since identified, ah, incomplete documentation. Um, we
28 have identified, ah, journal entries that have no
29 substantiation. Ah, we have, in fact, ah, in the last
30 couple of days, ah, submitted a formal complaint to the
31 Tax Institute of Australia, um, and we plan to file a

1 formal complaint with CA Australia which I believe Mr Van
2 Wegen is a member of as well. Um, there have been
3 numerous deficiencies that we have identified which
4 suggest that they - they haven't carried out their duty
5 of operating with the professional scare and - ah, ah,
6 skill and care, ah, in their professional capacity.

7 Who's identified these deficiencies?---Privilege. Ah, since
8 Pinnacle's resignation, ah, we have since appointed KPMG,
9 um, as, ah, on a secondment basis, um, and KPMG have
10 since agreed to become the group's tax advisors. Um,
11 initial feedback from KPMG, ah, and, ah, our lawyers also
12 reviewing, ah, a lot of the work that Pinnacle has done
13 in recent weeks, um, have identified some pretty glaring
14 holes in it.

15 So KPMG has been engaged by the group; is that
16 right?---Privilege. That's correct.

17 What do you mean by 'the group'?---Privilege. Ah, the Mayfair
18 Group, ah, which is separate to the IPO Group, um, has
19 engaged, ah, KPMG. Ah, it was off - if I recall
20 correctly, in early July that we made that decision, um,
21 given the - the issues and deficiencies we had
22 subsequently seen in Pinnacle's work. Um, we believed,
23 and I personally believed, ah, it was a prudent measure,
24 um, to upgrade our accounting firm, ah, to a top-tier
25 firm to make sure that, um, everything is as it needs to
26 be.

27 Do you say that KPMG has been reviewing the accounting
28 practices of Pinnacle in relation to your IPO
29 Group?---Privilege. Ah, KPMG was engaged initially on a
30 secondment basis. As part of that work, they were privy
31 to, ah, a lot of the transactions of the IPO Group.

1 What do you mean by a 'secondment basis'?---Privilege. Ah, the
2 nature of their initial engagement was a secondment, ah,
3 where KPMG provided a number of their staff, um, who we
4 engaged, ah, directly on a full-time basis, um, to work
5 on reconciling the group's - and when I say 'the group's,
6 not the IPO Groups, but the other entities within
7 the Mayfair Group, reconciling those documents, ah, back
8 - everything back to source documents.

9 Has KPMG provided any written reports in relation to the
10 deficiencies in Pinnacle's accounting practices for IPO
11 Group?---Privilege. That wasn't the basis of their
12 engagement. We haven't requested them to do that at this
13 stage.

14 Well, how did they identify deficiencies in the IPO Group's
15 accounting if they weren't engaged by the IPO Group and
16 they weren't engaged for the purposes of the IPO
17 Group?---Privilege. Ah, they naturally cannot see the
18 IPO Group's sides of the transactions given that we no
19 longer have access to the, ah, accounting records of that
20 group. That being - - -

21 How (indistinct) deficiencies then?---Privilege. Sorry, what
22 was the question.

23 How do they know there are deficiencies then?---Privilege.

24 They have seen the documentation that has been prepared,
25 ah, and, ah, the various, ah, transactional documents,
26 ah, and we have, ah, provided them with a - a range of
27 information in relation to, ah, the transactions that IPO
28 Wealth Holdings Group, ah, undertook. Um, so, ah,
29 naturally, given that that was an integral part of
30 the Mayfair Group, um, they, ah, ah, have been across a
31 lot of the work that has been undertaken, ah, by

1 Pinnacle.

2 So what instructions and documents have you given to KPMG that
3 relates to the IPO Group?---Privilege. Ah, as you are no
4 doubt aware, ah, the IPO Group had a number of
5 transactions to related parties within the
6 broader Mayfair Group so KPMG has been assisting us, ah,
7 in reviewing those transactions and reconciling
8 everything back to source documents.

9 Let me ask the question again. What instructions and documents
10 have you given to KPMG in relation to the IPO
11 Group?---Privilege. We haven't provided them access to
12 any financial accounts for the IPO Group. Um, naturally
13 the Mayfair Group entities, ah, not the IPO Group
14 entities, ah, have various agreements, um, that IPO Group
15 is a counter-party to, ah, and the KPMG personnel, ah,
16 have naturally been provided with a copy of those
17 documents.

18 So are you saying that KPMG hasn't had access to any IPO Group
19 accounts?---Privilege. Ah, we don't - ah, our group no
20 longer has access to the IPO Wealth Group's, ah,
21 financial or Xero - Xero accounts more specifically. Um,
22 that being said, any agreements, ah, or transactions
23 which the Mayfair Group was a counter-party to, naturally
24 we have, ah, a record of that documentation.

25 You mentioned incomplete journal entries and erroneous journal
26 entries within the IPO Group accounts, didn't
27 you?---Privilege. That's correct.

28 And how did KPMG identify those?---Ah, privilege. That was
29 identified, ah, largely by our internal, ah, team, ah,
30 and KPMG, who has also been, um, undertaken some work,
31 ah, on the broader Mayfair Group, ah, which Pinnacle

1 Advisory Group was also providing those services to, um,
2 has identified, ah, similar deficiencies.

3 I'm sorry, I didn't quite hear you. Who identified - how did
4 KPMG identify the journal entries that were erroneous or
5 incomplete?---Ah, privilege. Ah, the journal entries
6 that they identified as erroneous or incomplete were not
7 necessarily within the IPO Group, but they were within
8 the broader Mayfair Group that the - ah, that Pinnacle
9 had - Pinnacle Advisory Group was also, ah, ah, advisors
10 and tax accountants for.

11 So the errors that you're talking about and the incomplete
12 records relate to the Mayfair Group, but not the IPO
13 Group?---Privilege. No, that's not correct. We have
14 identified, ah, a number of, ah, errors and these have
15 been submitted to the Tax Institute of Australia as part
16 of our submission.

17 Who's 'we'?---Privilege. I submitted the complaint. Ah, it
18 was being - it had been prepared by our internal finance
19 team, ah, and submitted a couple of days ago.

20 I see. So your internal finance team is responsible for having
21 identified defects in journal entries in the IPO
22 Group?---Privilege. That's correct.

23 But not KPMG?---Privilege. KPMG has been assisting us
24 throughout by assessing in the last, ah, ah, probably
25 seven or eight weeks or thereabouts, um - - -

26 But not in relation to - not in assessing the quality of the
27 IPO Group accounting?---Privilege. We didn't engage them
28 to undertake an assessment of that, but based on feedback
29 of the work that they have seen, um, we and they
30 considered that there have been considerable
31 deficiencies.

1 Feedback from KPMG; is that right?---Privilege. That's
2 correct.

3 What feedback did KPMG give you about the IPO
4 accounts?---Privilege. Again, they haven't seen the IPO
5 accounts so they are unable to comment specifically on
6 that side of any transactions.

7 All right. Thank you. Now, who constitutes the internal -
8 well, did you say the 'internal management team' or the
9 'internal accounting team' of IPO or Mayfair?---Ah,
10 privilege. Sorry, what was the question?

11 I asked you who had identified the incomplete and erroneous
12 journal entries and I thought you said that it was the
13 internal management or accounting group, I can't recall
14 exactly which expression you used; do you recall
15 that?---Privilege. I do recall. Ah, I mentioned that
16 our internal finance team had identified deficiencies in
17 the work that had been undertaken in the IPO Wealth
18 Holdings Group by Pinnacle Advisory Group.

19 Thank you. Now, who comprises the internal finance
20 team?---Privilege. Ms Lydia Lee, ah, was financial
21 controller for the overall group, including IPO Wealth
22 Holdings Group. Ah, Bridgette Pennetta and Cindy Huong
23 is our bookkeeper.

24 So, as I understand it, Lydia Lee, Bridgette Pennetta and
25 somebody named Cindy are the ones who have identified the
26 journal errors? So the errors in the journals of IPO
27 Group; is that right?---Privilege. I will go one step
28 further than that. Pinnacle, when questioned on these
29 journals prior to the appointment of receivers and
30 managers, also agreed that they had either incorrect
31 information which needed to be deleted or were often

1 unable to substantiate journal entries that they had
2 made.

3 What were they - what documents were they looking at? Lydia
4 Lee and Bridgette Pennetta and Cindy when they identified
5 these deficiencies?---Privilege. A lot of these were
6 identified in the months leading up to the appointment of
7 receivers and managers. Thereafter, we naturally didn't
8 have access to the accounting package. However, we do
9 have access to the email correspondence with Pinnacle
10 Advisory Group where we have pressed them a number of
11 times to answer questions in relation to transactions
12 that they have entered. The summary of all of this is
13 provided in the complaint that we had filed with the Tax
14 Institute of Australia.

15 Do you have a copy of that?---Privilege. We do.

16 I wonder if you would provide that to the provisional
17 liquidators. Do you have any objection to
18 that?---Privilege. I will discuss it with our lawyers.

19 Well, perhaps what I will do then is I will ask the court for a
20 direction that the document be provided. I seek that
21 direction, Registrar.

22 MR HAY: Registrar, may I take an opportunity to take
23 instructions from our client in relation to that?

24 JUDICIAL REGISTRAR: Yes. Well, we can probably do that during
25 the course of a break, Mr Hay. I will just make a note
26 now of what it is that the plaintiffs seek. So it's a
27 direction for production of complaint lodged by - (to
28 witness) is it by the Mayfair Group or by the IPO
29 Group?---Privilege. It was made by the Mayfair Group
30 with myself signing off as the person submitted the
31 formal complaint.

1 All right. And who was the - what was the body that it was -
2 the complaint was lodged with?---Privilege. It's the Tax
3 Institute of Australia and it was a complaint against
4 Mr Craig Van Wegen and Ms Nora Fairbanks of Pinnacle
5 Advisory Group. They are both members of the Tax
6 Institute of Australia.

7 Right. Thank you, Mr Mawhinney. You will have an opportunity
8 to confer with your lawyers about whether you consent to
9 that direction or so on. I haven't made the direction
10 yet. I've just made a note of it. We will come back to
11 it after you've had an opportunity to confer?---Thank
12 you.

13 Thank you. Mr Galvin.

14 MR GALVIN: Thank you, Registrar. Mr Mawhinney, were there two
15 complaints that you had issued? Was - I thought - I
16 thought you mentioned another one but perhaps I
17 misunderstood you?---Privilege. We have one that we've
18 mostly prepared. We just haven't submitted - haven't had
19 the opportunity to submit it but we will be submitting
20 it.

21 Right. And who's that to?---I believe it's Chartered
22 Accountants Australia and New Zealand, which Mr Craig
23 (indistinct) is a member of.

24 Institute of Chartered Accountants?---Privilege. It's CA -
25 yes, CA Australia and New Zealand, if I'm not mistaken.

26 All right. Thank you. Now, the - you say that the
27 deficiencies in Pinnacle's work, in relation to IPO
28 Group, were identified by the internal finance team
29 before the receivers were appointed, I think you said in
30 the months leading up to the appointment of the
31 receivers; is that correct?---Privilege. The majority of

1 them were identified subsequent to the receivers being
2 reported. As I mentioned earlier, their work has
3 naturally fallen heavily under the microscope as part of
4 this process. As part of our preparation for the
5 submission, we reviewed emails that had been sent to
6 Pinnacle Group questioning certain entries, a certain
7 lack of supporting documentation that had been provided
8 in the months leading up to the provisional appointment
9 of receivers and managers. However, naturally, as part
10 of this receivers and managers process and provisional
11 liquidation process, that has been much more heavily
12 scrutinised and reviewed.

13 Just so I understand this, can I just get you to clarify this:
14 as I understand your evidence, what you're saying is that
15 the work that has been done in relation to identifying
16 the deficiencies in Pinnacle's work has mostly been done
17 since the appointment of receivers but relates to work
18 that was done largely before the appointment of the
19 receivers; is that correct? Well, obviously it was
20 before the appointment of the receivers because they
21 ceased acting not long after. But is that how you would
22 put it?---Privilege. Naturally, having a relationship or
23 an engagement with Pinnacle Advisory Group for nearly the
24 best part of two years, there has been various instances
25 where we have requested certain answers from them
26 (indistinct) for them to provide certain services. As
27 time went on - and on reflection - looking at the
28 provision of services, now that we've had the opportunity
29 to sit down and review this in far more detail, it's
30 evident that there have been a number of deficiencies
31 along the way that have naturally built up, which have

1 obviously become part of this process and (indistinct) we
2 felt compelled, given that there are other businesses
3 that they service and they may service in the future that
4 I would hate to have left in the same position that we
5 are in today.

6 Can you identify one of the deficiencies?---Privilege - - -

7 Specifically, I mean?---Privilege. Absolutely. IPO Wealth

8 Holdings Number 3 Proprietary Limited, the books and
9 records that Dineco relied on in preparation of their
10 second receivers report specified or stated that there
11 was an undeclared dividend of about \$8 million, \$8.3
12 million, if I recall correctly and, therefore, asserting
13 that IPO Wealth Holdings Number 3 had a creditor.

14 Pinnacle Advisory Group wrote to us to say that that
15 journal entry should not have been there and, therefore,
16 that entry entity was technically solvent. That's just
17 one of a number of deficiencies.

18 But who made the journal entry?---Privilege. It was Rachel Xu
19 at Pinnacle Advisory Group.

20 And do you know on whose instructions she made that

21 entry?---Privilege. I believe it would have been at the
22 instruction of the principles of Pinnacle Advisory Group.

23 Well, where would they get their instructions

24 from?---Privilege. They're the tax accountants that
25 arranged that particular transaction. So we definitely
26 did not, in in capacity, approve that entry and, in fact,
27 there is no documentation, there are no board papers to
28 support that entry being made.

29 Did you review the accounts?---Privilege. Yes, we do from
30 time-to-time.

31 Pinnacle (indistinct) the invoice - the IPO Group from time-to-

1 time for its services, whom did it invoice? Was it a
2 particular entity within the group or was it you or how
3 did that work?---Privilege. If I recall correctly, they
4 would invoice another entity within the Mayfair Group and
5 then we would allocate and apportion out expenses
6 accordingly off the various SPVs and, obviously, IPO
7 Wealth Holdings Proprietary Limited.

8 So the SPVs did ultimately pay something for the accounting
9 work that related to them to Pinnacle?---That's correct.

10 And how did the SPVs fund those payments to Pinnacle?---The
11 payments were made from the Mayfair Group. It depends on
12 the timing of when those payments were made. Earlier on
13 it would have been via the IPO Wealth Fund moneys that
14 were borrowed from Vasco's IPO Wealth Holding Group.

15 So the IPO - the money that investors put into Vasco, and which
16 was lent to IPO Wealth Holdings Number 1, was used, in
17 part, to pay the accounting fees of the SPVs; is that
18 right?---Privilege. That's correct.

19 Were the accounts of the IPO Group ever audited?---Privilege.
20 They weren't.

21 I beg your pardon?---Privilege. No, they weren't.

22 Is there a reason for that?---Privilege. There was no
23 requirement to.

24 Yes. But you didn't think it might be wise to do
25 it?---Privilege (indistinct)

26 (indistinct) audited?---Privilege. We were a privately held
27 group. We didn't have a requirement to.

28 All right. Did the investment - was there an investment
29 strategy that the IPO Group had in relation to
30 investments made by SPVs?---Privilege. There was an
31 investment strategy for the IPO Group and part of that

1 was naturally investing into the SPVs who would then on-
2 invest themselves.

3 And was that investment strategy in writing?---Privilege.

4 That's correct. It evolved over time when it provided a
5 copy of a couple of iterations to the court as part of
6 the submissions.

7 Part of - what submissions are you talking about?---Privilege.

8 I believe as part of the summons for - - -

9 I see. Sorry, I understand. Thank you?---Yes.

10 Was there a due diligence process that was deployed when

11 investments were being contemplated by IPO

12 entities?---Privilege. Absolutely.

13 And was the process set out in a written form

14 anywhere?---Privilege. Yes. We have a due diligence
15 checklist.

16 And is that one of the documents you provided to the

17 court?---Privilege. That's correct.

18 What about the marketing of the investments - sorry, I withdraw

19 that. The marketing of investment into the fund, the IPO

20 Wealth Fund; how did you go about doing

21 that?---Privilege. IPO Wealth Proprietary Limited, in

22 its capacity as investment manager, was engaged and

23 contracted by Vasco as the trustee of the fund to

24 undertake two things: one was to raise - to introduce

25 investors to the IPO Wealth Fund, the second thing was to

26 make recommendations to the IPO Wealth Fund, which Vasco

27 investment managers ultimately approved. Vasco approved

28 all marketing for the IPO Wealth Fund.

29 So I think your answer is that Vasco engaged IPO Wealth Pty

30 Limited, is that right, to attract investors; is that

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

1 What did IPO Wealth do to attach investors?---Privilege. IPO
2 Wealth Proprietary Limited would use a direct advertising
3 strategy primarily to attract investors to the fund.

4 What's that?---Privilege. Advertising.

5 Advertising where and how?---Privilege. Via online and offline
6 means.

7 What online means were used?---Privilege. We would utilise
8 Google Advertising or Paperclip Advertising, more
9 generally, we utilised display advertising, email
10 newsletters as the primary forms.

11 What was the last one? Email to whom?---Privilege. Email
12 newsletters.

13 To whom?---Privilege. To (indistinct) databases that the group
14 controls and also databases of third party providers in
15 the finance industry.

16 Who were those third parties?---Privilege. If I recall
17 correctly, amongst others, there was the Switzer
18 Financial Group (indistinct) Copper, Investor Daily and
19 Nest Egg, the ones that come to mind.

20 What was the first one you mentioned?---Privilege. Switzer
21 Financial Group.

22 How do you spell that?---Privilege. S-w-i-t-z-e-r.

23 All right. Thank you. And what was the offline marketing that
24 IPO Wealth Proprietary Limited engaged in?---Privilege.
25 We used a number of typical and standard means including
26 billboards, newspaper and radio.

27 And how much would be, say - what would the annual expenditure
28 be on these marketing activities?---Privilege. I can't
29 recall off the top of my head but it would - overall,
30 roughly, a couple of million dollars a year.

31 And where did - how was IPO Wealth funded to do

1 that?---Privilege. IPO Wealth (indistinct) advertising
2 and marketing was, effectively, paid for via the IPO
3 Wealth Holdings Group.

4 Which entities in the group?---So IPO Wealth Holdings would on-
5 lend money to the Mayfair Group which then put that to
6 use through IPO Wealth Proprietary Limited for
7 advertising.

8 Are you saying that the investors funds came from Vasco and
9 were lent to IPO Wealth Number 1 - IPO 1 which then lent
10 the money to the Mayfair Group to conduct advertising for
11 the IPO Group; is that what you're saying?---Privilege.
12 In order to make investments, we would need to raise
13 capital to undertake those investments and, therefore,
14 that formed part of the cost of acquiring, ultimately,
15 managing those investments.

