

## HALIFAX INVESTMENT SERVICES PTY LTD (AUSTRALIAN ENTITY)

### CREDITOR AND INVESTOR FAQ –14 JUNE 2019

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\*denotes this question has been added since the investor FAQ dated 17 April 2019

## 27. Is Ferrier Hodgson merging with KPMG?\*

## 28. How does the Merger of Ferrier Hodgson and KPMG affect investors and creditors?\*

## 29. If I have questions who should I call?

### 1. What happened at the Second Meeting of creditors?

At the second meeting of creditors held on 20 March 2019, creditors resolved that the Company be wound up under Section 439C(c) of the Corporations Act 2001 (**the Act**) and Morgan Kelly, Phil Quinlan and Stewart McCallum were appointed Liquidators.

Detailed minutes of this meeting are available on the Ferrier Hodgson website. A recording of the minutes has been uploaded to the FH website, link as follows:

<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/halifax-investment-services-mp3-200319.mp3>

### 2. What progress has been made by the Liquidators since the second meeting of creditors?

The primary focus since the commencement of the Liquidation has been:

1. Preparing Court applications (in Australia and New Zealand) for directions to enable the distribution to investors of the funds held on their behalf as soon as possible; and
2. The pursuit of antecedent transactions to seek to maximise the return to Investors and creditors.

### 3. What is the status of my trading position?

All investors' accounts remain frozen in 'Close Only' mode – i.e. it is not possible to enter into new positions, nor is it possible to withdraw money from client accounts, however it is possible to close out current positions.

### 4. Will I get my money back?

Given the deficiency in client funds, it appears that there is likely to be a shortfall to investors from trust assets. Investors will have an unsecured claim in the Company in the event of a shortfall in trust assets, however any return to unsecured creditors is contingent on future recoveries of Company assets.

We estimate that a dividend of approximately **83 to 94 cents** in the dollar will be payable to investors in their capacity as beneficiaries with an entitlement to claim trust monies.

This estimate is preliminary only and may be subject to revision. In particular, it may be impacted by market movements in the value of open positions and directions from the Court as to the date on which investor claims should be crystallised.

**5. How long will it take for investors to receive a distribution?**

This will largely be dependent on the length of time taken to obtain directions from the Court. However, it is likely that the process of making the application to Court and making a distribution to investors will take at least 12 months, possibly longer.

We appreciate that investors would like to have access to funds held in accounts as soon as possible. However, due to the many complex issues that will require directions from the Court as well as other recovery actions to be taken, it is difficult at this time to provide an accurate estimate as to the timing of a distribution.

Following the receipt of Court directions, we anticipate it will take at least 6 months to make a distribution due to the time required to:

- Liquidate stocks; and
- Adjudicate on approximately 12,600 investor claims

The Liquidators will explore the potential for any interim distribution to investors however it is not expected that this would occur prior to initial court applications being commenced, heard and determined.

**6. Are the shares I purchased using my Halifax account held in my own name?**

At this stage, it is apparent that the shares acquired as a result of transactions entered into by the Company's investors are held by custodians, not in the investors' names. Therefore, we need to understand the legal implications of the ownership, as well as any implications of a cash deficiency and the impact that may have on investors' abilities to trace their initial deposits through to the ultimate share purchase.

All share transactions will continue to be suspended (other than the closing out of share transactions, however as all investor accounts have been frozen, any funds resulting from this transaction will be frozen).

**7. Should I close out my positions? Will cash or shares be treated more favourably in terms of an allocation of funds to client accounts?**

The Liquidators are unable to provide investment advice or instructions as to whether it would be beneficial to sell shares. At this stage it is not known whether cash or shares will be treated equally in the reconciliation process. It is likely that the Liquidators will be required to seek directions from the Court to resolve this question and investors will be provided with a further update in due course.

**8. Are IB investors able to claim under the Securities Investor Protection Corporation (SIPC) policy?**

We have recently received advice from our solicitors which indicates that IB investors are unfortunately unable to claim coverage under the SIPC policy.

By way of explanation, SIPC is not an insurance company. Rather, SIPC is a US federally mandated corporation which assists to protect and provide coverage to customers on their brokerage accounts, in circumstances where their brokerage firm (who is a SIPC member broker-dealer) becomes insolvent. That is, SIPC will assist where a "member broker-dealer" enters external administration.

Interactive Brokers LLC and Halifax America LLC are SIPC members. However, these entities are not subject to the Liquidation.

Unfortunately, Halifax is not an SIPC member and as a result, investors of Halifax cannot claim under the SIPC policy.

**9. How do I know if am a creditor of the Australian entity or a creditor of the New Zealand entity?**

The following table provides a summary of investor creditors and their status as beneficiaries / creditors of entities within the Halifax Group. In summary, all investors are beneficiary creditors of Halifax except for those creditors who have invested on the Halifax NZ IB platform.

