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**HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (Halifax AU)**  
**HALIFAX NEW ZEALAND LIMITED (IN LIQUIDATION) (HALIFAX NZ)**  
**CREDITOR AND INVESTOR FAQ – 18 March 2020**

1. **What is the current status of the Halifax liquidation?\***
2. **What is the current status of the Court application?\***
3. **How am I able to participate in the Court process and ensure that my views are heard?**
4. **Do the Liquidators intend to close out Investor positions?\***
5. **I have not received a response from the Liquidators to the issues raised in the questionnaire I submitted in response to the Investor Notice dated 15 November 2019, why is this?\***
6. **I believe my account is traceable. Can I request that Investor trace my account?\***
7. **What do the Liquidators think is the right way to distribute the Investor Funds?\***
8. **How can I view the Court documents?\***
9. **What is the status of my trading position?**
10. **Will I get my money back?**
11. **How long will it take for investors to receive a distribution?\***
12. **Are the Liquidators able to make the decision to close out all Investor positions? Are KPMG required to close out all positions if enough Investors ask them to?**
13. **Are the shares I purchased using my Halifax account held in my own name?\***
14. **I thought my funds were held in a segregated account. Is this the case?\***
15. **My account balance has increased significantly since the appointment of the Voluntary Administrators. Will I receive the benefit of these gains?\***
16. **Should I close out my positions? Will cash or shares be treated more favourably in terms of an allocation of funds to client accounts?\***
17. **Are IB investors able to claim under the Securities Investor Protection Corporation (SIPC) policy?\***
18. **How do I know if am a creditor of the Australian entity or a creditor of the New Zealand entity?**
19. **What if I have invested through a Self-Managed Super Fund (SMSF?)**
20. **What investigations have been conducted so far?**
21. **What are the results of further tracing work undertaken during the liquidation?\***
22. **What is the extent of the co-mingling?**
23. **How will any recovery actions be funded?\***
24. **What is ASIC doing?**



25. I am an IB investor, I can see my shares and cash sitting in my account. Why is my account affected by the liquidation?
26. Can investors obtain dividend statements / tax statements?
27. What is the indebted amount for the purposes of the POD form?
28. If I submitted a POD during the Administration, do I need to submit another POD?
29. I am an unsecured creditor. How do I lodge a claim?
30. If I have questions who should I contact?\*

\*denotes this question has been updated since the investor FAQ dated 30 October 2019



## 1. What is the current status of the Halifax liquidation?\*

Creditors resolved that Halifax AU and Halifax NZ be placed into liquidation on 20 March 2019 and 22 March 2019 respectively.

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

- i. 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
- ii. Investigations in relation to the pursuit of antecedent transactions to seek to maximise the return to Investors and creditors and potential claims against third parties in relation to conduct which occurred prior to the appointment of the Voluntary Administrators.

## 2. What is the current status of the Court application?\*

We filed an application with the Federal Court of Australia on 3 July 2019 requesting direction as to how we should proceed to move forward towards a final hearing. Given the commingling and deficiency across two jurisdictions, the Liquidators are of the view that a co-ordinated Court direction is required in both Australia and New Zealand to determine (amongst other things):

- How the Liquidators should deal with the fact that the Client Monies are commingled;
- Whether open or unrealised investments should be realised, and if so how;
- The date at which each Client's entitlement should be calculated;
- Whether the Administrators' and Liquidators' remuneration, costs and expenses should be paid out of trust property; and
- How investors will be given an opportunity by the Court to make submissions in the proceedings, either themselves or through a legal representative.

On 29 and 30 July 2019 the Federal Court of Australia heard our initial application that the Federal Court issue to the High Court of New Zealand (**NZHC**) a letter of request seeking cooperation from the NZHC in relation to coordination of the Australian and New Zealand hearings.

The Liquidators of Halifax New Zealand Limited (**Halifax NZ**) filed an application for directions as to the distribution of client monies with the NZHC on 25 September 2019, accompanied by a further application for procedural orders.

Case management hearings were held in the High Court of New Zealand on 12 December 2019 and the Federal Court of Australia on 13 December 2019.

A joint directions hearing took place by way of audio-visual link on 18 February 2020 for the hearing of applications of Investors seeking to be joined as a defendant (including as a representative defendant) or seeking to intervene.



At this hearing, representatives were appointed to represent the categories outlined in the Investor Notice dated 15 November 2019 as follows:

Category	Representative
Investors of both Halifax AU and Halifax NZ whose proportionate entitlement to or share of funds from the deficient mixed fund will be greater after the realisation of all extant investments than it was on the date administrators were appointed.	Mr Boon Loo
Investors of both Halifax AU and Halifax NZ whose proportionate entitlement to or share of funds from deficient mixed fund will be lower after the realisation of all extant investments than it was on the date administrators were appointed.	Elysium Business Systems Pty Ltd
Investors of both Halifax AU and Halifax NZ who transferred shares into the IB platform from another stockbroker and have not traded in those shares.	Jason Hingston
Investors of both Halifax AU and Halifax NZ whose investments are not traceable and who wish to argue that all investors should share in any deficiency.	Atlas Asset Management Pty Ltd as trustee for the Atlas Asset Management Trust

A joint directions hearing is scheduled for 3 April 2020, at which time the Liquidators expect a timetable will be set for any substantive argument on the issue of closing out.