16 Yes. I understand that. But my question was: did IPO Number
17 1 lend money to the Mayfair Group to fund advertising for
18 the IPO Group?---Privilege. That's - that's incorrect.
19 Privilege. They lent money to the Mayfair Group to
20 advertise IPO Wealth Proprietary Limited for the purposes
21 of attracting investors to the fund for Vasco to approve.

22 Sorry. When you say 'they lent money to the Mayfair Group',
23 who's 'they'?---Privilege. IPO Wealth Proprietary
24 Limited.

25 Number 1?---Correct.

26 So - and the only money that it had was the money that was lent
27 to it by Vasco; isn't that right?---Privilege. No,
28 that's not the case. Over time, as the group identified
29 other funding sources, those moneys were also put towards
30 advertising and marketing expenses.

31 But before those other funding sources became available, the

1 Vasco funds, the funds advanced by Vasco to IPO 1, were
2 used to - were on-lent, if you like, to the Mayfair
3 Group; is that right?---Privilege. That's correct.
4 Were those loans in writing?---Privilege. I believe there was
5 a facility agreement between IPO Wealth Holdings
6 Proprietary Limited and Eleuthera Group Proprietary
7 Limited.
8 What's the relevance of Eleuthera Group to the Mayfair
9 Group?---Privilege. Eleuthera Group Proprietary Limited
10 is the Mayfair Group's treasurer entity.
11 Treasurer entity; is that right?---Privilege. That's correct.
12 What do you mean by 'treasurer entity'?---Privilege. The Act
13 says an entity that would make payments on behalf of
14 other entities within the group and it would distribute
15 funds to various investments that the group had made.
16 How much money did IPO 1 lend to Eleuthera; do you
17 know?---Privilege. I can't recall off the top of my
18 head.
19 Would it be in the millions?---Privilege. Yes.
20 And the idea was that Eleuthera would then expend that money on
21 advertising for the IPO Group; is that what
22 happened?---Privilege. That was only a small portion of
23 what it would do with the funds overall.
24 I understand that. But I'm just - I'm speaking in the context
25 of the marketing for the IPO Group. You would work out
26 how that was funded. As I understand it at the moment,
27 it was funded at least early on by money being advanced
28 by Vasco to IPO Number 1 and IPO Number 1 lending some of
29 that money to Eleuthera; is that correct?---Privilege.
30 That's correct. And, again, in line with our expense
31 allocation policy, those expenses were then apportioned

1 out across the various SPVs in the IPO Group.
2 But did Eleuthera repay the money that was lent to
3 it?---Privilege. Yes, it did.
4 (Indistinct)?---Yes. Privilege. The Dineco report identifies
5 the fact that around \$42 million went from IPO Wealth
6 Holdings Group into the Mayfair Group and almost exactly
7 \$42 million was returned to the IPO Wealth Holdings
8 Group.
9 So the money that was lent was to the Mayfair Group via - that
10 is, more specifically, to Eleuthera, was repaid in full,
11 was it?---Privilege. That's correct. The Dineco report
12 reflects that.
13 I see. All right.
14 JUDICIAL REGISTRAR: Mr Galvin, before you move on, would now
15 be a convenient time for a quick five minute break?
16 MR GALVIN: Yes, of course. It would actually. Thank you.
17 JUDICIAL REGISTRAR: All right then. Thank you. What I will
18 do is I will just stand down until 11.55. People can
19 keep their connections open and so on and put themselves
20 on mute, or whatever they want to do. There's no need to
21 go out and come back in from the hearing.
22 MR GALVIN: Could the associate take down the - just take down
23 the document at the moment just so we can - because I'm
24 not sure I can log back in if there's a big document on
25 the screen. I don't want to get locked out.
26 JUDICIAL REGISTRAR: All right then. Thank you. Well, I
27 suggest you don't log out, Mr Galvin.
28 MR GALVIN: I won't log out. I won't log out.
29 JUDICIAL REGISTRAR: We've got you there. Don't leave. Yes.
30 All right then. Mr Associate, if we could just close
31 that document and adjourn the court and stand the court

1 down until 11.55, please.
2 <(THE WITNESS WITHDREW)
3 (Short adjournment)
4 MR GALVIN: I think my learned friend might be just getting
5 some instructions about the document we were seeking,
6 Registrar.
7 JUDICIAL REGISTRAR: Yes, thank you. Looks like we've got
8 everybody back now. Thank you for that.
9 JUDICIAL REGISTRAR: Yes. Thank you, Mr Galvin.
10 MR GALVIN: I might just make an inquiry about the production
11 of a complaint to the Tax Institute could be made
12 available.
13 MR HAY: Mr Galvin, I haven't had the opportunity to review the
14 document yet. I would just like - I don't anticipate
15 there's a difficulty (indistinct)
16 MR GALVIN: (Indistinct) of course.
17 MR HAY: (Indistinct) lunchtime.
18 MR GALVIN: I might just leave that for the moment and talk
19 about - come back to that later.
20 MR HAY: I'm obliged, thank you.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 MR GALVIN: Mr Mawhinney, I would like to ask you some
3 questions about the information memoranda which were
4 issued in relation to the fund from time-to-time. Could
5 the associate please go to p.915 - actually, perhaps,
6 before I do that, I just - there was just one other thing
7 I wanted to mention or ask you about concerning the
8 internal finance team of Mayfair. As I understand it,
9 that consists of Lydia Lee, Bridgette Pennetta and Cindy.
10 Now, do you know what Cindy's surname is?---Huong, I
11 believe it is.

12 How do you spell that?---I believe it's H-u-o-n-g. And,
13 Mr Galvin, I forgot to mention we also have - we use the
14 contract services to the CFO Centre. So Chris Berryingul
15 is, effectively, a part-time or contract CFO for
16 the Mayfair Group.

17 Was he involved in identifying the deficiencies in the journal
18 entries in the IPO Group?---Privilege. He has - he is
19 aware and has identified some as part of that process.

20 Now, Lydia Lee is someone who's within the finance team. What
21 are her - what's her role within the group?---Yes.
22 Privilege. Lydia's role was to oversee the group's
23 financials in her role as group financial controller.
24 She would prepare the financial accounts for the IPO
25 Wealth Group in conjunction, obviously, with Pinnacle
26 Advisory Group.

27 And Bridgette Pennetta, what was her role?---Yes. Bridgette -
28 privilege. Bridgette Pennetta's role was to work
29 alongside Lydia Lee in a similar function for the
30 preparation of accounts. There is also quite a
31 fundamental document relating to the IPO Wealth Group,

1 which is the quarterly investment portfolio summary that
2 was also maintained by the internal Mayfair finance team.
3 I see. And what are Lydia Lee's qualification; do you
4 know?---Privilege. I believe she's a chartered
5 accountant. I don't have a copy of her CV in front of
6 me.
7 Cindy Huong's qualifications; are you able to say what they
8 are?---Privilege. She is more of a junior bookkeeper who
9 joined the group quite recently.
10 And Bridgette Pennetta; what are her
11 qualifications?---Privilege. I believe she has a
12 qualification in tax accounting, if I recall correctly.
13 Thank you. Now, could I ask the associate, please, to go to
14 p.915. No doubt you recognise that document,
15 Mr Mawhinney?---Privilege. I recognise the image, yes.
16 Well, you might just need to scroll a bit so that - now, that's
17 a - if we scroll down, we can see that that's an
18 information memorandum relating to the IPO Wealth fund
19 dated 27 March. You will see that at the top
20 (indistinct) first line of the page we're on at the
21 moment?---Privilege. Yes, I can see that.
22 And this was a document that was aimed at attracting investment
23 in the IPO Wealth fund; is that right?---Privilege.
24 That's correct.
25 Who drafted it? Are you able to say?---Privilege. It was
26 largely drafted by Vasco Trustees Limited.
27 I see. Did you contribute to its drafting at all?---Privilege.
28 Yes, we contributed to it but the fundamental form and
29 substance of it, including the format, was provided by
30 Vasco Trustees Limited, given that that is (indistinct)
31 business.

1 When you say 'we contributed to it', who do you
2 mean?---Privilege. It would have been myself at the time
3 and, if I recall correctly, we had a contract CFO, Jim
4 Paulyshyn, who was working for us at the time as well.
5 Just for the transcript, could you spell his name,
6 please?---Privilege. P-a-u-l-y-s-h-y-n.
7 Thank you. Who gave advice in relation to the preparation of
8 the information memorandum; do you know? Legal or
9 accounting or regulatory advice?---Privilege. Don
10 Christie of Astuto Lawyers.
11 Is that A-s-t-u-t-o?---Privilege. Correct.
12 Can you say who else gave general advice in relation to the
13 establishment of the fund in the first
14 place?---Privilege. As I mentioned, Don Christie did, I
15 believe Jim Paulyshyn did, who was our contract CFO at
16 the time, if I recall correctly, we had an advisor from
17 London called Warren Hardie, who also advised on the
18 preparation of this document.
19 To whom was this document circulated?---Privilege. It was
20 issued by Vasco and then circulated to prospective
21 investors for the IPO Wealth fund.
22 Who did the circularising?---Privilege. It was sent to
23 investors that had inquired about the IPO Wealth fund by
24 the IPO Wealth Proprietary Limited team.
25 Who's the IPO Wealth Proprietary Limited team? Who was in that
26 team?---Yes. Privilege. So IPO Wealth Proprietary
27 Limited had, from recollection, about three or four staff
28 that were business development managers who would provide
29 this to prospective investors.
30 But who were they?---Privilege. Yes. At the time - well, are
31 we referring to early 2017?

1 Yes?---Privilege. If I recall, it was Christopher McGill,
2 Hamza Habib and Qaseem Ansari.

3 Okay. Qaseem. Is that Q-a-s-e-e-m?---Privilege. Correct.

4 So the persons who were attracted via the advertising would
5 make their inquiry and receive a copy of the information
6 memorandum to fill out their knowledge about the
7 investment; is that right?---Privilege. That's correct.
8 In order to make an investment application they would
9 need to complete the form that was always attached to
10 this document and then provide - we would provide a copy
11 of that directly to Vasco for approval.

12 Right. How did you come to approach Vasco to be involved in
13 this?---Privilege. It was on a recommendation - or,
14 sorry, referral, should I say from Don Christie.

15 If we go to the key features part of this document - I will
16 just find exactly where that is - perhaps if we go to,
17 perhaps, p.922 first. This is a letter which is included
18 within the information memorandum signed by - or in your
19 name; is that right?---Privilege. I can't see the bottom
20 of the document.

21 Just scroll to the bottom of that page, please, associate.

22 Thank you?---Privilege. That's my name, yes.

23 Yes. So IPO Wealth Proprietary Limited was the - what was its
24 role in this?---Privilege. It was contracted by Vasco to
25 be the investment manager of the IPO Wealth fund, which
26 entailed two primary responsibilities. One was
27 introducing potential investors to the fund for Vasco to
28 approve and, secondly, making investment recommendations
29 for Vasco to approve.

30 Did it make reports from time-to-time to Vasco, the
31 trustee?---Privilege. It did provide reports from time-

1 to-time, yes.

2 What were the reports about?---Privilege. The reports were to
3 do with the investments that had been made by the IPO
4 Wealth fund.

5 I know they were to do it but what was reported
6 exactly?---Privilege. The reporting requirements evolved
7 over time. At Vasco's request, they largely focused on
8 how IPO Wealth Holdings Proprietary Limited, the
9 borrower, had utilised those funds to make various
10 investments.

11 So what - were the reports that IPO Wealth Proprietary Limited
12 provided to Vasco in writing?---Privilege. That's
13 correct.

14 Are you talking about the quarterly portfolio
15 summary?---Privilege. Yes. Over time Vasco's requests
16 for reporting increased and we obviously complied with
17 those reporting requests and what evolved after, I think
18 about - after about year 2 - or at least 18 to 24 months
19 was the quarterly investment portfolio summary. We had
20 never been provided a template per se to report on.

21 When you say you hadn't been provided with a template, you
22 (indistinct) as the investment manager, develop your own
23 template for reporting?---Privilege. That's exactly what
24 we did.

25 Is that - and that's the portfolio summary?---Privilege.
26 That's correct.

27 Were there any other written reports apart from the - to Vasco,
28 I mean, other than the portfolio summary?---Privilege.
29 We were required to provide compliance reports with
30 respect to us operating under a licence provided by DH
31 Proprietary Limited, which is a related party of Vasco,

1 and we were also required to provide an annual investment
2 managers report which would be circulated to IPO Wealth
3 fund unit holders.

4 And what was contained in that report?---Privilege. If I
5 recall correctly, it outlines a number of the key
6 investments that IPO Wealth Holdings Proprietary Limited,
7 as the borrower, had made and just the general
8 performance of the one investment that the fund had made,
9 which was the loan to IPO Wealth Holdings Pty Limited.

10 Was that report given to Vasco?---Privilege. Yes, it was.

11 Now, could we just go to the middle of that page, please,
12 associate. We see the paragraph beginning, 'The money
13 raised through the fund will be invested in a range of
14 corporate finance transactions'. Now, when this
15 information memorandum was issued in March - I think it
16 was March 2017, what - what were the corporate finance
17 (indistinct) that you had in mind at that
18 time?---Privilege. The group had already begun making
19 investments prior to the IPO Wealth fund in a couple of
20 companies. Those included Liven Proprietary Limited
21 (indistinct) and I believe it was Public Democracy Pty
22 Limited. So those were initial investments that the fund
23 made, obviously, with a range of other investments that
24 took place as the fund grew over time.

25 It's described as a range of corporate finance transactions.

26 Does that mean investment in equity and
27 loan?---Privilege. Yes. Equity and debt. Corporate
28 finance (indistinct)

29 All right?---Yes (indistinct) broad (indistinct)

30 The next paragraph advises that the investment manager, which
31 is IPO Wealth Pty Ltd, is supported by a team with

1 significant experience in corporate finance within
2 Australia. Who comprised that team?---Privilege. Ah, if
3 I recall correctly at the time, ah, our CFO, Jim
4 Paulyshyn, ah, who had, ah, previously worked at Coopers
5 & Lybrand before it became PricewaterhouseCoopers - ah,
6 he had significant experience, um, in the nature of the
7 investments that the IPO Wealth Holdings Group was, ah,
8 making. Ah, Hamza Habib, ah, who was part of the
9 business development team, um, also, ah, has operated as
10 a broker, ah, with significant international experience
11 as well. Ah, I believe there were - - -

12 Sorry to interrupt, but how do you spell his name for the
13 transcript?---Yeah. So H-a - privilege. H-a-m-z-a H-a-
14 b-i-b.

15 Thank you. Sorry. Go on. They're the members of the team
16 that you're talking about?---Privilege. Ah, in addition
17 to that was Warren Hardie that I mentioned earlier, ah,
18 who was London-based.

19 Could we go to p.923, please. The next page, I
20 think?---Privilege. Just to add to that, um, I believe
21 that a number of those, ah, profiles were actually listed
22 in this document.

23 Yes. Yes. Thank you. There's a reference down the bottom of
24 that page to regular investment reports next to key
25 benefits. Do you see that in the third paragraph -
26 second paragraph from the bottom?---I see that, yeah.

27 Those regular investment reports - what - were they the reports
28 I've already asked you about and you've given evidence
29 about?---Privilege. They were the reports, I believe,
30 that we provided to Vasco.

31 Are they the portfolio summary reports?---Ah, privilege. It

1 wasn't those reports that were provided. It - ah, it was
2 an annual report that we provided to Vasco - information
3 that we provided in respect to the borrowers provided to
4 Vasco.

5 So does regular in this context mean annual?---Privilege. I
6 believe so.

7 P.931 of the court book, please. I think you refer there to an
8 established network - if we just scroll down. You see
9 under the heading there - what did you mean by
10 established network in the second and third line of that
11 passage under your name?---Privilege. I at the time had
12 developed an extensive network of businesses, advisers,
13 investors, ah, people that could introduce new investment
14 opportunities to, ah, the IPO Wealth Group. Um, so
15 naturally through my network, let alone our other
16 advisers, who also had their own significant networks,
17 um, collectively we had a well-established and - and
18 quite significant network, not just within Australia, but
19 also overseas.

20 Who were they?---Ah, privilege. The people with the network or
21 the people who we claimed to be part of the network?

22 The people that were within your network - the network that's
23 being referred to in this paragraph, who was included in
24 that?---Well, privilege. Ah, it included, ah, by - by
25 name? Is that what you're referring to?

26 Yes?---Privilege. Jeffrey Beaumont, who at the time ran a
27 corporate advisory firm called Tandem Capital. Daniel -
28 Daniel Roare, who used to be James Packer's CFO, who had
29 worked for me previously. There were, ah, a couple of
30 broking firms in London. I can't recall the name of them
31 off the top of my head. Um, I would need a bit more time

1 to think about the complete network.

2 All right. Could we go to p.925, please, Mr Associate. (To
3 witness) This offer was made to qualifying investors.
4 What steps did you take to - or did the IPO Group take to
5 confirm that investors met these criteria?---Privilege.
6 The IPO Group was not required to take steps as the IPO
7 Group did not accept investment from investors directly.

8 So that was Vasco's responsibility. Is that
9 right?---Privilege. That's correct. We would introduce
10 investors to the fund. We would obtain the relevant
11 certification or accounting certificates if required, um,
12 and then the decision was made by Vasco whether or not to
13 accept those investments.

14 All right. I think - you see the target fund size on the left-
15 hand side there?---Privilege. Yes.

16 There's a statement to the effect that the investment manager
17 was seeking to raise between 100m and 500m. Where did
18 those figures come from? What - how was that
19 determined?---Privilege. The nature of funds management
20 is such that if a fund only has, say, tens of millions of
21 dollars in it. Typically it can be difficult to generate
22 a sufficient return to justify the existence of the fund,
23 hence we had the target of raising at least \$100m and
24 potentially up to \$500m, which would better service the
25 ability for the fund to generate returns to make it a
26 commercially sound venture.

27 All right. What investors acquired if they invested was units,
28 effectively, in a unit trust. Is that
29 right?---Privilege. That's correct.

30 And they had specific return entitlements that were fixed. Is
31 that right? According - and there was a range available

1 to select?---Privilege. The returns were always quoted
2 to be target returns.

3 I see. Was there a maximum amount that an investor could
4 receive on his or her investment?---Privilege. Correct.
5 It was always up to the target amount.

6 Right. And if the investment realised an amount that was more
7 than enough to return that target investment and more
8 than enough to pay costs associated with it, where did
9 the surplus go?---Privilege. The surplus would remain
10 within the IPO Wealth Fund.