Platform	CSA	Beneficiary creditor of	Unsecured creditor of
Halifax IB	Halifax	Halifax	Halifax
Halifax IB	Halifax NZ	Halifax	Halifax NZ
Halifax NZ IB	Halifax	Halifax NZ	Halifax
Halifax NZ IB	Halifax NZ	Halifax NZ	Halifax NZ
MT4	Halifax	Halifax	Halifax
MT4	Halifax NZ	Halifax	Halifax NZ
MT5	Halifax	Halifax	Halifax
MT5	Halifax NZ	Halifax	Halifax NZ

**10. What investigations have been conducted so far?**

Our investigations have identified the following:

- The director and former director of the Company may have breached their obligations under Section 180 to 184 of the Act;
- Halifax may have breached its obligations in relation to the ASIC Client Money Rules and Section 981B of the Act;
- There may be potential claims against external advisors for misstatement of accounts and/or failure to report misconduct; and
- Recoveries may be available in respect of antecedent transactions and insolvent trading.

These and other potential claims are being investigated by the Liquidators.

Creditors and investors who have any additional information to the above which would assist our investigation are requested to write to us setting out full particulars.

**11. How will any antecedent recovery actions be funded?**

Generally, a liquidator is not required to incur an expense in relation to a winding up unless there is sufficient available property.

In considering the merits of proceeding with any recovery action, a liquidator must have regard to the relative costs and benefits together with the prospects of success and the financial ability of defendants to meet claims. Recovery actions are often expensive and can involve lengthy delays if court proceedings are required.

There are a number of potential avenues to fund further action, including:

- A liquidator may apply to ASIC for funding to carry out a further investigation into possible breaches of the law (the Assetless Administration Fund). Findings from such investigations could also be useful in civil recovery actions.
- There are a number of financiers who offer 'litigation funding' to covering certain costs of investigating and pursuing larger claims in return for a fee, usually in the form of a percentage of recoveries.
- Recoveries from one successful action may assist in funding other actions.
- The liquidators have been exploring various avenues outlined above and, where possible, will provide updates to creditors on this process.

**12. What is ASIC doing?**

The Liquidators are working closely with ASIC to assist with their ongoing lines of investigation.

**13. I am IB investor, I can see my shares and cash sitting in my account. Why is my account affected by the liquidation?**

Our investigations to date indicate that funds invested by MT4 and MT5 investors may have been used to 'top up' the accounts of IB investors (and vice versa).

By way of explanation, it would appear as though a pool of funds was maintained in the IB Allocated Account and transferred to the IB Master Account on an as needs basis. Accordingly, it is not possible to identify individual investor deposits flowing through from the IB Suspense Account to the IB Master Account and then on to the credit of the individual account.

We have also identified transactions between the Halifax Pro Allocated Account (which held funds deposited by MT4 and MT5 investors) and the IB Master Account meaning that funds deposited by MT4 and MT5 investors were, in some instances, used to credit IB accounts. When IB investors transferred funds to Halifax, they were held in a Halifax controlled account (co-mingled with the funds of other investors) however there was no immediate transfer to IB. Instead, the individual account was credited using a 'pool' of funds already held in the IB Master Account which was in effect, a mix of funds deposited by multiple investors.

This co-mingling of funds in the IB Master Account is just one example of ways in which investor funds have been co-mingled across platforms. The reason for this co-mingling appears to be improper operation of trust accounts and improper application of client monies.

**14. What is the extent of the co-mingling?**

Based on our preliminary investigations to date (including our review of over 10,000 transactions) it appears that:

- There is no pattern behind the transfer of funds between client accounts (i.e. frequency, where funds were directed to, purpose etc); and
- There appears to be substantial contraventions of the Client Money Rules.

Having regard to the above, we consider that client funds are comingled to such an extent that it is not possible to trace deposits to individual investor accounts. Further, it appears as though funds deposited by MT4 and MT5 investors may have been used to credit the accounts of IB Investors (and vice versa).

**15. Can investors obtain dividend statements / tax statements?**

We understand that historically account statements were available for investors to consider their financial and tax positions. These account statements include details such as changes in equity and any dividends received on stocks held. We understand that no tax advice has ever been provided by Halifax.

These statements are still available in the ordinary course through either the account platforms, or a written request to [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au) which will be forwarded to the Halifax team to send a copy of the account statement.

Investors will need to obtain their own tax advice in relation to the treatment of any movement in account value or dividends received, in particular given the position of Halifax investors generally in the liquidation is yet to be finalised. Neither Halifax nor the Liquidators are able to provide any tax advice in this regard, however we will continue to consider the tax implications of any future distributions to investors and update investors where appropriate.

Investors may wish to provide a copy of the **Update to investors – Activity Statements** dated 6 May 2019 on the Ferrier Hodgson website to an advisor or government agency as part of any advice they are seeking.