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

Investors who provided a responses to the Investor Notice dated 15 November 2019 which stated they wished to be joined as a defendant to represent a group of Investors, or wish to apply to seek leave to be heard in the proceedings, received correspondence from the Liquidators providing instructions in relation to the filing of an application, together with supporting submissions and affidavits, with the relevant Court by 4 February 2020.

As per question 2, representative defendants have now been appointed to the four categories outlined in the Investor Notice dated 15 November 2019. In circumstances where you wish to participate in the Court process at this stage, we suggest you seek legal advice in this regard.

**4. Do the Liquidators intend to close out Investor positions?**

Please refer to the Investor Update in relation to closing out issued on 13 March 2020:

<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-new-zealand-limited/investor-update---13-march-2020.pdf>

**5. I have not received a response from the Liquidators to the issues raised in the questionnaire I submitted in response to the Investor Notice dated 15 November 2019. Why is this?**

All responses received in accordance with the Investor Notice dated 15 November 2019 have now been reviewed by the Liquidators and were provided to the High Court of New Zealand and the Federal Court of



Australia at the directions hearings held on 12 December 2019 and 13 December 2019. They are available to the parties (including representative defendants) in those proceedings.

The Liquidators do not intend to respond to each response. The appropriate forum for relevant issues to be addressed is through the Court process which is currently underway.

**6. I believe my account is traceable. Can I request that the Liquidators trace my account?**

The Liquidators have previously advised the Court that it is not practically feasible to trace individual investor accounts. At this stage the Liquidators are unlikely to be undertaking any further tracing work (in addition to those Investors who claimed they are traceable in response to the 15 November 2019 Investor Notice) unless ordered to do so by the Court or otherwise as necessary for purpose of proceedings.

**7. What do the Liquidators think is the right way to distribute the Investor Funds?**

The Liquidators will adopt an essentially neutral position in respect of the matters currently before the Courts (ie the date of adjudication of investor claims, whether investor funds should be pooled etc). Whilst it is not the role of the Liquidators to advocate for any particular course of action, it is the role of the Liquidators to assist the court to resolve the matter in the interests of justice, which will include putting before the Court all relevant evidence in relation to the matters currently before the Courts, and assisting the Court, by way of submissions, to give appropriate directions/judicial advice in respect of the distribution of the funds held by Halifax / the Liquidators.

**8. How can I view the Court documents?\***

To ensure all investors are kept informed, various Court documents, including those listed below, have been made available to investors at the following link:

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

- The interlocutory process, being the Application by the Liquidators for the orders they seek from the Federal Court of Australia;
- Affidavits filed in support of the initial application for a letter of request to be issued to the High Court of New Zealand in relation to coordination of hearings; and
- Non-confidential exhibits accompanying the affidavits filed with the Court.

In certain instances, these documents have been redacted where they contain personal and confidential investor information in accordance with Orders of the Courts.

**9. 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.

**10. 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, however at this stage it is likely that all Investors will receive at least a portion of their money back.

At this stage, it is not possible to estimate with any certainty the amount of a distribution payable to investors in their capacity as beneficiaries. This is because the total distribution received by Investors is dependent on a number of matters which are currently before the Courts for consideration, including but not limited to, the date of adjudication of Investor claims, whether the Liquidators would be justified in grouping or pooling some or all of the funds and whether or not orders are made in relation to the close out of investor positions.



Investors will have an unsecured claim in the Company in the event of a shortfall in trust assets. Any return to unsecured creditors is contingent on future recoveries of Company assets.

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

The timing of any distribution will largely be dependent on the length of time taken to proceed to a final hearing and then to obtain directions from the Court.

The timing of the final hearing and directions will be subject to a number of matters including court availability and the approach taken by the parties to the proceedings. We understand that investors would like to receive a distribution as soon as possible. However, due to the many complex issues that will require directions from the Court, it is difficult at this time to provide an accurate estimate as to the timing of a distribution. Following the receipt of Court directions, and depending upon what directions are made, we anticipate it could take up to 6 months to make a distribution due to the time required to ascertain the value of the assets available for distribution, determine the quantum of assets which may need to be liquidated, and to adjudicate on approximately 12,600 investor claims.

**12. Are the Liquidators able to make the decision to close out all Investor positions? Are KPMG required to close out all positions if enough Investors ask them to?**

Please refer to the Investor Update in relation to closing out issued on 13 March 2020:

<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/3-redacted-exhibit-mjk1-filed-31719.pdf>

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

As is common practice in the broking industry, shares acquired as a result of transactions entered into by the Company's investors are held by custodians, not in the investors' names.