11 Which would be ultimately you. is that right?---Privilege.
12 That would ultimately be distributed back to the
13 investment manager, IPO Wealth Pty Ltd, at the end of
14 each year, subject to a capital protection reserve being
15 met.

16 So what would the investment manager do with it,
17 though?---Privilege. That would be, ah, effectively
18 effort for time and, ah, energy expended.

19 I beg your pardon? You mean it went to pay its
20 costs?---Privilege. That - the money would flow back to
21 IPO Wealth Pty Ltd as compensation for operating the
22 fund, given that investors would be paid first.

23 Sorry. Do you mean IPO No 1?---Privilege. No. I mean IPO
24 Wealth Pty Ltd, the investment manager.

25 Well, how was it entitled to the surplus money?---Privilege.
26 It was entitled to surplus money under its investment
27 management agreement.

28 Have you produced a copy of that?---Ah, privilege. I believe,
29 if we haven't, I'm certain Vasco would have. It's an
30 agreement that they were a counter-party to.

31 So the investment manager was the one that ultimately took any

1 surplus that was realised out of these
2 investments?---Privilege. No, that's not correct. I
3 believe there may be a misunderstanding here that I'd
4 like to clarify. Your question earlier was in respect of
5 the IPO Wealth Fund.

6 Yes?---If there was a surplus remaining in the IPO Wealth Fund
7 as a result of income that the fund received, after
8 paying investors and after meeting its capital reserve
9 requirements, um, then that surplus would be distributed
10 back to IPO Wealth Pty Ltd on an annual basis.

11 And distributed by whom?---Distributed by Vasco.

12 All right. And was there surplus from year to
13 year?---Privilege. As the fund grew, the - what's known
14 as capital protection reserve grew, um, which was booked
15 on the balance sheet of IPO Wealth Pty Ltd. However,
16 that wasn't distributed, ah, due to the capital
17 protection reserve needing to continue to grow over time.

18 Was that capital reserve protection or capital protection
19 reserve - was that a sum maintained under the terms of
20 the IPO Wealth Fund trust deed?---Privilege. That's
21 correct. It was operated - capital protection reserve
22 was operated, maintained and accounted for by Vasco.

23 And what was the purpose of that?---Privilege. The capital
24 protection reserve was there to top up investors if there
25 was ever a shortfall in income to service the target
26 returns being met.

27 Wasn't it there for it to cover any capital
28 losses?---Privilege. If I recall correctly, I believe it
29 was, yes. I just don't have a copy of it in front of me.
30 It is specified in the information memorandum.

31 All right. Well, we might come back to that. The unit trust

1 was an unregistered unit trust and it wasn't required to
2 be registered with ASIC at all?---Privilege. I believe
3 that was the case. Again, that was Vasco's department.
4 The funds then that were invested were lent by Vasco to IPO 1
5 and, from there, IPO 1 lent the money out to - out to the
6 SPVs. That's what generally happened, isn't
7 it?---Privilege. That's incorrect.

8 Where did the money go then? Or how is that statement
9 incorrect perhaps is a better question?---Privilege. The
10 moneys that were loaned by Vasco to IPO Wealth Holdings
11 Proprietary Limited were invested in share capital in the
12 SPVs.

13 You say there weren't - they weren't lent, they were - it
14 acquired shares in the SPVs; is that right?---Privilege.
15 That's correct. The Dineco first receivers report was
16 incorrect and the second report prepared by Dineco it
17 indicated that it had gone into share capital, however,
18 it didn't correct its previous statement.

19 Now, there were loan agreements, weren't there, between IPO
20 Number 1 and the various SPVs?---Privilege. Yes, there
21 were.

22 So are you saying that the money that was advanced by IPO 1 was
23 not lent under those agreements but, rather, was paid for
24 shares in the companies?---Privilege. That's correct.
25 And that's why it was reflected as unissued share capital
26 or share capital on the balance sheet of IPO Wealth
27 Holdings.

28 What's 'unissued share capital'?---Privilege. This was
29 something that Pinnacle recorded in the books of the IPO
30 Group. I believe, 'unissued share capital' implies it
31 was moneys that had been invested in the SPVs. As share

1 capital, however, that entity was waiting for the shares
2 to be issued to it.

3 Pardon me, Registrar. Could we go, please, to court book
4 p.1235. (To witness) This is the balance sheet of IPO
5 Wealth Holdings Number 3 as at 22 May 2020, isn't
6 it?---Privilege. That's what it says at the top.

7 Do you see towards the - not towards the bottom of the page but
8 towards the bottom of the screen, it's really halfway
9 down the page, the heading 'Liabilities'?---Privilege. I
10 can see that. Let me just move my (indistinct) yes, I
11 can see that.

12 And IPO Wealth Holdings Number 3, that's SPV3 or IPO3, is the
13 entity that invested in Accloud shares; is that
14 right?---Privilege. It is one of three IPO entities that
15 held Accloud shares.

16 What were the other ones?---Privilege. IPO Wealth Holdings
17 Proprietary Limited and IPO Wealth Holdings Number 6
18 Proprietary Limited.

19 Right. Now, this records a loan - an intercompany loan from
20 IPO W1 to IPO W3 in the sum of 8.3 or \$8.4 million,
21 doesn't it?---Privilege. That is what the report says.
22 However, there is an email from Pinnacle Group advising
23 that that entity was incorrect. That is the example that
24 I provided you earlier of an entry that should not have
25 been made by Pinnacle Group.

26 Can we scroll to the bottom of the page, please. Do you see
27 the reference to unissued capital there?---Privilege. I
28 can see that.

29 Do you know what those entries mean or reflect?---Privilege.
30 Firstly, these are draft accounts and, secondly, it looks
31 like they relate to investments in relation to Accloud.

1 So if you go back to - well, sorry, we don't need to move - do
2 you see at the top of the screen the reference to the
3 non-current liabilities. Where did Pinnacle get the
4 instructions from to enter that into the balance sheet?
5 That loan of \$8.4 million?---Privilege. They did not get
6 any instructions from me to do that.

7 Did they get instructions from the finance team?---Privilege.

8 I don't believe that was the case, no.

9 How do you know that?---Privilege. The fact that our finance
10 team emailed Pinnacle asking why there was an
11 intercompany loan of that amount sitting as a liability.
12 It was a pretty clear indication that they weren't aware
13 of it.

14 When did they do that?---Privilege. I don't have a copy of
15 that email but I believe it was this year.

16 Yes. What about in the previous year? Do you see - if we
17 could go to the top of the page, please, Mr Associate.
18 The June - 30 June - as at 30 June 2018 - well, that's
19 not the previous year, it's two years previous; do you
20 see that?---Privilege. I can see that.

21 And you can see that the liability was the same two years
22 previously?---Privilege. Correct. I can see that.

23 Did anybody ever complain about that as being an incorrect
24 reflection of the state of affairs or state of accounts
25 between IPO 1 and IPO 3?---Privilege. If you look at the
26 logs, I can assure you that entity was not made as at -
27 or prior to 30 June 2018. Pinnacle Advisory Group made
28 that entry subsequent to that date and that's why our
29 team picked up on that being an incorrect entry.

30 Right. There were loan agreements, let's say, between IPO W1
31 and IPO3, there was one loan agreement; do you recall

1 that?---Privilege. Yes.

2 Now, there are - as I understand it, these loan agreements are
3 not in the court book but, for the purposes of the
4 reference, they are contained within an exhibit named
5 CMD24 to an affidavit of Matthew Dunstan sworn on 22 May
6 2020. Now, I'm sorry, Mr Mawhinney, I don't have a copy
7 of that but there are a series of these loan agreements
8 with each entity and you're aware of those, aren't
9 you?---Privilege. I'm aware of the agreements. As I
10 mentioned, there has been no moneys advanced under those
11 agreements.

12 Right. So when were those agreements prepared; do you
13 know?---Privilege. I don't recall. It was some years
14 ago now.

15 Right. You signed on behalf of each entity in each
16 case?---Privilege. That's correct.

17 The one that relates to IPO - or the loan to IPO3 is governed -
18 that is, a loan to IPO3 by IPO1 and is dated 23 January
19 2019.

20 MR HAY: I object, Judicial Registrar. It would be fair to
21 Mr Mawhinney if these documents were put before him if
22 he's going to be asked detailed questions about them.

23 MR GALVIN: Well, it's not necessary to give a witness a
24 document to ask questions about them. I would certainly
25 provide it if I were - if I had the means and facility to
26 do it, Registrar, but it's not essential to provide a
27 witness with a document in order to examine on it.
28 That's not stated law.

29 JUDICIAL REGISTRAR: Mr Hay, did you want to say anything
30 further?

31 MR HAY: No. Thank you, Judicial Registrar.

1 JUDICIAL REGISTRAR: Thank you. I think Mr Galvin can ask
2 questions about what the witness recalls about the loan
3 agreements without showing him the documents. If he's
4 going to go into a great deal of the content of them,
5 that might need to be revisited. Thank you, Mr Galvin.

6 MR GALVIN: Thank you, Registrar. Mr Mawhinney, this document
7 was - that I'm looking at - and I appreciate you don't
8 have a copy of it - is dated 23 January 2019. So it's -
9 that's 18 months, thereabouts, old?---Privilege. Do you
10 mind me asking what the title of the document was or is?
11 Of course. In fact, it might be convenient, Registrar, if
12 perhaps the document is emailed to the court and to - or
13 emailed to the court, rather, by my instructors during a
14 five minute break (indistinct) Mr Hay ultimately makes a
15 fair point in the sense that it will be easier to examine
16 on this document if the witness has it.

17 JUDICIAL REGISTRAR: Yes, that would be fine, Mr Galvin, Your
18 instructor can email it to my associate and then he will
19 be able to - if it's a PDF, he will be able - it doesn't
20 really matter what kind of document - - -

21 MR GALVIN: Yes. It's - - -

22 JUDICIAL REGISTRAR: (Indistinct) on his screen in the same way
23 that she's sharing the court book.

24 MR GALVIN: That's right, yes. It's just so my instructor
25 knows, it's CDM24 to Mr Dunstan's affidavit of 22 May.
26 So if we could just have a few moments for that to occur,
27 Registrar, and then come back?

28 JUDICIAL REGISTRAR: Yes. Certainly. I will just stand down
29 for five minutes, thank you.

30 <(THE WITNESS WITHDREW)

31 (Short adjournment)

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 MR GALVIN: Thank you, Registrar. The court will have received
3 two exhibits, as I understand, or two documents, rather.
4 One is a large bundle of facility agreements. Another
5 one is a specific facility agreement relating to IPO 3.
6 Could I ask the associate, please, to put that document -
7 that latter document on the screen.

8 JUDICIAL REGISTRAR: So which document is it? Is it the full
9 agreement or - is it the full exhibit or just the
10 facility agreement?

11 MR GALVIN: Just the facility agreement relating - - -

12 JUDICIAL REGISTRAR: Very well.

13 MR GALVIN: - - - to IPO 3.

14 JUDICIAL REGISTRAR: Thank you.

15 MR GALVIN: Thank you for that. Could you just scroll down a
16 little, please, so that Mr Mawhinney can see what the
17 document is. Just pause there, please. (To witness) You
18 can see that this is an agreement between IPO Wealth
19 Holdings No 1 and IPO No 3. Is that right?---Privilege.
20 Yes.

21 Would you go to the last page of the document, please, just
22 where those signatures are. Scroll down a little bit.
23 You can see they're your - they're both your signatures.
24 Is that right?---Privilege. Yes.

25 And then above that a little, please, Mr Associate, you'll see
26 it's dated 23 January 2019?---Privilege. Yes.

27 Do you recall executing this document on or about that
28 date?---Privilege. I don't recall, but that is my
29 signature.

30 All right. Could you go back to the first page again, please,
31 or the - yes. There. Thank you. See the (indistinct)

1 if you could scroll down, please, to the next page,
2 please. The definition of (indistinct) sorry. Yes. Two
3 pages on, please. That's right. Just there. Thanks.
4 (To witness) You can see there that the facility limit
5 was A\$20m. Is that right?---Privilege. That's what it
6 says. That being said, I don't understand the relevance
7 of the agreement, given that no moneys were drawn down
8 under the - - -
9 Yes. I know you say that, but the fact is that money was paid
10 by IPO 1 to IPO 3, wasn't it?---Privilege. Yes, it was.
11 You say that that occurred because it was an equity investment.
12 Is that right?---Privilege. That's correct.
13 But here we have a loan agreement, which was executed by you on
14 or about 29 January 2019. Isn't that
15 correct?---Privilege. Yes, there is, but, as you'll see
16 with all the other SPVs, there is no money owing back up
17 to the borrower, IPO Wealth Holdings No 1, and that is in
18 - that is confirmed in the Dineco second receivers'
19 report.
20 Yes. I understand that's your assertion. Could we go, please,
21 to the first page, again, please, Mr Associate. Under
22 the heading Operative Provisions there, if we go down to
23 the definition of commencement date. Commencement date -
24 this document was supposed to be effective as of 26 July
25 2017. Is that right?---Privilege. That's what the
26 document says.
27 So why did you sign this document on 29 January
28 2019?---Privilege. This is one the - - -
29 When no money advanced?---Privilege. This is one of the
30 discrepancies that we identified with, ah, Pinnacle's
31 work where they had sought to backdate agreements, and

1 there's a great example of that.

2 I see. If this document was not intended to be effective, why

3 did you sign it?---Privilege. It was provided to me

4 along with a professional recommendation to have it

5 executed.

6 Yes. But why did you sign it?---Ah, privilege. Because we

7 wanted to have agreements in place between the IPO Wealth

8 Holdings and the SPVs.

9 Yes. You wanted to have a loan agreement in place between IPO

10 Holdings 1 and, in this case, IPO 3. That's what you

11 wanted to do, isn't it?---Privilege. That doesn't mean

12 moneys were drawn - drawn under that loan.

13 Yes. Well, why did you have the agreement, then? Why did you

14 execute the agreement if moneys were to be - no moneys

15 had been paid or would be paid by way of

16 loan?---Privilege. At the time, ah, we were discussing

17 with Pinnacle the treatment of the relationship between

18 IPO Wealth Holdings No 1 and the SPVs. Um, subsequent to

19 that discussion, ah, it was agreed that the moneys would

20 be invested on an equity basis, as is the case with the

21 SPVs.

22 When - sorry. You say subsequently it was agreed that the

23 money would be advanced on an equity basis. Is that what

24 you just said?---Privilege. Yes.

25 When you say subsequently, when did that - when was that

26 agreement reached?---Privilege. I can't recall.

27 And between whom was it reached?---Privilege. It was Pinnacle

28 that entered the transactions between IPO Wealth Holdings

29 and the SPVs and treated them as unissued share capital,

30 as you pointed out previously. Um, the Dineco receivers'

31 report refers to this, and the second Dineco receivers'

1 report refers to the fact that the borrowers - sorry -
2 the SPVs have no creditors but for IPO Wealth Holdings No
3 3, which is for that \$8.3m undeclared dividend. There is
4 an email from Rachel Xu on 29 May 2020 from Pinnacle
5 Advisory Group saying, ah, 'Please ignore this
6 transaction. This needs to be reversed. There shouldn't
7 be any dividend declared for IPO Wealth Holdings No 3 for
8 financial year 2019'. If you haven't got a copy of that
9 email, I can provide a copy of it to you.

10 This transaction is between IPO No 1 and IPO No 3, isn't it?

11 This agreement?---Privilege. This agreement is.

12 Yes. so the parties who were to decide whether or not there is
13 to be a loan agreement were those parties, not Pinnacle.

14 Isn't that right?---Privilege. Correct.

15 So it's IPO - it's you as director - as sole director of IPO 1
16 and the sole director of IPO 3 that decided there should
17 be a loan agreement in January 2019?---Privilege. Ah,
18 yes, there's a loan agreement. However, as I said, the
19 treatment of investments, ah, into that SPV and other
20 SPVs as even is shown on that balance sheet you had up a
21 moment ago references unissued share capital, and,
22 therefore, the investment made is on an equity basis.

23 But it also references a loan, doesn't it? A liability?---Can
24 you refer me to where that is, please?

25 Yes. If we can go back to the loan agreement, which I think -
26 not the loan agreement, sorry. The balance sheet, which
27 is at p.1235 of the court book - you see there under the
28 heading Liabilities - Noncurrent Liabilities the figure
29 of \$8.389m loan IPO WH 1?---Privilege. I mentioned a
30 moment ago - you asked me for an example of inaccuracies
31 or incompetence with Pinnacle's work. There's a prime

1 example. 29 May there was the email from Rachel Xu of
2 Pinnacle Advisory Group saying, 'Ignore this transaction.
3 This needs to be reversed. There shouldn't be any
4 dividend declared between IPO Wealth Holdings No 3 for
5 financial year 2019'.

6 Well, I'm not asking you about dividends. I'm asking you about
7 a loan from IPO 1 to IPO 3. That's got nothing to do
8 with dividends, has it?---Privilege. I believe it does,
9 because that is a dividend that was due to be paid up to
10 IPO Wealth Holdings No 1 per Pinnacle's treatment of it,
11 but, as I said, that is an incorrect entry that should
12 never have existed, because there is no supporting
13 documentation that Pinnacle can provide to substantiate
14 that.

15 All right. Do you have any documents that indicate that IPO 1
16 was investing equity in IPO 3?---Privilege. Ah, the
17 record of investments being on an unissued share capital
18 basis, ah, into that entity and, ah, all the other
19 entities in SPVs is a great example of how moneys went
20 into, ah, the various different SPVs. It's consistent
21 across all of them.

22 NO. Sorry. My - perhaps if we scroll down to the bottom of
23 the page, please, Mr Associate. (To witness) You see the
24 reference to unissued capital. Do you say those entries
25 there reflect the fact that IPO 1 invested - made an
26 equity investment in IPO 3?---Privilege. That's correct.

27 So the top - the part about the liabilities is incorrect, but
28 this part here is correct. Is that what you're
29 saying?---Privilege. That's correct. May I have a look
30 at the date of this balance sheet, please.