**16. What will happen next in the liquidation?**

The Liquidators will shortly be making an application to the Federal Court of Australia for directions in relation to:

- Following realisation of all investments (in accordance with the Court's directions), pooling together all those Client Monies which are co-mingled;
- Distributions to investors of such proportions of the Client Monies so pooled as the Court directs; and
- Costs and expenses of the administration and of the liquidation (including the Liquidators' remuneration), both in respect of the making of such distributions in particular and in respect of the liquidation in general.

**17. What is the status of the Court application?**

We anticipate that the application in the Federal Court of Australia will be filed by the end of June 2019 requesting co-operation between the Courts in both Australia and New Zealand requesting direction as to how we should move forward towards a final hearing. The application in the High Court of New Zealand will follow immediately after that.

**18. What is the expected timing of the next steps?**

Below is a high-level overview of next steps and estimated timing:

- File applications in Australia and New Zealand – June 2019
- Seek co-operation between High Court (NZ) and Federal Court (AU) – Mid July 2019
- Case management directions including appointing representative defendants – August 2019 to February 2020
- Hearing and Liquidators to comply with directions – March 2020 or later

Please note, timing will be determined by the Courts and is outside of our control as Liquidators

**19. How am I able to participate in the Court process and ensure that my views are heard?**

Investors and other interested parties will be given an opportunity to be represented and have submissions made on their behalf in an application to the Court. It will be the Court that will ultimately determine the matter.

All investors and creditors will be informed of the Court application and the orders being sought as well as any orders that are ultimately made by the Court. This update will also contain information in relation to creditor participation in this process.

**20. I have lost my user ID or account number. How do I obtain these details?**

Your user ID or account number will be on the POD form provide by Link Market Services.

It is important that you complete a separate POD and proxy form for each account. Proxies and POD's which have not been completed on this basis will not be accepted.

Please contact Link Market Services (halifax@linkmarketservices.com.au or 1300 910 051 (Australia). + 61 1300 910 051 (overseas)) if you have not received these forms.

**21. What is the indebted amount for the purposes of the POD form?**

For the purposes of the POD form, please estimate the value of the assets (shares, cash and other securities) held in your Halifax account as at 23 November 2018 in AUD. The POD amount represents an estimate only and will not necessarily constitute the final value of your claim.

The Liquidators may be required to seek Orders from the Court regarding how final investor claims will be quantified (including the date on which the claim is to calculated).

**22. If I submitted a POD during the Administration, do I need to submit another POD?**

Creditors and investors who have already lodged a Proof of Debt during the Voluntary Administration are **not required** to lodge another Proof of Debt at this stage.

**23. Am I considered a 'secured creditor' or a 'creditor' for the purposes of the POD form?**

Investors are considered 'creditors' for the purposes of the POD form.

**24. How do employees make a claim?**

At this stage the Liquidators are unable to confirm whether Halifax will have sufficient funds from the circulating assets to meet all of your outstanding pre-appointment entitlements.

As the Company was placed into liquidation on 20 March 2019, you may be entitled to make a claim through a government safety net fund known as the Fair Entitlements Guarantee (FEG) for your outstanding pre-appointment entitlements. The Liquidators encourage you to submit a claim under the FEG scheme to ensure that your entitlements are paid as soon as possible.

FEG provides eligible applicants with compensation for employee entitlements including unpaid wages within the three months prior to the liquidator's appointment, outstanding annual leave, long service leave, pay in lieu of notice and redundancy. FEG does not provide funds in respect of superannuation.

The eligibility of each claim is determined by the Department of Jobs and Small Business. For further information regarding the FEG process, including your eligibility, visit the Department of Employment's FEG webpage ([www.employment.gov.au/FEG](http://www.employment.gov.au/FEG)), please call the FEG Hotline on 1300 135040 or email [FEG@employment.gov.au](mailto:FEG@employment.gov.au).

## **25. How can employees get group certificates?**

The Liquidators will prepare and issue a PAYG Payment Summary to all current and former employees shortly after financial year end.

## **26. I am an unsecured creditor. How do I lodge a claim?**

If you have not received a Proof of Debt to date, please contact Link Market Services at [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au) and request a Proof of Debt form to be issued to you.

## **27. Is Ferrier Hodgson merging with KPMG?**

In March 2019, it was announced that Ferrier Hodgson will merge with KPMG Australia, with the majority of partners and staff joining the combined business. The merger is expected to complete during the week commencing 17 June 2019.

Please note, the Ferrier Hodgson website will still remain active from completion.

## **28. How does the Merger of Ferrier Hodgson and KPMG affect investors and creditors?**

The merger will not impact ongoing progress of the liquidation of Halifax AU, the appointees and professional staff managing the liquidation will remain unchanged.

Should you have any questions, please contact Link Market Services (details at Question 29) or refer to the Ferrier Hodgson website, link is below:

<https://www.ferrierhodgson.com/au/creditors/halifax-investment-services-pty-ltd>

## **29. If I have questions who should I call?**

Please direct any queries to Link Market Services at [halifax@linkmarketservices.com.au](mailto:halifax@linkmarketservices.com.au) or 1300 910 051 (or +61 1300 910 051 outside of Australia).