**14. I thought my funds were held in a segregated account. Is this the case?**

We understand that in certain instances and in particular in relation to accounts held with Interactive Brokers, Investors were (and remain) of the view, that funds were held in individual segregated accounts. While this may have been the case in relation to Investors on the IB platform, our analysis has identified extensive commingling of funds within accounts held by the Halifax Group meaning it appears that funds held in all accounts formed a 'single deficient mixed fund', including individual segregated accounts.

**15. My account balance has increased significantly since the appointment of the Voluntary Administrators. Will I receive the benefit of these gains?**

It is likely that the Courts will consider the way in which Investor gains (and losses) since the date of appointment will be attributed. In the interlocutory process filed with the Federal Court of Australia on 3 July 2019, the Liquidators have sought judicial advice as the date on which the Liquidators would be justified in calculating the value of clients' investments (ie 23 November 2018 or some other date). The Liquidators are unable to speculate further as to how investor gains and losses may be apportioned in circumstances where the date of adjudication of claims is yet to be determined by the Court.

**16. 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 for Investors to close out (or sell) positions. At this stage it is not known whether cash or shares will be treated equally in the distribution process. This is a matter which may be considered by the Courts as part of the Liquidators' application.

Please refer to the Investor Update in relation to closing out issued on 13 March 2020:

<https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-new-zealand-limited/investor-update---13-march-2020.pdf>



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

IB investors are unlikely to be able 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.

A number of Investors have stated that representations were made prior to the appointment of the Voluntary Administrators that the Company was an SIPC member. We are currently undertaking our own investigations in relation to these claims. Investors will be provided with an update in due course.

**18. How do I know if I 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

**19. What if I have invested through a Self-Managed Super Fund (SMSF)?**

SMSF investors will participate in the Liquidation in the same way as individual and corporate investors and will not be awarded priority of payment on the basis that they operate as a SMSF.



## **20. What investigations in respect of possible recovery actions have been conducted so far?**

Our investigations have included the following:

- Whether the Director and Former Director of the Company may have breached their obligations under Section 180 to 184 of the Corporations Act 2001 (**Act**);
- Whether Halifax may have breached its obligations in relation to the ASIC Client Money Rules under the Act; and
- Whether recoveries may be available in respect of antecedent transactions and insolvent trading.

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.

The Liquidators' investigations in relation to the conduct of the Director, Former Director, Former Accountant and Former Auditor are ongoing. Given the nature of these investigations, and the fact that they may be subject to litigation at some stage in the future, the details of these potential claims are necessarily confidential at this stage. Creditors will be provided with a further update in due course.

## **21. What are the results of further tracing work undertaken during the liquidation?**

Further testing conducted during the liquidation has supported our initial view that the majority of investor funds/assets held by both Halifax AU and Halifax NZ are part of a "single deficient mixed fund" affected by commingling and unlikely to be traceable to individual investors.

## **22. What is the extent of the commingling?**

Based on our preliminary investigations to date (including our review of over 10,000 transactions) it appears that there is extensive commingling of Halifax AU and Halifax NZ Client funds across all platforms in the majority of accounts operated by the Halifax Group.

The Liquidators' investigations indicate that 98% of funds held on trust by the Halifax Group for the benefit of Clients are affected by commingling.

The costs of undertaking detailed investigations in relation to each investor to trace trust assets would be such that it would not be practically feasible to do so. The costs of tracing each individual investor account (of which there are 11,900+) would be disproportionate to the amount of the Deficiency and benefit that Clients would likely obtain from such an exercise.

Consequently, the Liquidators have made an application to the High Court of New Zealand and the Federal Court of Australia for judicial advice / directions including, amongst other things, directions as to whether the funds affected by the commingling should be pooled.

## **23. How will any 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.

#### **24. What is ASIC doing?**

ASIC have recently advised that the Director and Former Director have been banned from providing financial services advice for six years, effective from 29 April 2019.

We understand that the ASIC's investigations into the conduct of the Director and Former Director in relation to the Company are ongoing. The Liquidators are working closely with ASIC to assist with their enquiries.

#### **25. I am an 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 may not be possible to identify all 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 (commingled 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 commingling 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 commingling appears to be improper operation of trust accounts and improper application of client moneys.

For further information in relation to commingling of accounts and flow of funds through the Halifax accounts please see the Funds Flow Memorandum which is located from page 297 of the following link: <https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/3-redacted-exhibit-mjk1-filed-31719.pdf>

#### **26. Can investors obtain dividend statements / tax statements?**

These statements are still available in the ordinary course through either the account platforms, or a written request to [helpdesk@halifaxonline.com.au](mailto:helpdesk@halifaxonline.com.au).



Investors will need to obtain their own tax advice in relation to their accounts. Neither Halifax nor the Liquidators are able to provide tax advice of any kind.

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

**27. 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 Liquidators are seeking Orders from the Court regarding how final investor claims will be quantified (including the date on which the claim is to be calculated) and on this basis, the claim amount on your POD represents an estimate only and will not necessarily constitute the final value of your claim.

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

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.

**29. 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.

**30. If I have questions who should I contact?**

Please direct any queries to KPMG via email at [au-fmhalifax@kpmg.com.au](mailto:au-fmhalifax@kpmg.com.au).