31 Right at the top, please. You see it's May 2020? 22 May

1 2020?---Privilege. I can see that, As I mentioned, we
2 have an email from Rachel Xu of Pinnacle Group as at
3 29 May, um, stating that that transaction should be
4 reversed.
5 Yes. Which transaction?---The transaction that sits as a
6 liability of just over \$8m.
7 Do you have that in front of you at the moment?---Privilege. I
8 can provide you with a copy of it.
9 I'm sorry. Perhaps I'll be clear. My question was, do you
10 have that in front of you at the moment?---Privilege.
11 The email or the balance sheet?
12 The email?---Privilege. I have a copy of it here.
13 In front of you?---Privilege. Yes, I do.
14 What other documents do you have in front of you?---Privilege.
15 That is the only document.
16 Are any other documents in the room with you?---Privilege. No,
17 there's not.
18 I wonder if that - I note the time, Registrar. I wonder if
19 that document could be provided to my instructors,
20 please?---Privilege. I'd be more than happy to share a
21 copy of it with you.
22 All right. Sorry, Registrar. You're on mute.
23 JUDICIAL REGISTRAR: Thank you, Mr Galvin. It's - are you
24 suggesting we break now for lunch, are you, Mr Galvin?
25 MR GALVIN: Well, it's three minutes to 1, and I could go for
26 another three minutes, but I'd like to get this document?
27 JUDICIAL REGISTRAR: All right, then. Well, why don't we break
28 now for lunch, and over the lunch break, Mr Mawhinney,
29 can you please email the document that you're referring
30 to to my associate and to the liquidators'
31 solicitors?---Of course.

1 And we'll just remind you as we break for lunch, Mr Mawhinney,
2 apart from any mechanical issues that you need to discuss
3 with someone around getting that document out, as I've
4 indicated, or a conversation with your lawyers about the
5 earlier document that Mr Galvin sought production of, you
6 shouldn't discuss your evidence with anybody over the
7 lunch break?---That's - that's understood.

8 All right, then. Thank you. What time do you wish to
9 reconvene, Mr Galvin?

10 MR GALVIN: Look, is 2 o'clock convenient?

11 JUDICIAL REGISTRAR: It is from my perspective. Is that
12 convenient for you, Mr Hay?

13 MR HAY: Thank you, Registrar. Yes, it is.

14 JUDICIAL REGISTRAR: And is - - -

15 MR HAY: Might we be copied on Mr Mawhinney's email to the
16 court, if that's okay.

17 JUDICIAL REGISTRAR: Yes, that's fine. Mr Mawhinney, if you
18 can include Mr Hay, please. If you have - - -

19 MR HAY: My solicitor.

20 JUDICIAL REGISTRAR: Yes. The - your solicitors?---I'll do
21 that.

22 And, Mr Mawhinney, are you - is it convenient for you to resume
23 at 2 o'clock?---Yes, it is.

24 All right. Thank you. Well, we'll adjourn the court now until
25 2 pm. I'm not sure what happens with the Zoom link, so I
26 think you can just turn your cameras and audio off, or my
27 associate might be able to explain it to you after I've
28 left the bench. So, Mr Associate, can we just adjourn
29 the court, and could you please explain to people what to
30 do with their Zoom links.

31 <(THE WITNESS WITHDREW)

1
2 UPON RESUMING AT 2.01 PM:

3 JUDICIAL REGISTRAR: Right. Thank you, Mr Associate. Now,
4 Mr Galvin, have you received the document that
5 Mr Mawhinney was going to send through?

6 MR GALVIN: I think so, yes.

7 Right. Thank you. And, Mr Hay, have you had an opportunity
8 over the lunch break to get instructions as to the
9 provision of a copy of a complaint lodged by the Mayfair
10 Group to the Tax Institute of Australia?

11 MR HAY: Thank you, Registrar. Not adequately yet. There are
12 exhibits to - I thought it was a document, but it's, in
13 fact, a number of documents, including the exhibits,
14 which I'm working through, but we're going to need a
15 little more time.

16 JUDICIAL REGISTRAR: Well, that's all right. That could be - I
17 think we're sitting today, Wednesday and Thursday, so
18 perhaps if that could be reviewed after today's session.
19 If there's no objection to providing it, it can be sent
20 by your instructors to Mr Galvin's instructors.
21 Otherwise I can deal with it on Wednesday.

22 MR HAY: Indeed. And we'll continue to look at it in the
23 interim period anyway.

24 JUDICIAL REGISTRAR: All right. Thank you. Mr Galvin, is that
25 satisfactory to you?

26 MR GALVIN: Yes, thank you, Registrar.

27 JUDICIAL REGISTRAR: All right, then. Thank you. All right,
28 then. Well, we'll resume.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 JUDICIAL REGISTRAR: Mr Mawhinney, I'll just remind you that
3 you're still on path, and you - if you wish to claim the
4 privilege against self-incrimination, then you need to do
5 so before - by saying the word 'privilege' before you
6 answer the question?---I understand.

7 Right. Thank you. Are you ready to resume, Mr Galvin, or was
8 there any other matters I needed to deal with?

9 MR GALVIN: No. I'm ready to resume, Registrar.

10 JUDICIAL REGISTRAR: All right. Thank you.

11 MR GALVIN: Mr Mawhinney, if you could look at the balance
12 sheet of IPO 3, which is on the screen at the moment, I
13 was asking you before about the liabilities there, the
14 \$8.4m. You say that that's a mistake. Is that
15 right?---Yes. Correct.

16 And it was a mistake that Pinnacle made?---Privilege. That's
17 correct.

18 Now, you say also that the funds that were invested by IPO 1
19 into IPO 3 were to acquire shares in IPO 3. Is that
20 right?---Privilege. That's correct. An ASIC search
21 shows that, ah, previously, share capital has been issued
22 in lieu of receiving investment from IPO Wealth Holdings
23 No 1.

24 So this document that you've produced over lunch is an email
25 from Rachel Xu dated 29 May 2020. Could we have that on
26 the screen, please. Just while that's happening,
27 Registrar, it's occurred to me that I've overlooked
28 having the examination book marked for identification. I
29 - it being an electronic document, I'm not sure what the
30 court wants to do about that, but I suppose it should be
31 marked for identification. Is that right? Sorry.

1 You're on mute.

2 JUDICIAL REGISTRAR: Thank you. I'm not sure. I'll mark it as
3 - for identification at the moment as MFI1, and I'll just
4 clarify, I'm not sure why - given that the court has it,
5 I would've thought it could be marked as an exhibit, but
6 I'll check.

7
8 #EXHIBIT 1 - (For identification) Examination book.

9 MR GALVIN: All right.

10 JUDICIAL REGISTRAR: And then the document that you're showing
11 Mr Mawhinney now, do you want me to mark that?

12 MR GALVIN: Yes, please.

13 JUDICIAL REGISTRAR: All right.

14
15 #EXHIBIT A - Email from Rachel Xu to Greg Hammond dated
16 29/05/20.

17 MR GALVIN: Thank you. This email - how do you say this email
18 bears on the question of whether IPO 3 issued shares to
19 IPO 1, Mr Mawhinney?---Privilege. This email relates to
20 the reversal of a transaction. It doesn't relate to the
21 issuing of shares.

22 Well, what's it got to do, then, with the questions I was
23 asking you about whether the money invested by IPO 1 into
24 IPO 3 was by way of debt finance or equity
25 investment?---Privilege. You were asserting that the
26 liability owed to IPO Wealth Holdings 1 was done so under
27 a loan agreement, which isn't the case, given the
28 transaction is erroneous.

29 When was the decision to invest in IPO 3 made by IPO
30 1?---Privilege. Ah, would've been around the time that
31 that entity was incorporated.

32 In 2017?---Privilege. I don't recall when it was incorporated.

1 All right. Well, could I ask the associate, please, to go to
2 examination book p.1079.

3 JUDICIAL REGISTRAR: Yes, is that the - - -

4 MR GALVIN: Yes, it is. Thank you. I'm sorry. I just wanted
5 to get to the right page. The - - -

6 JUDICIAL REGISTRAR: No, no. That's all right.

7 MR GALVIN: Could you just confirm - if you scroll up, please,
8 associate, and you'll see, Mr Mawhinney, that this is a
9 search of - it might not be IPO 3. Sorry. The first
10 page again. Might have the wrong document. Pardon me.
11 Yes. It's p.1079. Is that right? Yes. IPO - that's
12 number 4. Is that 1079? That's the one. Thank you.
13 You see that's a search of IPO Holdings No 3, isn't it,
14 Mr Mawhinney?---Privilege. I can see that, yes.

15 And the shareholder appears on page - it doesn't appear that
16 the shareholder is identified in the document, actually.
17 Yes. Sorry. Pardon me. Yes, it is. On p.1080 at the
18 bottom. The shareholder here is IPO 1, isn't it?---Ah,
19 privilege. That's correct. That's what the document
20 says.

21 So IPO 1 was from the beginning the sole shareholder of this
22 company. Is that right?---Privilege. That's correct.

23 And you're saying that there was a decision to issue more
24 capital - rather, more shares to it, is that right, as a
25 result of the investment that was made?---Privilege.
26 That was the procedure for all of the special purpose
27 companies.

28 No. I'm sorry. My question to you was the company was
29 incorporated with IPO Wealth Holdings Proprietary
30 Limited, that is, IPO 1 being the sole shareholder,
31 wasn't it?---Privilege. That's correct.

1 And after that occurred IPO made an investment to - or paid
2 money to IPO 3. Is that right?---Privilege. That's
3 correct.

4 And what did IPO get in return for those - for that
5 payment?---Privilege. It would receive shares in IP
6 Wealth Holdings Number 3.

7 But it was already the sole shareholder, wasn't
8 it?---Privilege. That's correct.

9 So why would additional shares to a sole shareholder be of any
10 value to it?---Privilege. It was the process that we
11 decided to follow of investing on an equity basis so that
12 each share had a value of a dollar.

13 So how was the - so how much did IPO 1 pay to IPO 3
14 (indistinct) half of it or something like
15 that?---Privilege. Sorry? How much?

16 Was it eight and a half million, that amount that was in the
17 balance sheet or was it some other amount?---Privilege.
18 I can't recall what the amount was that - - -

19 Do you recall roughly what it was?---No, I can't.

20 Was it in the millions?---Privilege. Yes, I believe it would
21 be.

22 So is there - were there any shares issued as a result of that
23 payment?---Privilege. Which payment are you referring
24 to?

25 The payment of the money that was advanced by IPO 1 to IPO
26 3?---Privilege. Which payment?

27 Well, how many payments were there? Was it one payment or many
28 payments?---Privilege. I believe there were a number.

29 Okay. Well, what did - when were the shares issued that were
30 consequent upon those payments or given in consideration
31 for those payments?---Privilege. As you'll see from the

1 screen in front of us, all here, you'll see that there's
2 \$800,000 amount paid in lieu of 800,000 shares being
3 issued to IP Wealth Holdings Proprietary Limited. So
4 that is an example of \$800,000 being invested into SPB 3
5 in lieu of being - in lieu of shares being issued to IP
6 Wealth Holdings Number 1.

7 That was \$1 a share?---Privilege. That's correct.

8 But I thought the amount that was advanced was in the
9 millions?---Privilege. That's correct. You may recall
10 the concept unissued share capital. And that refers to
11 where investment was made, but shares had not yet been
12 issued. Given that these are draft, un-audited,
13 unfinalised accounts, those shares had not yet been
14 issued.

15 Why - well, when was the money paid?---Privilege. Which money?
16 There were a number of transactions.

17 The money paid by IPO 1 to IPO 3?---Privilege. I don't have a
18 copy of the bank statements in front of me, so I don't
19 know.

20 Do you know what year it was?---Privilege. I don't recall off
21 the top of my head.

22 In 2017?---Privilege. I don't believe so, but I just can't
23 recall.

24 This company - you said this company was incorporated at the
25 time of the investment, didn't you?---Privilege.

26 Correct.

27 And this company was incorporated in 2017. You can go to the
28 first page of that search, please, Mr Associate. It was
29 incorporated in July 2017. Do you see that?---Privilege.
30 I can see that.

31 So is that when the investment was made by IPO 1 into IPO

1 3?---Privilege. Based on the fact that there are 800,000
2 shares issued, unless this document specifies the date
3 that those shares were issued, I don't know.

4 Well, the rest of the shares that are supposed to be issued?
5 They're just unissued share capital, are
6 they?---Privilege. That's exactly why Pinnacle used that
7 term on the balance sheet.

8 So the decision to invest in - I take it that, because this is
9 IPO 3, you understand that the investment we're dealing
10 with here is the Accloud shares. Is that
11 right?---Privilege. Yes, I do.

12 So the decision to invest in Accloud shares was made in
13 around July 2017 by the IPO Group. Is that
14 right?---Privilege. I can't recall, but it would have
15 been in and around that time.

16 And IPO 1, you think, paid millions of dollars, you don't know
17 how many, to IPO 3 to fund that investment?---Privilege.
18 Again, I don't recall the exact amount.

19 Yes, but it was, nonetheless, the purpose of advances was to
20 acquire the Accloud shares. Is that right?---Privilege.
21 That's correct.

22 There were no further advances - after those advances were made
23 by IPO 1 to IPO 3 to fund the acquisition of the shares
24 in Accloud, were there any further advances to IPO 3 by
25 IPO 1?---Privilege. I don't believe there were, no.

26 Why did you execute a loan agreement between IPO 1 and IPO 3
27 in January 2019?---Privilege. We decided to enter into
28 those agreements between the SPV 1 and all of the
29 subsidiaries. It was something that was uniform across
30 all of them. It wasn't specifically just for that one
31 entity.

1 My question was why, not what. My question was why did you do
2 it? And when you say 'we', who do you mean by
3 'we'?---Privilege. It was me and the finance team at the
4 time.

5 All right. Well, let's just focus on that for the moment. The
6 finance team comprised whom at that time?---Privilege.

7 In 2017, if I can recall correctly, it was Samantha Nuro
8 and Rodney Watson were members of that finance team.

9 Finance team of what entity?---Privilege. Of the IPO Wealth
10 Group.

11 All right. And what are their qualifications and
12 background?---Privilege. I don't have their CVs in front
13 of me. That was three years ago.

14 Do you have any idea who they are and what their background
15 is?---Privilege. Yes. They are qualified accountants, I
16 believe. That's why we hired them.

17 What about their background and experience? Were you aware of
18 that when you hired them?---Privilege. Absolutely. We
19 went through - we go through an interview process with
20 all of our staff.

21 So - I see. So they made a decision, did they, or together
22 with you, is that right, to prepare and execute loan
23 documents for each of the SPVs?---Privilege. That's
24 correct. That's why the documents were prepared.

25 All right. Now, why did that happen? What was the reason for
26 executing those loan agreements?---Privilege. I can't
27 recall.

28 Is that a serious answer?---Privilege. Correct. I - as I
29 said, I don't know why we entered into those loan
30 agreements. It was several years ago now.

31 Are you sure it wasn't to reflect that the moneys had been -

1 that had been paid by the holding company, IPO 1, to the
2 subsidiaries had been lent?---Privilege. At the time, it
3 may well have been. However, as you've seen from our
4 books and records, that's not how these investments have
5 subsequently been treated.

6 Well, you're the sole director of IPO 1. Is that
7 right?---Privilege. That's correct.

8 At all relevant times going back to 2017?---Privilege. That's
9 correct.

10 You're the sole director of all the subsidiaries, all the SPVs,
11 from the time they were incorporated?---Privilege.

12 That's correct.

13 So you're the only person who could have decided whether there
14 was an equity investment or a loan investment in the
15 SPVs. Isn't that correct?---Privilege. That's correct.

16 Are you saying now that you don't recall whether you decided it
17 to be an equity investment or a loan investment, that is,
18 the moneys that were put into these SPVs?---Privilege. I
19 can't recall when, but we did subsequently decide that
20 those investments were to go in as share capitals into
21 those - into all the SPVs from IPO Wealth 1. And that's
22 why it's reflected that way in the books.

23 Do you mean that that was subsequently decided after January
24 2019?---Privilege. It would have been decided after
25 executing those agreements.

26 Well, the loan agreements had already taken effect, hadn't
27 they?---Privilege - - -

28 The money had already in fact been lent. Isn't that
29 right?---Privilege. Just because a loan agreement's in
30 place doesn't mean that moneys are advanced under it,
31 particularly when the advancing of moneys has been

1 treated by the issue of share capital instead.

2 Now, just a moment, Mr Mawhinney. The money had already been
3 advanced by January 2019, hadn't it?---Privilege. This
4 money - well, this document you have in front of you
5 here, yeah, the document in front of you here indicates
6 that \$800,000 was invested into SPV 3 in lieu of 800,000
7 shares being issued to it.

8 Just listen to my question. The money that IPO 1 paid to IPO 3
9 for the purposes of acquiring Accloud shares was all paid
10 before January 2019, wasn't it?---Privilege. I don't
11 know. I don't have the bank statements in front of me.

12 Do you have any reason to doubt that?---Privilege. No. As you
13 can probably imagine, there have been a lot of
14 transactions, and a lot of transactions relating to
15 Accloud specifically. I just can't remember that
16 particular SPV (indistinct)

17 So as at January 2019, it was perfectly clear, wasn't it, that
18 the money had been lent by IPO 1 to IPO 3?---Privilege.
19 No, that's not the case.

20 Well, the decision to treat it as an equity investment occurred
21 after January 2019, didn't it?---Privilege. I don't have
22 a copy of all the accounts in front of me to specify how
23 they have in fact been treated.

24 So do you say that - is it the case that the - there were loans
25 that were converted into equity? Is that possibly what
26 happened? Is that what you decided to do?---Privilege.
27 I don't believe that was the case.

28 Well, what were these payments before you decided to treat them
29 as equity?---Privilege. These are unaudited, unfinalised
30 accounts. Once those accounts are finalised and lodged,
31 the relevant treatment would match the actual treatment.

1 No. At the time the money was paid, how did you regard it?
2 Was it for - was it a loan or was it to acquire
3 shares?---Privilege. This document in front of us very
4 clearly - - -

5 No. No. No. Don't worry about the document in front of us.
6 I want you to go back to your recollection. When the
7 money was paid by IPO 1 to IPO 3, did you regard the
8 money as being advanced on a loan basis or with a view to
9 acquiring shares in IPO 3?---Privilege. The view of
10 acquiring shares. And the document in front of you
11 confirms exactly that.

12 Why did you execute a loan agreement in January 2019
13 then?---Privilege. We did the same for all 17 SPVs at
14 the time.

15 That doesn't answer the question. Why did you do
16 it?---Privilege. Should we need to treat any investments
17 as loans, then we would have done so, but that wasn't the
18 case.

19 I see. So it was in the event that should you need to treat
20 any of the money that had been paid as a loan, then you
21 could rely on that document. Is that what you're
22 saying?---Privilege. I believe so, yes.

23 Now, the reality is that the money that IPO 1 received from
24 Vasco was received under a facility agreement, which I
25 think was executed in April 2017. There's no need to go
26 to it, but I think that's well known. Is that
27 correct?---Privilege. That's correct.

28 And the money that Vasco advanced to IPO 1 was secured by
29 general security agreement. Do you recall
30 that?---Privilege. That's correct.

31 It's a repayment of the money advanced to IPO 1 by Vasco was

1 secured by, effectively, a general charge over all of the
2 assets and undertaking of IPO 1?---Privilege. That's
3 correct.

4 Now, IPO 1 - let's for the moment just say - paid money to all
5 of the subsidiaries. Forget about for a moment that it
6 was on a loan basis or an equity basis. But it certainly
7 had no security, did it, in respect of those
8 payments?---Privilege. It held security over the assets
9 of IPO 1, which included the shares of the subsidiaries.

10 I'm sorry. I'm sorry. I mustn't have been clear. I'm talking
11 about IPO 1's security over assets of the SPVs. There
12 was no security?---Privilege. That's correct. There
13 wasn't required to be, per the IN, or the loan agreement.

14 Yes. Well, I didn't ask you whether it was required to be. I
15 just asked you whether it was a fact. Okay? Do you
16 understand that?---Privilege. I understand.

17 Now, the ability of - what I might do is I might ask you a
18 couple of questions about the investment strategy, if I
19 may. I asked you a few questions earlier about the
20 strategy that was employed to determine what investments
21 should be made. And I think you said there was a
22 document that set that strategy out. Did that change
23 from time to time?---Privilege. Yes. Our investment
24 strategy evolved over time.

25 How did it start and how did it end up? What were the
26 (indistinct)?---Privilege. Yes. Privilege. Initially,
27 our focus was on pre-IPO companies and business that
28 would be heading towards a listing on a public exchange.
29 As it evolved, we started to invest in the likes of real
30 estate and the likes of business credit as part of our
31 overall plans to, really, make sure that the portfolio

1 was well diversified.

2 Did the nature of the investments change over
3 time?---Privilege. Yes. That was in line with our
4 diversification strategy.

5 What was the diversification strategy?---Privilege. We
6 considered as part of our risk management procedure that
7 we would invest in different types of businesses at
8 different maturity stages, in different countries and in
9 different countries - sorry - currencies, so that the
10 portfolio overall was very well diversified and not
11 necessarily too single point sensitive.

12 Now, just coming back then to the funding of IPO 1 by Vasco.
13 As I understand it, there's something like over \$86
14 million was advanced from 12 April 2017. Would that seem
15 right to you?---Privilege. Until what time?

16 Overall from 12 April 2017 until today the amount of money that
17 has been advanced by Vasco to IPO W 1 is in the order of
18 \$86 million. Is that correct?---Privilege. No, that's
19 not correct.

20 What is the correct sum?---Privilege. According to the Dineco
21 report, it indicates about \$130 million had been advanced
22 between IPO Wealth Holdings - sorry - the IPO Wealth
23 funds and IPO Wealth Holdings.

24 Is that consistent with your recollection and
25 understanding?---Privilege. Off the top of my head, it
26 was somewhere in and around that number.

27 All right. Thank you. Now, IPO was obliged to make repayments
28 to Vasco under the loan agreement from time to time,
29 payments of interest and principal was - I don't think
30 we've got a copy of the loan agreement in the court book,
31 but that's the case. Is that right?---Privilege. That's

1 correct.

2 And it was making payments up until about February. Would that
3 be right? February 2020?---Privilege. That's correct.

4 And what were the sources of the moneys that were paid back to
5 Vasco?---Privilege. The moneys came from IP Wealth
6 Holdings Proprietary Limited to go back to Vasco.

7 Yes, but where did IPO Wealth Holdings get the money
8 from?---Privilege. Some of it was money that had been
9 advanced to itself. Other moneys had come from elsewhere
10 in the Mayfair Group.

11 Loans to it. Is that right?---Privilege. In some instances,
12 it was loans. In other instances, it was because it had
13 acquired assets out of IP Wealth Holdings.

14 (Indistinct)?---(Indistinct)

15 Was money paid up from the SPVs up to IPO Holdings by revenue
16 and so forth?---Yes. Privilege. Yes, it was.

17 There was nothing in the information memorandum to suggest that
18 entities would be lending money to IPO W 1 in order for
19 it to make payments to Vasco. There's nothing in the
20 information memorandum about that, is there?---Privilege.
21 The IM, if I'm not mistaken, refers to private equity
22 transactions and corporate finance transactions. They're
23 a servicing of interest in order to further an investment
24 strategy, I believe, complies with that.

25 Wasn't the idea that the money that was advanced by Vasco to
26 IPO 1 would be invested through subsidiaries and the
27 revenue made by those subsidiaries, with investments that
28 they took, would be paid back to IPO 1 so that it could
29 repay its debt from time to time, honour its obligations
30 under the facility agreement with Vasco? Isn't that the
31 way it was meant to work?---Privilege. When you refer to

1 it being the idea, what are you referring to?

2 The information memorandum?---Privilege. I don't have a copy
3 of it in front of me at the moment. Is there a
4 particular section you'd like to refer to?

5 Yes. Why don't we go to the information memorandum. Let's,
6 say, take the one - take the first one, which is at
7 p.915. Now, could you - I wonder if you could indicate
8 the associate when you're ready to turn to the next page
9 and indicate to the court, please, where it is indicated
10 that moneys that will be repaid to Vasco could come from
11 sources other than SPVs or the investments that were made
12 by IPO Holdings 1. Could you scroll through and identify
13 that for us, please?---Privilege. Can you repeat the
14 question, sorry.

15 All I'm asking you to do is to identify the information
16 memorandum where it is where investors are informed that
17 the money which will be repaid to Vasco might be from
18 sources other than investments made through the
19 SPVs?---Privilege. The obligation under the loan
20 agreement was to make principal and interest repayments.
21 There's no requirement for them to come from particular
22 sources.

23 You agree, then, that there is no advice to investors to the
24 effect that repayments to Vasco could come from anywhere,
25 so long as IPO 1 made the payments; is that
26 right?---Privilege. I believe that's the case. I
27 haven't had the opportunity to review the IM in detail
28 otherwise.

29 Thank you. And so the reality is that IPO 1 did, in fact, pay
30 money to the SPVs, and it repaid money to Vasco, and the
31 source of the money that it paid to Vasco wasn't just

1 from within the IPO group; it came from outside the IPO
2 group, as well. Is that right?---Privilege. Ah, it did;
3 however, please bear in mind that it was through the
4 purchase of assets, ah, the moneys advanced to the IPO
5 Wealth Holdings group from the Mayfair Group, um, that
6 that funding was received, so effectively, the payment -
7 repayments back to Vasco, ah, were in lieu of assets
8 being purchased out of the IPO Wealth Holdings group, um,
9 which is effectively creating an internal market for
10 those securities, ah, and, therefore, in compliance with
11 the information memorandum.

12 Could you explain what that means, please?---Yeah, certainly.

13 So your question, if I've understood correctly, was, ah,
14 whether there was any disclosures as to, ah, moneys being
15 paid from other sources other than the SPVs. Was that
16 correct?

17 Well, my question is whether or not the Vasco payments,
18 payments back to Vasco, rather, in repaying its debt,
19 came from sources other than investments made with
20 investors' money through the SPVs. Let's take an obvious
21 example?---Sure.

22 Make it simple. So SPV 1 - sorry. IPO 1 advances money,
23 whatever amount, to SPV 3 so that SPV 3 can buy shares in
24 Accloud. If SPV 3 received dividends from Accloud, then
25 this - the holding company No.1 would be entitled to
26 receive those dividends as a sole shareholder of SPV 3;
27 correct?---Privilege. That's correct.

28 Or if there was a loan, and I know you say there wasn't one,
29 but if there was a loan, it would be repaid to IPO 1, and
30 IPO 1 would recover money that way. That's correct,
31 isn't it?---Privilege. Ah, that's correct.

1 And then IPO 1 would use - could use that money to repay its
2 debt to Vasco, which would then be able to distribute
3 money to investors; is that right?---Privilege. That's,
4 of course, one way of looking at it, yes.

5 Now, what I'm asking is whether the money that was paid by IPO
6 1 to Vasco in repayment of its debts and interests came
7 from sources other than SPV investment?---Privilege. Ah,
8 it is - I believe it's nowhere described in the IM that
9 the source of income has to be from the SPVs. If there
10 is, can you point me to the section.

11 Thank you for that observation. Now, could you just answer my
12 question, though. I'm asking you whether money other
13 than SPV money was used to repay the Vasco
14 debt?---Privilege. Ah, the bulk of the money repaid, ah,
15 came from the sale of assets. I don't have the accounts
16 in front of me to ascertain whether or not there was
17 other moneys used.

18 Whose assets?---Privilege. The sale of the assets of the SPVs.
19 The bulk of the money that was paid to Vasco, you say, was paid
20 by the sale of assets of SPVs?---Privilege. Correct.

21 The ability of IPO 1 to repay its debt to Vasco was dependent
22 upon IPO 1's liquidity, wasn't it?---Privilege. Correct.

23 And I suggest to you that the ability of IPO 1 to recover
24 amounts - or, rather, to maintain its own liquidity
25 depended upon the liquidity of the SPVs?---Privilege.
26 It's correct. It also depended on the ability for the -
27 the IPO 1 to source external funding. Um, I'd like to
28 point to the fact that I had a meeting with, ah, Mr and
29 Ms - ah, Mr Dunstan and Lee Monik from Vasco Investment
30 Managers, ah, on or around - I think it was 17 September
31 2019 to discuss, ah, amongst other things, (a), the

1 internal realisation of assets to create liquidity, um,
2 and (b), ah, the identification of an external, ah,
3 facility, um, should there need to be, ah, liquidity
4 drawn upon at short notice to facilitate, um, repayments,
5 ah, on the loan. This is - - -

6 When - - -?---This is something Vasco was very much across.

7 When was that meeting?---Privilege. Ah, it was in September
8 2019, if I recall correctly. It was with Mr - Mr Monik
9 and Mr Dunstan.

10 All right. Now, could I ask - there's a - just in relation to
11 that, and I'm afraid this is a document which is not in
12 the court book, but there's - just for the purposes of
13 identification, I will say that it is Exhibit C and D 34
14 to Mr Dunstan's affidavit of 29 May 2020, and in that
15 email - it's an email from you to Lee and Craig. Was
16 that Craig Dunstan and Lee Monik?---Privilege. I believe
17 it would be. I don't have it in front of me.

18 No, it's an email dated 3 April 2020. It's very short. Let me
19 just read the relevant part. It's 3 April 2020. 'Hi,
20 Lee, Craig. We note your position on releasing the
21 capital protection reserve to the investment manager;
22 however, we firmly believe that Vasco's, in fact, in a
23 position as trustee to make use of the capital protection
24 reserve under the current circumstances by relying on the
25 existing wording in the IM. See below excerpts from p.14
26 of the IM that support the ability of the trustee to use
27 the CPR [that's capital protection reserve] for investor
28 distributions'.

29 And then you quote a passage, 'The capital
30 protection reserve would be used to top up the fund's
31 asset pool in the event of any capital losses. At the

1 moment, whilst the loan is in default' - you then said, I
2 should say, 'At the moment, whilst the loan is in
3 default, there is a loss of capital to the fund, that is,
4 a capital loss. Under these circumstances, the CPR can
5 be mobilised'. Do you remember sending that
6 email?---Privilege. I do recall, yes.

7 Was that sent in April 2020 because IPO 1 was simply not able
8 to pay what was owed to Vasco at the time?---Privilege.
9 The loan was in default for the first time in its history
10 as of 31 March 2020, if I recall correctly.

11 And it was in - not only was it in default, but there was no
12 way that IPO 1 could make the payments due to Vasco at
13 that time; is that right?---Privilege. Ah, I can't
14 recall the entire circumstances but, um, obviously, the
15 loan was in default because the payments hadn't been
16 made.

17 Well, you don't say that the company was able to pay its debts,
18 do you, at that time?---Privilege. Ah, no, I don't.

19 The idea of using the capital protection reserve was not
20 consistent with the IM at all, was it? That (indistinct
21 words) to repay a debt?---Privilege. No, I - I disagree
22 with that comment.

23 The - do you agree that the capital reserve was intended to
24 fund or to top up the fund's asset pool in the event of a
25 capital loss?---Privilege. Yes. I believe that was, ah,
26 one of the scopes of that - that particular clause. I
27 don't have it in front of me, so I don't know.

28 But you were wanting this money that was kept in reserve to be
29 used to top up or make up for IPO 1s inability to pay its
30 debt back to Vasco. That's a
31 different - - -?---Privilege. No. Privilege. No,

1 that's incorrect.

2 What did you want to do with the capital reserve
3 fund?---Privilege. Firstly, the capital protection
4 reserve, ah, accrues as performance fees for the
5 investment manager, being IPO Wealth Pty Ltd.

6 Mr Mawhinney, my question was, what were you proposing be done
7 with the fund, not how it was created.

8 What - - -?---Privilege.

9 What were you proposing be done with it?---Privilege. If you
10 allow me to finish, I'll answer your question.

11 As long as you answer the question, please?---Of course.

12 Privilege. The money that had accrued as the capital
13 protection reserve, given that that was an entitlement of
14 IPO Wealth Pty Ltd, we sought to put that towards
15 ensuring, ah, investor, ah, distributions were serviced.
16 We wanted to make sure that the unitholders in the fund
17 continued to receive their distributions, given that
18 COVID-19 had just hit, ah, and a lot of investors were
19 rather distressed, given the state of the market.

20 That money was not to be used, was it? The idea was not to use
21 that money to meet a shortfall in payments due under the
22 loan agreement between Vasco and IPO 1?---Privilege. I
23 see that as something different to meeting any shortfall
24 in payments in relation to the loan. The - the purpose
25 of my email to Vasco was to ensure that the unitholders
26 continued to receive their distributions by foregoing an
27 entitlement that we have to that money.

28 In any event, Vasco refused, didn't they, because they didn't
29 see that that was the purpose of the capital protection
30 reserve?---Privilege. That's correct.

31 And as at May 2020, I suggest to you that the amount owed to

1 Vasco was in the order of \$77m. Does that seem right to
2 you?---Privilege. That sounds about right, yes.
3 There were currently at that time, and perhaps now, I suppose,
4 181 investors in the fund?---Privilege. That sounds
5 about right, yes. And - privilege. We don't keep the
6 books and records of the fund. That's information that
7 Vasco's privy to.
8 Yes. But IPO Wealth Fund manager would have an interest in
9 that, wouldn't it?---Ah, privilege. Ah, we have certain
10 information, but ultimately the fund accounting was done
11 by Vasco. And, further to that, we haven't received - or
12 we didn't receive a management report from Vasco, I
13 believe, since December 2019. We didn't receive a
14 management report for five months.
15 From whom?---From Vasco in their capacity as the fund
16 accountant.
17 Were they obliged to send you some report, were
18 they?---Privilege. That's correct.
19 Under what?---Privilege. Ah, that was their engagement as the
20 fund administrator to provide us with reporting on a
21 regular basis.
22 So where does one find the obligation in writing to provide
23 this report that you thought should've been
24 provided?---Privilege. They had provided to us
25 previously for nearly three years straight, and I believe
26 if it's not - if I'm not mistaken, it will be in an
27 agreement between the fund and Vasco administrators
28 either Pty Ltd or Ltd for the provision of fund
29 accounting services to the IPO Wealth Fund.
30 Now, in May - the middle of May 2020, Madgwicks, the solicitors
31 for Vasco, served a demand and notice of default. You're

1 aware of that?---Privilege. That's right.
2 And that - and you don't dispute that there had been a
3 default?---Privilege. That's correct.
4 You don't dispute that the default they identified was the
5 default?---Privilege. No, I don't.
6 And you agree, I take it, that IPO 1 was not in a position at
7 that time to remedy the default?---Privilege. At that
8 time it wasn't, no.
9 All right. Can I now ask you, Associate, please, to go to page
10 66 of the court book. Now, this document, it's the - - -
11 JUDICIAL REGISTRAR: Do you need that enlarged a bit,
12 Mr Galvin?
13 MR GALVIN: I would think so, yes. Thank you.
14 JUDICIAL REGISTRAR: Mr Associate, if you can just go to the
15 top of the document, so that the - so that it can be seen
16 what it is. And then, once we're satisfied it's big
17 enough, then scroll to wherever it is Mr Galvin wants.
18 MR GALVIN: Thank you. Just (indistinct) at the moment is
19 fine.
20 JUDICIAL REGISTRAR: No. A bit smaller, please.
21 MR GALVIN: Well, Mr Mawhinney, can you read that all right? I
22 can. I don't know if you can?---Privilege. Yes. It's
23 okay. I'll let you know if I can't.
24 The email which you sent over lunch time from Rachel Xu, was
25 that - when you were looking at that in the course of
26 giving your evidence, was that on a computer screen or
27 was it on a sheet of paper?---Privilege. It was on a
28 laptop.
29 Is it the same laptop you're looking at at the
30 moment?---Privilege. It is.
31 Yes. So you've been looking at files on your laptop, as well

1 as the examination book. Is that right?---No, I haven't.
2 And the person in the room that I mentioned earlier will
3 be able to confirm that.

4 Right. All right. But you were looking at that email on your
5 screen, weren't you?---Privilege. If I recall correctly,
6 I brought it up during the break that we had. That was
7 all.

8 All right. Now, this document is what we call a quarterly
9 investment portfolio summary. Is that
10 correct?---Privilege. That's correct.

11 Could you please explain to Her Honour, the Registrar, what
12 this document is?---Privilege. This is an internal work
13 paper that was provided to Vasco on a quarterly basis to
14 track the movement of investments held by the IPO Group.

15 So provide once a quarter to Vasco by the IPO Group. Is that
16 correct?---Privilege. It was provided by IPO Wealth
17 Proprietary Limited, the investment manager.

18 The investment manager. I see. Now, there's an Excel
19 spreadsheet. Is that right?---Privilege. That's
20 correct. It may have been converted to PDF from time to
21 time, but the basis of the document was a spreadsheet.

22 And the Excel spreadsheet would be updated, would it? The same
23 Excel spreadsheet would be updated every quarter? Is
24 that correct?---Privilege. That's correct.

25 And who prepared it?---Privilege. Initially, it was prepared
26 by Pinnacle Advisory Group. They helped us establish the
27 format and template for this document. We provided it to
28 Vasco and the template evolved over time in line with
29 Vasco's requests.

30 Who - which individual - or individuals were responsible for
31 maintaining this document as it was updated?---Privilege.

1 Lydia Lee was most recently responsible for that.
2 And how did she know what figures to put in the document when
3 she was updating it?---Privilege. Which components are
4 you referring to? It's a very big spreadsheet.
5 Any of them. Was she the only one who entered data into this
6 spreadsheet?---Privilege. Yes, it was her. From time to
7 time, it would be done with Pinnacle Advisory Group's
8 assistance.
9 Okay. So she did it always, but sometimes it was with
10 Pinnacle's assistance?---Privilege. That's correct. I
11 would, obviously, provide some input, if there had been
12 new transactions that had taken place or evaluation
13 metrics that - or substantial - sorry - evaluation
14 adjustments that could be substantiated. I would provide
15 those to her.
16 So how would Lydia - was it - sorry - Lydia Lee? Is that
17 right?---Privilege. That's correct.
18 How would Lydia Lee know what figures to enter here? Where
19 would she - what was the primary data from which she
20 extracted these figures?---Privilege. It would be off
21 the investment documentation, typically.
22 What investment documentation are you referring
23 to?---Privilege. The investment documentation relating
24 to each of the investments, including the allocation of
25 accrued expenses in line with our policy.
26 Do you recall this being described by you as the primary
27 document in which the investments were
28 recorded?---Privilege. Yes, I do.
29 What did you mean by that?---Privilege. What I mean by that is
30 the zero accounts that Pinnacle were largely maintaining,
31 because we started to identify some discrepancies in

1 there. We considered that this was the primary document,
2 given that this was what we were reporting on back to
3 Vasco on a regular basis.

4 I'm sorry. I think you've frozen. Mr Mawhinney, can you hear
5 us?---(Indistinct) to the (indistinct) assets with the IP
6 Wealth Holdings Group (indistinct) sorry.

7 Sorry to cut you off, but (indistinct) froze. If you go back,
8 please, to the start of the question.

9 JUDICIAL REGISTRAR: Yes. Mr Mawhinney, your screen froze
10 while you were answering that question, so if you could
11 begin answering from the start, please?---Certainly.
12 Would you mind repeating the question.

13 MR GALVIN: What I'm asking you is where the data came from in
14 this spreadsheet. You were saying something about
15 Pinnacle's accounting not being correct anymore. And
16 then I asked you about whether your evidence previously,
17 that this was a - the principal document that recorded
18 the investments, if you like. And I think you were
19 saying that - I think what we heard was that you were
20 saying that, because Pinnacle was not performing its role
21 adequately, you started relying more on this document as
22 a mean of updating Vasco. I might not have summarised
23 your evidence very well, but please repeat it as you
24 would have it?---Yes. Privilege. I would be happy to.
25 So that this document, which was an internal work paper,
26 was always the master document for the recording of
27 investment movements. Given that we're a relatively low
28 transaction volume, but high value transaction
29 organisation, maintenance of these movements was best
30 recorded on a spreadsheet to then subsequently be entered
31 into the accounting package following those transactions

1 taking place, which Pinnacle, obviously, did some work
2 with respect to. This document was provided to Vasco as
3 part of our reporting obligations. And the figures that
4 were entered into this spreadsheet were obtained from the
5 investment documentation for each investment, plus the
6 allocation of expenses in line with that policy.

7 And so that was the work that Lydia Lee did. She did all what
8 you just described. Is that right?---Privilege. It was
9 Lydia Lee since she joined the group, which I recall
10 being around January 2019. Prior to that, it was
11 Samantha Nua that prepared this document.

12 Would you review this document before it was sent to Vasco each
13 quarter?---Privilege. Yes, I would. I must admit, I
14 didn't have the opportunity to review it in detail.

15 MR HAY: Sorry to interrupt. We've just lost sound or it's
16 sounding robotic. I'm sorry. We're not hearing what
17 either the question Mr Galvin or the answer from the
18 witness at the moment.

19 MR GALVIN: I'll repeat the question. Mr Hay, can you confirm
20 (indistinct) Mr Hay, can you hear me all right?

21 MR HAY: We're not hearing that - what you're saying.

22 Registrar, could we just take a moment just to check our
23 connections here. It's just - - -

24 JUDICIAL REGISTRAR: Yes.

25 MR HAY: - - - dropped out (indistinct)

26 JUDICIAL REGISTRAR: Yes. Certainly. It's getting
27 (indistinct)

28 MR HAY: We might just need some technical assistance. I'm
29 sorry. May we stand down. I apologise. May we stand
30 down - - -

31 JUDICIAL REGISTRAR: Yes.

1 MR HAY: - - - just for a few minutes.
2 JUDICIAL REGISTRAR: I'll stand the matter (indistinct) when
3 you're ready.
4 <(THE WITNESS WITHDREW)
5 (Short adjournment)
6 JUDICIAL REGISTRAR: Yes. So have we sorted that out? Are you
7 able to hear us now, Mr Hay?
8 MR HAY: We can hear you much better. Thank you. Our
9 apologies for that. Can everyone hear us from - - -
10 JUDICIAL REGISTRAR: Yes, quite clearly. Thank you.
11 MR HAY: Okay. Thank you for that.
12 JUDICIAL REGISTRAR: That's all right. I will just see if
13 we've got Mr Mawhinney back. Yes, we do. Thank you.

1 <JAMES PETER MAWHINNEY, recalled and examined:

2 JUDICIAL REGISTRAR: Mr Mawhinney, can you hear

3 satisfactorily?---I can hear everyone. Thank you.

4 Thank you. All right. Yes, please, Mr Galvin.

5 MR GALVIN: Thank you, Registrar. Mr Mawhinney, you - I think

6 - I was asking questions about your input or approval of

7 the quarterly portfolio before it was sent to Vasco and I

8 think you were answering that question?---Privilege. I

9 was. I was going to say that normally I would review

10 this each quarter prior to it being provided to Vasco.

11 Vasco sought the urgent preparation and provision of this

12 report on or around 19 or 20, I believe it was, April

13 2020. Normally this report was due to be provided 30

14 calendar days - sorry, the last day of each month

15 following the previous quarter. So nine days prior to

16 the end of April we provided a copy. I believe it was

17 21 April 2020. I hadn't had the opportunity to review

18 the document thoroughly like I normally would given the

19 COVID circumstances and other pressures that we had on

20 the group at the time.

21 I should point out: this document that we're looking at on the

22 screen is a PDF version of the spreadsheet which the

23 provisional liquidators have prepared. So it's

24 contracted in the sense that it's not a full spreadsheet

25 that has all the figures. But you wouldn't see that

26 because you're familiar with the document, I take it; is

27 that right?---Privilege. Correct. This is just a subset

28 of the much larger spreadsheet.

29 Yes. Right. Now, we can take that document down, thank you,

30 Mr Associate. I wanted to ask you some questions about

31 the Accloud shares, if I may, Mr Mawhinney. There's a

1 gentleman by the name of Ross James who was associated
2 with Accloud. You know Mr James, do you?---Privilege.
3 Correct.

4 And how did you meet him?---Privilege. I met him - I believe
5 it was November 2014. He was introduced to me by a
6 supplier of ours at the time that had met him at a
7 networking event - sorry, had met Accloud's chief
8 operating officer at the time at a networking event and,
9 subsequently, the introduction was made.

10 And what did - how did you come to acquire - or IPO Group come
11 to acquire shares in Accloud - well, let me ask you
12 first, perhaps, what Accloud does or did at that
13 time?---Yes. Privilege. Accloud is a software as a
14 service company. It is - everyone is probably familiar
15 with Xero. It's almost like a hybrid between Xero and
16 Amazon enabling businesses to account for their goods and
17 trade their goods. They have been focusing on rolling
18 out their business in emerging markets and it's a
19 business that we have had an involvement with now for
20 quite a number of years.

21 How did your involvement start?---Privilege. Initially,
22 Accloud came to Eleuthera Group, it was at the time I
23 believe in 2014, seeking for Eleuthera Group's assistance
24 in sourcing capital for its business.

25 Just pausing there. But, for the transcript, could you spell
26 Eleuthera?---Privilege. E-l-e-u-t-h-e-r-a.

27 Thank you. Go on?---Privilege. We didn't engage at that
28 point. The group that I was running at the time, Real
29 Time Media Limited considered making an investment in the
30 company. That didn't proceed at the time. And,
31 subsequently, I believe, in 2015, I believe I reached out

1 to the founder after I had identified that they had
2 commenced a process to list in the Australian Stock
3 Exchange. Our engagement really began at that point.
4 When was that roughly, do you think?---Privilege. 2015
5 sometime. I believe it was the second half.
6 You say you reached out; what does that mean? You contacted
7 Mr James; is that right?---Privilege. If I recall
8 correctly, I think I did. It was five years ago. I
9 can't directly recall.
10 All right. Could I ask the associate, please, to go to p.1254
11 of the examination book. You might need to scroll up
12 through that or maybe make it a bit smaller so that
13 Mr Mawhinney can see the document and get an impression
14 of what it is. (To witness) Do you recognise this
15 document? I know that you're only seeing a heading at
16 the moment?---Privilege. Yes, I do recognise it. May I
17 see what the date is, please?
18 Yes. The date might be at the very end, perhaps?---Privilege.
19 I believe this document was executed in, yes, September
20 2017.
21 There's a reference to Green Horse Australia trading as the
22 Public Listing Company. I think you mentioned that
23 company earlier and it has changed its name now; is that
24 right?---Privilege. Correct.
25 Could you explain what that company is?---Privilege. At the
26 time Green Horse Australia would provide services to
27 assist businesses seeking to list on public markets.
28 And who are the directors of that company or who were at that
29 time, I should say?---Yes. Privilege. At the time I
30 believe it was myself. I can't remember if there was a
31 second director or not.

1 When I say 'at that time' I meant 1 September 2017, which is
2 the date of execution of this document; do you
3 agree?---Privilege. I believe, yes.

4 IPO Capital Proprietary Limited is not a company within the IPO
5 Group; is that correct?---Privilege. That's correct.
6 It's part of the Mayfair 101 Group?---Privilege. That's
7 correct.

8 And who are the directors of IPO Capital?---Privilege. Myself.
9 Online Investments we've asked you about and it was trustee, at
10 least at that time, with the Sunseeker Trust. Now, what
11 was the object of this - how did this document come
12 about?---Privilege. This document was a - it assembled a
13 number of agreements that had been held by various
14 parties within our group including the provision of
15 personal services or personal exertion, I believe, under
16 Green Horse Australia, if I recall correctly, and this
17 agreement sought to tidy up various entitlements that
18 the Mayfair Group had accrued over time for the provision
19 of services and capital for - to Accloud.

20 There's a reference - if you can go, please, to p.1256, there's
21 a reference at the top of that page to an agreement of
22 28 September 2016. That's one of the agreements you're
23 talking about where services were provided; is that
24 right?---Privilege. I believe so. I don't have a copy
25 of it.

26 No?---Privilege. I - I expect, based on what I see there, that
27 it was not just services, but also funding that had been
28 provided.

29 Yes, well - and that would appear from 1.1(b), wouldn't it, at
30 least?---Privilege. That's correct, bearing in mind, of
31 course, this was before the IPO Wealth group existed and

1 the IPO Wealth fund existed.

2 Yes, well, this is back in - this was September 2016. So you,
3 being (indistinct) and Online Investments, IPO Capital
4 and Green Horse had all provided equity, debt funding and
5 advisory services to Accloud; is that right?---Privilege.
6 That's correct.

7 What were the advisory services that you personally had
8 provided?---Ah, privilege. Ah, I had provided advice to
9 the founder with respect to, ah, their proposed listing
10 on the ASX. Um, we assisted them to undo their
11 transaction on the ASX, um, and subsequently, ah,
12 redirect the business towards establishing in London,
13 which they subsequently did.

14 Why did that occur?---Ah, privilege. It was a strategic
15 decision for the company, um, that it made more sense for
16 their business to be headquartered out of London, given
17 the potential, ah, scale of their operation, given it is,
18 arguably, the financial services capital of the world.

19 There's a reference there to IPO Capital having invested equity
20 of \$200,000, and a share certificate. And so shares had
21 been issued. Was that to IPO Capital, was it?---Ah,
22 privilege. I, ah - I can't see it on the agreement
23 there, but I do know that IPO Capital and Online
24 Investments Pty Ltd have both owned Accloud shares.

25 Do you know - the advisory services that are referred to
26 provided by you and Online Investments and so forth -
27 were those entities remunerated for those advisory
28 services?---Ah, privilege. I believe that that's what
29 this document captured.

30 I see. This - so this document provided to that remuneration
31 is what you're saying?---It - privilege. I believe there

1 may have been a document or two prior to that, or at
2 least agreements in writing between both parties.
3 In paragraph 1.1(e) there, Online Investments provided \$905,000
4 pursuant to an agreement with Accloud dated 23 December
5 2015. Did that happen?---Privilege. Yes, I believe it
6 did. The document says it happened, it happened.
7 Do you recall it happening, though, independently of this
8 document?---Privilege. Yes, it would've happened, yeah,
9 well prior to this document. It was over a - ah, nearly
10 a year prior.
11 Now, if you look at clause 1.2, in consideration of those
12 matters, (a) to (e), 10m fully paid ordinary shares were
13 to be issued in Accloud, some to IPO Capital and some to
14 Online Investments, and that occurred. Is that
15 right?---Privilege. Ah, do you mind just scrolling up.
16 I can't see it there.
17 I'm sorry. Yes, of course. Can we scroll up, please, to 1.2
18 on p.1256, please, Mr Associate. I'm sorry; I'm looking
19 at my version. I didn't realise, Mr Mawhinney, that you
20 couldn't see what I was reading from, so I might just go
21 back to 1.1 first. Yes, just look at that, please, and
22 refresh your memory?---I - I can see 1.1. That's fine.
23 Yes. And 1.2 refers to - if we go up a bit, please - you'll
24 see there 1.2 involves an issue of shares to IPO Capital
25 and Online Investments?---Privilege. That's correct.
26 And those shares were issued in consideration for the items
27 listed in (a) to (e). Is that correct?---Privilege.
28 That's correct.
29 As I understand it, ultimately - we'll confirm this, perhaps,
30 but Online Investments didn't receive 4.8m shares; it
31 only got in the order of 3.2m. Does that sound right to

1 you?---Privilege. That sounds correct.

2 Do you know why that happened, why it wasn't 4.8?---Privilege.

3 I can't recall, but I do know the other 1.595m shares, if
4 I recall correctly, or let's call it 1.6m shares, um,
5 were acquired, ah, into IP Wealth Holdings Proprietary
6 Limited.

7 I see. All right. Now, my instructions are that, as at

8 5 January 2020, the Accloud share register disclosed the
9 following share ownership. And I just want you to tell
10 me if this is inconsistent with your understanding or if
11 you're not aware of it or if you agree with it?---Sure.

12 First of all, that IPO Capital had 5,160,428 shares, which
13 seems consistent with the document we just looked at.

14 Secondly, that IPO W Number 3 held 5.25 million shares,
15 5,250,000 shares. Does that seem consistent with what
16 you know?---Privilege. It sounds about right, yes.

17 MR HAY: Sorry, Mr Galvin. Mr Mawhinney, you do have to answer
18 audibly. It's being recorded?---Privilege. My
19 apologies. I'm not aware of what the Accloud share
20 register says, but those numbers prior to the transaction
21 that no doubt we're about to discuss were what was
22 recorded on the share register at the time.

23 MR GALVIN: I just want - I've got a process here of joining
24 dots, if you like, Mr Mawhinney. So just bear with me.
25 If we could go, please, to page 1268. You'll see that
26 there is a - if we scroll down, you'll see that's a share
27 certificate in Accloud for - to IPO Number 3 for 18,421
28 shares. Go to the next one. Sorry. Go back a page to
29 1267. There's one for a million shares. You might need
30 to go down a little bit, I think, to see - we can see it
31 there. Then to page 1266. Going back a page. There's

1 another 1.6 million shares to IPO Wealth Holdings Number
2 3, as well. And then if you just scroll down so
3 Mr Mawhinney can see that. And then back another page to
4 1265, another 2,613,579. So that's 2,613,579 shares
5 through IPO Wealth Number 3. If you scroll down a little
6 bit, you can see the reference to IPO 3. Now, those are
7 the shares that seem to add up to the 5.25 million shares
8 held by IPO Number 3. Now, if we could go, please, to
9 page 1523. Now, is it possible to turn this around 90
10 degrees, so that it's more easily read by Mr Mawhinney.

11 JUDICIAL REGISTRAR: My associate's just trying to do that. I
12 expect you'll be able to do it by the arrow that's at the
13 top of the PDF. Just wait a moment for my associate to
14 do that.

15 MR GALVIN: Yes.

16 JUDICIAL REGISTRAR: I don't think we can really expect
17 Mr Mawhinney to stand on his side or something to read
18 the document.

19 MR GALVIN: No. Just while that's happening, Mr Mawhinney, I
20 just want to - I'll tell you the nature of the document.
21 It's a transaction listing that records IPO W 3's
22 investment - equity investment in Accloud. And I just
23 wanted to - it looks like the amount paid was \$1 million
24 between 9 August 2017 and 30 January 2019. That's what
25 these entries suggest to me, but I want you to confirm.
26 Does it sound right?---Privilege. In round figures,
27 possibly, yes.

28 All right. Well, let's just get you to look at that. See if
29 you can see. These looks like they come from the zero
30 accounts, zero records.

31 JUDICIAL REGISTRAR: Mr Galvin, are there many documents of

1 this type there that you're going to be taking
2 Mr Mawhinney to now that are - need to be shown in a
3 different view?

4 MR GALVIN: I don't think there are many. There will be some.
5 But what I was going to suggest is we might tidy up the
6 court book a little bit tomorrow and provide one that
7 doesn't have this issue with it.

8 JUDICIAL REGISTRAR: All right. What was the page number
9 again? It's - - -

10 MR GALVIN: 1523.

11 JUDICIAL REGISTRAR: 1523. Thank you. It happily crashed my
12 associate while he was trying to get it. So we'll just
13 see how that goes. The other alternative is to
14 have - - -

15 MR GALVIN: I'll move on at the moment. I can come back to it
16 later on.

17 JUDICIAL REGISTRAR: Yes. And if my associate can't get it,
18 then you can always put - use the (indistinct) for that
19 purpose.

20 MR GALVIN: Now, it looks like two of these payments,
21 Mr Mawhinney, according to this, were made to Ross James
22 on 2 October 2017, an amount of \$50,000; on 5 October
23 2017, an amount of \$150,000. Can you explain why
24 payments were made to him by IPO 3?---Privilege. I
25 believe that was for the purchase of some shares that
26 were held by a company of his.

27 That wasn't going to add to the coffers, if you like, of
28 Accloud, was it? You were just buying his
29 shares?---Privilege. I believe that was the case.

30 How was the purchase of those shares from him consistent with
31 the investment strategy of the IPO Group?---Privilege. A

1 private equity transaction takes many shapes and forms.
2 Acquiring shares from someone in a business you're a big
3 believe in is very much in line with that strategy.
4 I mentioned to you that there were - the IPO Capital entity had
5 a certain number of shares. IPO Number 3 had these
6 shares that we've just been talking about. Then there
7 was IPO Number 6, which held 6 million shares. Is that
8 consistent with your recollection?---Privilege. Yes.
9 IPO Holdings Number 6 owned 6 million shares.
10 Do we have the court book back yet? Could we turn up page
11 1270, please.
12 JUDICIAL REGISTRAR: Yes. While my associate's doing that,
13 Mr Galvin, I'll just indicate that we can't rotate that
14 page, because they're not single pages. And what the
15 computer is trying to do is to rotate over 7000 pages.
16 MR GALVIN: No. Well - - -
17 JUDICIAL REGISTRAR: And every time it tries it, it crashes.
18 So - - -
19 MR GALVIN: We won't (indistinct)
20 JUDICIAL REGISTRAR: (Indistinct) documents until next time.
21 MR GALVIN: Of course. We won't persist. Thank you. Thank
22 you for that.
23 JUDICIAL REGISTRAR: Thank you.
24 MR GALVIN: Now, this is a document which is headed Binding
25 Term Sheet. It involves a number of parties, the sale of
26 - and repurchase of shares in Accloud, involves a company
27 Stealth Technology Singapore, a person by the name of
28 Honey Singh, S-i-n-g-h, Baljit, B-a-l-j-i-t, Singh,
29 that's S-i-n-g-h, and IPO Wealth Holdings No.6. Do you
30 recall this document, Mr Mawhinney?---Privilege. Yes, I
31 do.

1 And this involved the acquisition by IPO Wealth Holdings No.6
2 of the 6 million shares; is that right?---Privilege.
3 That's correct.

4 What was - what's Northvale a reference to?---Privilege.

5 Northvale Capital Partners Private Limited is a
6 Singaporean entity that sought to acquire a controlling
7 stake in the Vadodara Stock Exchange, a financial
8 services business located in India.

9 And why was it involved in this transaction?---Ah, Northvale's
10 principal, ah, sought access to funding to make that
11 investment. Um, given the tight timeframe, we didn't
12 consider it prudent, given that we were unable to
13 undertake due diligence on that particular investment in
14 the normal detail that we would, um, so rather than
15 providing the funding at short notice, which, from
16 memory, was three - ah, US3m, if I'm not mistaken, ah, we
17 - given Baljit Singh, the principal, and Honey Singh, who
18 I believe was his daughter, um, owned shares in Accloud,
19 um, we, under this agreement, decided to provide US\$3m
20 split into two payments, ah, one for US2.9m, um, which
21 went towards the purchase of 6 million Accloud shares,
22 given that they were substantial shareholders in Accloud,
23 um, on a buyback agreement, which is (indistinct) here,
24 ah, and to - ah, for the remaining - I believe it was
25 US100,000, to then acquire - I believe it was a 10 per
26 cent stake in Northvale Capital Partners Private Limited
27 for the purposes of effectively having a vested interest
28 in the success of, ah, the investment, ah, in the
29 Vadodara Stock Exchange business.

30 Can we scroll down the bottom of p.1271, please. You'll see
31 the reference to US dollars, 1.5m there, and the - first

1 of all, the reference to \$6m share - of - sorry, 6
2 million shares, rather, in Accloud for US\$2.9m, which is
3 what you - I think you said; is that right?---Privilege.
4 Yes, I can see that there.

5 Next page, top of the next page, if we could scroll to that,
6 please, shows or refers to the \$1.4m?---Privilege. Yes,
7 I see that.

8 So \$2.9m was paid for - US2.9 was paid for 6 million shares; is
9 that right?---Privilege. That's correct.

10 Now, the provisional liquidators have made some enquiries, and
11 they instruct me that Accloud's documents lodged with the
12 regulator in the United Kingdom disclose that Mr Singh
13 and his associates acquired their shares on 27 March 2017
14 by way of a share swap with Accloud India Private
15 Limited. Do you know anything about that?---Privilege.
16 No, I'm not across that transaction.

17 Now, in addition to these shareholdings, there's two more I
18 want to ask you about. IPOW itself, No.1, rather,
19 acquired 1,595,745 shares. I'm not proposing to take you
20 to the share certificates. There's no reason to doubt
21 that, is there?---Privilege. No, I agree with you on
22 that.

23 And Online Investments acquired 3.243 - sorry - 3,242,827
24 shares, which I think you agreed with earlier; is that
25 right?---Privilege. That sounds right. Correct.

26 So the total of all the entities I've referred to today,
27 include IPO Capital, IPO No.3, IPO No.6, IPO No.1 and
28 Online Investments, the total number of shares held by
29 those entities collectively is 21,250,000 shares, which
30 represented 12.5 per cent of the issued share capital in
31 Accloud. Is that correct? You agree with

1 that?---Privilege. I agree.

2 The shares that were acquired, do you recall what the purchase

3 price was for the shares acquired by IPO 1?---Privilege.

4 I can't recall, no.

5 Do you know if anybody was paid a fee or a commission on the

6 acquisition of these shares?---Privilege. Not that I'm -

7 well, no. No. It was a direct - direct transfer or

8 direct payment.

9 Now, you'd informed - previously informed the provisional

10 liquidators when they were receivers that these - that

11 the shares that were held by the IPO entities - by that I

12 mean number 3, number 6 and number 1 - were meant to be

13 registered in the name of IPO Number 3. Is that

14 right?---Privilege. Pinnacle Advisory Group suggested we

15 structure a transaction for the sale of those shares.

16 And part of that process was for the consolidation of

17 those share holdings into IP Wealth Holdings Number 3.

18 So it's not the case that it was a mistake that they were

19 registered in the names of the three

20 entities?---Privilege. I'm not sure which one you're

21 referring to there.

22 I thought it was - I read that - I'm not sure where this was,

23 but I read, I thought, in a document provided, perhaps by

24 you, but perhaps by someone else, that the shares were

25 registered in the three entities, but should have been

26 registered in the one entity, IPO 3, and that the

27 confusion was caused by the similarity of their names.

28 Does that ring a bell?---Privilege. I do recall that.

29 It was a suggestion that Pinnacle provided us with.

30 Was it true or not?---Privilege. I don't have it in front of

31 me, so I can't - I need it to be specified in more

1 detail.

2 Does that mean you can't really say whether there was a mistake
3 or not in terms of who had the shares?---Privilege. I
4 don't have the document in front of me, so I'm not - I
5 need to see a copy of it.

6 What document are you talking about?---Privilege. It sounds
7 like there's a document referring to some (indistinct)
8 I see. I understand. Thank you. Well, I don't have that
9 document. It's just my recollection, but perhaps we come
10 to it later. Could we go, please, to page 1248. Do you
11 recognise - it's sideways. What I'll do, perhaps,
12 Registrar, is come back to that later. I won't persist
13 with it now. Just bear with me, please, Registrar.

14 JUDICIAL REGISTRAR: That's fine, Mr Galvin.

15 MR GALVIN: Yes. And I presume 1251 is the same - in the same
16 condition, so - all right. Could we come to - perhaps,
17 to page 504. Yes. This is a document dated 26 March
18 2019. Could you scroll it - and headed Revenue Share
19 Agreement. Could you just explain what the nature of
20 this document was and what its origin was, Mr Mawhinney,
21 please?---Privilege. The revenue share agreement, um,
22 with, Accloud provides 101 Investment Limited, um, with
23 an entitlement to a percentage of its Indian revenue
24 stream in perpetuity. Ah, it was an agreement that we
25 negotiated, ah, with Accloud to help provide them with
26 funding that they needed to progress their business
27 towards a listing.

28 Who made the investment?---Privilege. One-O-one Investment Ltd
29 did.

30 Right. And did IPO Group lend money to 101 Investment to fund
31 that investment?---Privilege. No, the - the loan was

1 provided from IPO Wealth Holdings to Eleuthera Group who
2 then financed the transaction for 101 Investment Ltd.
3 I see. So IPO 1, was it, leant money to
4 Eleuthera?---Privilege. That's correct. The money went
5 to our group treasury entity.
6 And then Eleuthera leant that money on to 101
7 Investment?---Privilege. That's correct.
8 How was that of benefit to the IPO Group?---Privilege. Ah,
9 there's an entitlement for the IPO Group to receive, ah,
10 the payment of those funds.
11 What funds?---Ah, the funds that were advanced to Eleuthera
12 Group.
13 Was there a written loan agreement?---Privilege. Yes, there
14 is.
15 And what's the interest entitlement?---Privilege. I can't
16 recall off the top of my head. I'd need to see the
17 agreement.
18 When is the loan repayable? Do you know?---Privilege. I can't
19 recall.
20 All right. Pardon me for a moment. Is the loan to Eleuthera
21 secured?---Privilege. It's unsecured.
22 What was the amount?---Privilege. I can't recall.
23 Was it about \$9m?---Privilege. The amount advanced under this
24 agreement? Is that what you're referring to?
25 Well, I don't think there's any amount advanced under this
26 agreement. I'm asking about the amount of money that was
27 loaned to Eleuthera by IPO 1?---Privilege. You'd be
28 deferring to the Dineco report. That provides a
29 breakdown of how much money was loaned to and from the
30 Eleuthera Group.
31 No, no, no. Sorry. A misunderstanding. What I'm asking you

1 is how much money did IPO W lend to 101 - sorry. Let me
2 say it again. How much did IPO 1 lend to Eleuthera for
3 the purposes of acquiring the interest or 101's interest
4 in the revenue share agreement?---Privilege. The vast
5 majority of the payments made towards this agreement
6 didn't come from IPO Wealth - from IPO Wealth or IPO
7 Group.

8 I thought you said that 101 Investment funded this investment
9 out of a loan from Eleuthera?---Privilege. That's
10 correct.

11 Now, I thought you said that Eleuthera funded that loan to 101
12 Investment out of money it received from the IPO
13 Group?---Privilege. It received, ah, I think the first
14 two payments, if I recall correctly, from IPO Group. Ah,
15 the balance was paid from Eleuthera through other funding
16 sources.

17 Okay. Well, what was the amount that was paid out of the IPO
18 Group?---Privilege. I don't know. We do have a
19 breakdown of that.

20 Where's the breakdown?---On our - on our systems here. KPMG
21 has assisted with the reconciliation of all of this.

22 No, but would there be a record in the IPO records of the
23 amount that was being advanced to Eleuthera for this
24 purpose?---Privilege. Ah, sorry. In the IPO Group
25 records?

26 Yes?---Privilege. In the IPO Group's records - ah, I can't
27 recall how it was reported in the balance sheet. Again,
28 that was something that Pinnacle was taking care of.

29 Could we go to p.1379, please. Sorry. That's where we are.
30 Sorry. Down to clause 2.1, which is on p.1383,
31 'participation fee'. What's Accloud

1 Mauritius?---Privilege. It's a - I believe it's a
2 subsidiary of Accloud PLC.
3 Clause 2.1 provides for a participation fee: 'Investor shall
4 pay to Accloud Mauritius the sum of \$15m up to a maximum
5 of \$30m in aggregate'. Do you know what that relates
6 to?---Privilege. Yes. That was a fundamental term of
7 the agreement, which is the provision of capital, um, in
8 - ah, in lieu of receiving a share of the revenue stream,
9 which, if I recall correctly, would flow from Accloud
10 India into their Mauritian entity that it would have the
11 entitlement over.

12 So that was the price to be paid for the revenue stream, in
13 other words?---Ah, correct. It was on a pro rata basis,
14 so depending on how much we paid - if we paid the full 30
15 US dollars, we would receive a 10 per cent shareholding
16 in their revenue stream for India in perpetuity.

17 I see. And has that occurred? Has that been
18 realised?---Privilege. Ah, we have part funded this
19 agreement. Um, obviously, we have not completed it in
20 full, um, and wouldn't expect to be receiving a
21 percentage of their revenue in the coming months.

22 When you say 'we', are you talking about 101

23 Investments?---Privilege. That's correct.

24 What's 101 Investments - it's 101 Investments Limited, is

25 it?---Privilege. Yes, it's a investment holding company.

26 And where's it - is it - that the company that's incorporated

27 in the British Virgin Islands?---Privilege. That's
28 correct.

29 Whose decision was it to incorporate that company?---Privilege.

30 I made the decision based on a recommendation I received
31 from Pinnacle Advisory Group in 2018.

1 Right. Who at Pinnacle Advisory Group gave you that
2 advice?---Privilege. It was Craig Van Wegen and Nora
3 Fairbanks, the two principals.

4 And what's the reason for using a company incorporated in the
5 British Virgin Islands?---Privilege. We're a heavily
6 diversified international investment group. Um, we hold
7 investments - or prior to receivers and managers being
8 appointed, ah, in 10 countries, um, it is not uncommon,
9 particularly for business based over in London, to hold
10 investments in jurisdictions such as the British Virgin
11 Islands.

12 But what's your reason - what was your reason for incorporating
13 this company in the British Virgin Islands? What was the
14 reason Pinnacle gave you, for example?---Privilege.
15 There are obvious tax advantages of such a jurisdiction,
16 which - our view was that that would be of benefit,
17 ultimately, to the IPO Wealth fund unit holders, given
18 that we wouldn't need to make investments work so hard,
19 particularly where there was a clear justification for
20 holding those investments in that jurisdiction, um, and,
21 secondly, given the value of the potential investment
22 that we've made here over time, there's a degree of
23 anonymity associated with the British Virgin Islands.

24 Who are the directors of 101 Investments?---Privilege. The
25 current director is Nicholas Cooke.

26 Who's Nicholas Cooke? How do you know him?---Privilege. He's
27 a professional director.

28 He is based in the British Virgin Islands?---Privilege. Yes,
29 he is.

30 Is he related to Graham Cooke?---Privilege. Yes, he is.

31 How?---Privilege. I believe he is his son.

1 You mean Nicholas is the son of Graham?---Privilege. That's
2 correct.
3 And are they both located in the British Virgin
4 Islands?---Privilege. Yes, that's right.
5 Have you met them?---Privilege. I have met Graham previously
6 in our London office.
7 Does he take instructions from you in relation to the affairs
8 of 101 Investments?---Privilege. He makes his own
9 decisions in his capacity as a director of that company.
10 What does he base his decisions on? What
11 information?---Privilege. He bases his decisions on the
12 information that we have provided previously and
13 (indistinct) has provided previously with respect to
14 transactions for 101 Investments Limited to consider.
15 When you say 'we have provided', who's 'we'?---We - privilege.
16 Myself and Pinnacle Group.
17 All right. So it's these - and you said, 'It was me and
18 Pinnacle', and you really meant you and Pinnacle? You.
19 James Mawhinney and Pinnacle; is that right?---Privilege.
20 Yes, we would send investment information - well,
21 investments that we were proposing to enter into and then
22 Graham would decide whether or not those decisions would
23 align with the company's objectives.
24 Are you sure that they weren't - those decisions weren't, in
25 fact, made by you?---Privilege. Not at all. Graham
26 makes up his own mind.
27 Who are the shareholders of the company?---Privilege. 101
28 Investments Limited is owned by - I believe it is Mayfair
29 Group Limited, which is also a BVI company.
30 Who are the directors of that company?---Privilege. I believe
31 it's - I believe it's Nicholas Cooke.

1 And who are the shareholders of that company?---The Kismet
2 Retirement Fund in Singapore holds that structure in the
3 BVIs - BVI.
4 The Kismet Retirement Fund? Where's - is that a - is that a
5 trust?---Privilege. Yes, it's a trust.
6 Who's the trustee of the trust?---Privilege. Kensington
7 Partners or - I know first name is Kensington based in
8 Singapore. They're a professional trustee service.
9 And who are the beneficiaries of the trust?---Privilege. I'm
10 one of them.
11 Anybody else?---Privilege. I don't recall the list of
12 beneficiaries off the top of my head.
13 So it's fair to say that you're the ultimate owner of 101
14 Investment?---Privilege. That's correct.
15 101 Investments, I think, was incorporated on 21 January 2019.
16 Was that pursuant to the advice you got from Pinnacle,
17 was it?---Privilege. Absolutely right.
18 Can we have a look, please, at court book 1573. Do you
19 recognise that email? It's an email from you to Ravi
20 dated 20 March 2019 sent at 4.27 pm. Who's
21 Ravi?---Privilege. Financial controller of PayMate India
22 Private Limited.
23 Okay. Does this email have anything to do with the Accloud
24 shares or is it more to do with PayMate
25 India?---Privilege. It has nothing to do with the
26 Accloud shares. It is to do with the PayMate shares.
27 And why is it sent by 101 Investments Limited or on behalf of
28 101 Investments Limited?---Privilege. Where does it say
29 it's sent on behalf of 101 Investments?
30 Well, see it says - it reads, 'Hi Ravi, these changes are fine.
31 Thank you. We would like to make an investment via our

1 BVI entity'. And then it says - I see. Then it says - I
2 thought that was the address, '101 Investments
3 (indistinct) Chambers'. Sorry, it comes from you. So
4 what was the purpose of making the investment in PayMate
5 India through 101 Investments?---Privilege. We
6 established 101 Investments to be our technology
7 investment holding company for overseas technology
8 companies, which is exactly what PayMate and Accloud are.

9 All right. What - so what are the assets that - and
10 investments that 101 Investments holds as we speak
11 today?---Privilege. It owns 21.25 million Accloud
12 shares, it holds the Accloud revenue share agreement and
13 it holds \$2 million US at purchase price worth of PayMate
14 India shares.

15 Could I ask you, please, to go, Mr Associate, to 2972, please.
16 (To witness) You've seen this? This is a letter from KHQ
17 to Thomson Geer Lawyers dated 25 May 2020. Have you seen
18 this letter before?---Privilege. I can only see
19 something with three lines and a signature on it.

20 JUDICIAL REGISTRAR: I think you need to go to the previous
21 page, Mr Associate.

22 MR GALVIN: It doesn't look right to me. That doesn't look -
23 this is certainly not the document I'm looking at. 2972;
24 is that right? We've got a difference here between my
25 document and the court's document. I don't know why that
26 is. 2972.

27 MS PAPAEO: It should be 2927.

28 MR GALVIN: 2927. All right. Let's see if that corresponds.
29 No. I'm looking for a letter from KHQ to Thomson Geer
30 dated 25 May 2020. I wonder if Ms Papaleo can help us
31 find that.

1 JUDICIAL REGISTRAR: Who was it to, Mr Galvin?
2 MR GALVIN: Thomson Geer.
3 JUDICIAL REGISTRAR: To Thomson Geer?
4 MR GALVIN: Yes.
5 JUDICIAL REGISTRAR: From?
6 MR GALVIN: KHQ Lawyers.
7 MS PAPAEO: I'm sorry, it's 2976.
8 MR GALVIN: 2976.
9 JUDICIAL REGISTRAR: Thank you, Ms Papaleo.
10 MR GALVIN: Thank you for that. I'm very grateful. (To
11 witness) You've seen that letter before? We might just
12 scroll slowly through it, please, Mr Associate. And we
13 will just pause at - a little bit further up, but only
14 just - no, sorry, the other way. That's better. Thanks.
15 Just to there. I just want to direct your attention,
16 Mr Mawhinney, if you can read it, paragraph 4.1(b) - and,
17 first of all, have you - do you recall this letter being
18 sent by KHQ Lawyers?---Privilege. Yes, I do. I'm
19 familiar with it.
20 Four-point-one-b reads, 'Liquidity. The Mayfair 101 Group's
21 management wishes to optimise' - - -?---Sorry, would you
22 mind just scrolling - - -
23 I'm sorry. Sorry. I'm reading from the wrong. Can we go to
24 the next page, please, 4.1(d)?---Yes.
25 Yes, 101, that's IL means Investment Limited, doesn't it? 101
26 Investments Limited, 'Is an investment entity associated
27 with the Mayfair 101 Group, but is not part of the IPO
28 Wealth Group. 101 Investments Limited holds investments
29 in assets of an income producing nature, and in assets
30 with liquidity events assessed as being beneficial to
31 the Mayfair 101 group as a whole'. Is that a correct

1 statement, or are those statements correct?---Privilege.
2 I believe it to be the case, yes. Ah, 'income producing
3 nature', ah, those investments had not at that stage
4 produced income, ah, but otherwise the purpose and the
5 structure and that entity not being part of the IPO
6 Wealth Group is correct.
7 The assets that you're referring to include the Accloud shares,
8 don't they?---Privilege. Yes, they do.
9 And the PayMate India shares?---Privilege. That's correct.
10 And they were expected to be income producing; is that
11 right?---Privilege. That's correct.
12 What's a liquidity event? Is that an event which makes an
13 entity liquid?---Privilege. A liquidity event is when an
14 asset is converted into cash of sorts.
15 All right. Has 101 Investments realised any of its assets to
16 this point in time?---Privilege. No, it hasn't.
17 It's fairly clear in this statement that - in this paragraph
18 that 101 Investments is something which lies outside the
19 IPO Wealth Group. I think you confirm you agree with
20 that, is that so?---Privilege. I agree with that
21 statement, but the screen that we're looking at at the
22 moment, this information was provided by Pinnacle
23 Advisory Group and it was erroneous. That's - those
24 other statements should not have gone out. We've since,
25 obviously, subsequently submitted our complaint to the
26 tax institute, because the information providing there is
27 in fact erroneous.
28 Is that information provided in various parts of this letter,
29 is it?---Ah, privilege. It's the information relating
30 the Accloud shares.
31 All right. You may need to scroll through this. Could you

1 identify for the court, please, how statements in this
2 document are inaccurate and - which statements are
3 inaccurate and how they're inaccurate?---Privilege. Ah,
4 the section there about delayed exit, ah, was provided by
5 Pinnacle Advisory Group. Ah, the component regarding
6 better liquidity, ah, I believe was provided by Pinnacle
7 Advisory Group. Um, the statements in there, ah, don't
8 align with actually, ah, our treatment of those
9 transactions.

10 What do you mean? Where's the failure in
11 alignment?---Privilege. There's a component in delayed
12 exit - I'm just trying to find it - where they talk about
13 COVID-19 and the impact to the UK public markets - I'm
14 just trying to read it. Sorry, it's a bit small.

15 Can we expand it a bit, please, Mr Associate. Can you read
16 that, Mr Mawhinney?---Yes, I can see that.

17 Okay. So where's the inaccuracy?---Privilege. It's a late
18 exit event. I must have it confused with a different
19 document. That paragraph looks correct. My apologies.

20 That's all right. Well, let's go back. You say that - do you
21 say there was a mistake in somehow connecting COVID-19
22 with something?---Privilege. Ah, I don't believe it's in
23 that document. I just say 'COVID-19' and I thought it
24 might've been the same reference, but, um, it - that
25 (indistinct) there is correct.

26 All right. Let me just see if that's referred to somewhere
27 else?---Do you mind just scrolling up? I can read
28 paragraph - - -

29 Yes. Scroll up to earlier paragraphs?---Sorry.

30 I mean, go scroll down, I think. People see this sort of thing
31 differently and I - - -?---Yes.

1 Can we just stop at 4.2, and you can see that, 'IPO 3 was
2 established by the buyer as a special purpose vehicle to
3 hold all the IPO Wealth Group's investment in Accloud',
4 but as we know, some of the interests were - shares were
5 held by two other IPO entities, so - - -?---So,
6 privilege, I believe this is now getting into the
7 component that Pinnacle provided to KHQ Lawyers as part
8 of the submission.

9 I see. So is it in paragraph 4.2(b), 'To that end both
10 companies' - or perhaps we should start from the
11 beginning of the paragraph, 'For expediency purposes two
12 then existing entities of the IPO Wealth Group acquired
13 Accloud shares 14 days before the incorporation of IPOW',
14 so that'd be IPO 6 and IPO 1; is that right? No, sorry,
15 that's not right. It says it's IPO Capital and Online
16 Investments. Well, we're aware that those - and we've
17 seen already that those two entities that did acquire
18 shares, and did they acquire them in circumstances where
19 IPOW 3 would've acquired them if it had been incorporated
20 in time?---Privilege. This is the component of the
21 letter including 4.1(f) which Pinnacle prepared which we
22 considered to be erroneous.

23 All right. Well, let's look at 4.1(f). What is erroneous in
24 4.1(f)?---Privilege. It states, amongst other things,
25 'It determined to do this by converting the investment in
26 Accloud to a loan to 101 PL by means of transferring the
27 investment in Accloud to 101 Investments submitted in
28 return for moneys payable to the IPO Wealth Group on the
29 terms of the loan'. That statement's erroneous. There
30 is no loan agreement.

31 There's no loan agreement between IPO and IPO 3 and 101 Ltd; is

1 that right? Investments Ltd?---Privilege. That's
2 correct.

3 All right. Was one prepared?---Privilege. One was prepared;
4 however, it was never signed in counter parts, there was
5 no drawdown notice and 101 Investments Ltd director,
6 Graham Cook, who was the director of 101 Investments Ltd
7 at the time had never even sighted the document.

8 Okay. So who prepared the loan agreement?---Privilege.
9 Pinnacle did. How they came to enter that transaction
10 into our books, um, ah, when that agreement wasn't even
11 executed and provide this information to our lawyers, ah,
12 proposing that that transaction was on foot, um, is, ah,
13 something that, ah, we have submitted as part of our
14 complaint to the tax institute, because it is entirely
15 erroneous and the document never existed.

16 Did you sign this loan agreement yourself?---Privilege. I
17 signed. It was never signed by the counterpart and
18 therefore was never in place.

19 Well, why did you sign it?---Privilege. Because at the time
20 Pinnacle was not aware that we had, ah, transferred
21 significant moneys into IPO Wealth Holdings from
22 the Mayfair Group, and that our plan was to then acquire
23 those shares, as opposed to actually it be under a
24 facility agreement.

25 So why did you sign the agreement?---Privilege. At the time,
26 it was on the advice of Pinnacle that that was how we
27 should treat the transaction.

28 And did you at the time disagree or agree?---Privilege. At the
29 time, ah, when I executed it, it made sense; however,
30 subsequent, given the amount of money that had flowed
31 back into the IPO Wealth Holdings Group, it was only fair

1 that that money went in on the basis of it acquiring an
2 asset or assets, um, and that's what we did with the
3 Accloud shares.

4 So how did Pinnacle commit an error if they did something which
5 you agreed with at the time by preparing that document?
6 You signed it?---The preparation of the document was not
7 erroneous.

8 Right?---It was the subsequent recording of a document that was
9 never countersigned or even seen by the counterparty, and
10 therefore could - could never have been put - ah, never
11 have been on foot.

12 All right. Well, we might come back to that in a little while.

13 Thanks, Mr Mawhinney. All right. It's true to say that
14 101 Investments was not in any sense an SPV of - in the
15 IPO Group, as you - I think that we've established that
16 it was outside the IPO Group?---Privilege. That's
17 correct. It's part of the broader Mayfair Group.

18 Now, according to a report dated 21 September 2019 in Accloud's
19 31 March 2019 financial report the Accloud Group at that
20 time was in the process of signing a contract with a
21 major infrastructure provider in India, which was
22 expected to lead to \$5 billion in revenue. Do you recall
23 that?---Privilege. I recall it. Ah, this was just one
24 of a number of contracts that Accloud had either signed
25 already or has been working on. It was nothing new.

26 So it was expected - in September 2019, the expectation of
27 Accloud was that there would a contract entered into
28 which would lead to revenue of \$5 billion. Do you agree
29 with that?---Privilege. I can't recall when that - that
30 contract came online, um, it wasn't part of our thinking
31 at all. It was one of a number of contracts that Accloud

1 has been working on for some time now, so it's nothing
2 overly significant from where we sit.

3 I just wonder if - would you just excuse me for a moment,
4 please, Registrar.

5 JUDICIAL REGISTRAR: Do you want a couple of minutes,
6 Mr Galvin?

7 MR GALVIN: Yes, if I could, please.

8 JUDICIAL REGISTRAR: Yes. Certainly. We'll stand down for a
9 few minutes.

10 <(THE WITNESS WITHDREW)

11 (Short adjournment)

1 <JAMES PETER MAWHINNEY, recalled and examined:

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

3 MR GALVIN: Thank you, Registrar. I appreciate that time. I

4 was going to take Mr Mawhinney to a document, but it's

5 not in the court book. I thought it might have been, but

6 it's not, so I'll just proceed without it at the moment.

7 Mr Mawhinney, I was asking some questions about the

8 listing of Accloud in the United Kingdom, which seems to

9 have been anticipated certainly in September 2019. When

10 did you first become aware of the potential listing of

11 the Accloud entity?---Privilege. As I mentioned before,

12 Accloud had commenced a reverse takeover of a listed ASX

13 company in 2015. Um, ah, they subsequently undid that

14 transaction, and then, ah, sought to list over in the

15 United Kingdom. Um, I've been involved. I actually

16 introduced them to the broke that they are utilising to

17 list the company, um, so it's something that has been on

18 the roadmap for some five years now.

19 Do you recall, though, in the report that I mentioned the

20 anticipated signing of a contract which was going to

21 yield from business in India some \$5 billion in revenue.

22 Do you recall that specifically?---Privilege. No, I

23 don't. Ah, as I said, there are a number of contracts

24 that Accloud were working on. Ah, that was just one of a

25 number of them.

26 There's an email I'd like to take you to which is 1430, please,

27 Mr Associate. If we could just scroll down a little bit,

28 please. This is an email from you dated 14 September -

29 sorry, 14 June 2019 to Craig Van Wegen; is that right?

30 W-e-g-e-n, of Pinnacle?---Yes. Correct.

31 You were anticipating that Accloud was about to list in the

1 second week of July; is that right?---Privilege. That's
2 correct. At the time.

3 Isn't that something you learned from Mr James, Ross
4 James?---Ah, privilege. Yes, ah, and also from other
5 board members of Accloud, ah, and the brokers. As I've
6 said I've been very closely involved in this company for
7 some five years now.

8 You were very closely involved in it, were you?---Privilege.
9 Yes, that's correct, in a - - -

10 In what capacity?---Sorry. As a - well, second largest
11 shareholder in the company capacity.

12 Right. And so the reference to the investment in India
13 amounting to \$5m in revenue is - \$5 billion in revenue,
14 sorry, is something that has escaped your recollection;
15 is that right?---Privilege. I don't recall the
16 counterparty that the agreement was with. I hadn't seen
17 the agreement and it had no consequence in relation to
18 any of our, ah, internal management of the Accloud
19 shares.

20 I didn't ask you that. I asked you if you had no recollection
21 of the \$5 billion contract. Forget about who the
22 counterparty was. It was something that was a subject of
23 special attention in a report?---Privilege.

24 It was a matter of great significance to Accloud, wasn't
25 it?---Privilege. Ah, I don't know if it was of great
26 significance to Accloud, but it was one of a number of
27 transactions that they were working on of - of similar
28 sizes, by the way. This wasn't unusual (indistinct.)

29 All right. Now, so there's a reference here you tell Craig
30 that Accloud is back on track to list in the second week
31 of July. It had been off track, had it?---Privilege. It

1 doesn't say back on track.

2 It's on track - sorry - to list for the second - what did you

3 mean by on track? What was it that told you

4 that?---Privilege. Ah, it would've been my discussions

5 with the board of Accloud.

6 What did they tell you?---Privilege. Sorry, and to add to

7 that, likely the brokers, as well.

8 What did they tell you?---Privilege. To list a company there's

9 a series of steps that needs to be taken, ah, including

10 audited financials, prospectus preparation, um, on a

11 market you need to demonstrate that there's, ah, adequate

12 working capital requirements are being met, um, so at

13 that point in time it looked like they had ticked most of

14 the boxes that were required to get the company listed.

15 Did you have any discussion about the value of the shares on

16 listing?---Privilege. Ah, we would've at the time.

17 Do you remember what - what do you remember of those

18 discussions? What price was anticipated?---Ah,

19 privilege, at the time, ah, a price hadn't been decided

20 with the brokers, um, but I do know that anything between

21 50p a share and a pound 30 a share was discussed.

22 I see. The shares that had been acquired by 101 Investments -

23 or, rather, IPO, I should say. The IPO Group. How much

24 had been - what was the share price for those

25 paid?---Privilege. At what point?

26 When they were acquired?---Privilege. You may recall there was

27 a number of (indistinct) of shares that have taken place

28 over time. I can't remember all of them off the top of

29 my head.

30 Do you have any idea, for example, what IPO 3 paid for its

31 shares?---Privilege. I can't recall, no.

1 All right. Well, perhaps we can come back to
2 that?---Privilege. I would add IPO Wealth 6 paid US\$2.9m
3 for six million shares.
4 Right. I see. Well, my maths is no good, so I'm not going to
5 work it out at the moment. We'll work it out
6 later?---Privilege. That - that was - ah, I believe it
7 was just over 50 US cents per share.
8 I see. Yes. Okay. Good. Thank you. What would that be in
9 Sterling?---Ah, privilege, off the top of my head,
10 probably 35, 40 Sterling or thereabouts. Or p - p,
11 should I say.
12 P, yes, that's right. Yes. Now, you said in this email, 'Can
13 we speak next week about how we go about this?' What's
14 'this' a reference to?---Privilege. I would need to see
15 the rest of the email trail to understand.
16 All right. Well, I don't think we have that, and then you say,
17 'Which entity we should correct it to', does that help
18 you remember what you were referring to?---Privilege.
19 Ah, I expect that this was in relation to your question
20 earlier, ah, where Pinnacle, ah, had suggested, ah, that
21 there was a correction needed with respect to where those
22 shares were held.
23 Yes?---Um, given that the use of the word 'correct' is in
24 there.
25 I see. And then there's a reference to, 'The flow-on effect to
26 Vasco for reporting purposes, as I want to ensure this is
27 done the best way possible'. What were you concerned
28 about in your expression of those words?---Ah, privilege.
29 We have a reporting requirement back to Vasco, and if
30 Pinnacle were advising us to make any changes I wanted to
31 make sure that that was adequately and - and properly

1 reported on.

2 In the spreadsheet?---Privilege. Correct.

3 How would you report this in the spreadsheet? What, you mean
4 there would be a change of entity in the spreadsheet and
5 that would have to be explained. Is that what you were
6 getting at?---Privilege. Ah, if there was any movement
7 of the shares, normally that would be reflected back in
8 the quarterly investment portfolio summary.

9 All right. All right. Now, I was just going to move to a
10 slightly different point now, Registrar. Is that a
11 convenient time to finish for the day?

12 JUDICIAL REGISTRAR: If that suits you, Mr Galvin, that's fine.
13 We're listed against on Wednesday for this with a start
14 time of 11.30, as I think I indicated to you when
15 granting leave to issue the summons. To fit you in for
16 three days this week, I had to work around another
17 hearing that I already had - other hearings I already had
18 on Wednesday morning. I expect them to be finished by
19 11.30.

20 MR GALVIN: No, we're very grateful for the accommodation.

21 JUDICIAL REGISTRAR: So we'll commence at 11.30 and my
22 associate tells me that we'll be able to use the same
23 Zoom link on Wednesday and Thursday as has been used
24 today.

25 MR GALVIN: Yes. Good. Thank you.

26 JUDICIAL REGISTRAR: All right. So, Mr Mawhinney, you'll be
27 continuing to give evidence on Wednesday and so apart
28 from the discussions that you need to have with your
29 lawyers about the document that was sought by Mr Galvin,
30 the - you shouldn't be discussing your evidence with
31 anyone. Mr Galvin, we had the undertaking earlier about

1 the court book, but I'm not - normally, the way these
2 sorts of things work, the examinee wouldn't have access
3 to the court book outside of court time.

4 MR GALVIN: Yes.

5 JUDICIAL REGISTRAR: Do you want to deal with that in any
6 particular way?

7 MR GALVIN: I don't think it's practical, really, to do
8 anything about that at the moment. I think we can just
9 leave that where it lies at the moment. I think I was
10 really addressing what happens at the end of Thursday.

11 JUDICIAL REGISTRAR: All right. That's all right, I just
12 wanted to raise that with you. Is there anything else
13 before we conclude for the day?

14 MR GALVIN: The only thing I might - we may make an endeavour
15 to improve the quality of the court book so that it's -
16 the pages that are 90 degrees the wrong way could be
17 fixed up.

18 JUDICIAL REGISTRAR: Yes. All right.

19 MR GALVIN: I appreciate that - - -

20 JUDICIAL REGISTRAR: Is that - - -

21 MR GALVIN: I know that you've probably been through the entire
22 court book and marked it up with your notes. That's a
23 joke, by the way. I was just thinking that probably no
24 one would be inconvenienced by that if we were to do
25 that.

26 JUDICIAL REGISTRAR: No, but the other thing that you might
27 find easier is just to extract those pages into a - those
28 particular pages into a separate PDF and align them that
29 was.

30 MR GALVIN: That's helpful. We might make a supplementary
31 folder.

1 JUDICIAL REGISTRAR: I think that might be better, because that
2 way then they're still in the court book, but it's a
3 little bit like having a, you know, compendium of key
4 documents or something. You've reproduced them somewhere
5 else, but if it's a relatively small PDF it should be
6 able to be rotated without the crashing that was
7 occurring here.

8 MR GALVIN: We'll rotate the documents once we've extracted
9 them into a small file.

10 JUDICIAL REGISTRAR: Yes. Yes. All right. Is there anything
11 from your perspective, Mr Hay?

12 MR HAY: Thank you, Registrar, no.

13 JUDICIAL REGISTRAR: All right, then, and, Mr Mawhinney, do you
14 understand all of that?---Yes, I understand. Thank you.
15 All right, then. Thank you. Mr Associate, I'll have you
16 adjourn the court, please, until - well, for this
17 hearing, anyway, till 11.30 on Wednesday.

18 ADJOURNED UNTIL WEDNESDAY 19 AUGUST 2020