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## **HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (Halifax AU) CREDITOR AND INVESTOR FAQ – 30 October 2019**

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\*denotes this question has been updated since the investor FAQ dated 14 June 2019



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

At the second meeting of creditors held on 20 March 2019, creditors resolved that Halifax AU 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. On 13 May 2019, Stewart McCallum retired as liquidator.

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**) have 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.

We have requested the Courts' direction as to how we should proceed to move forward towards a final hearing. Once the respective Courts provide further guidance on the process for the proceedings (including how investors can have their views heard), we will provide a further update to investors.

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

It is our intention to facilitate the appointment of representative investors for particular issues to be decided by the Court to ensure that all investors have an opportunity to be represented in relation to issues that affect them.

Once the respective Courts provide further guidance on how investors can have their views heard, we will provide a further update to investors. We expect to provide creditors with an update in relation to the representative investor process by mid to late November 2019.



#### **4. 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 it seeks 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. This is in line with Orders of the Court.

#### **5. 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.

#### **6. 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.

#### **7. 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

#### **8. 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).

**9. 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.

**10. 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.

**11. 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

<b>MT5</b>	Halifax NZ	Halifax	Halifax NZ
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## 12. 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.

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.

## 13. 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 comingling and unlikely to be traceable to individual investors.

## 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 co-mingled 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. 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.

**16. What is ASIC doing?**

The Liquidators are working closely with ASIC to assist with their enquiries.

**17. 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 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 commingling appears to be improper operation of trust accounts and improper application of client monies.

**18. 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 website to an advisor or government agency as part of any advice they are seeking.

**19. 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](mailto:halifax@linkmarketservices.com.au) or 1300 910 051 (Australia)).



+ 61 1300 910 051 (overseas)) if you have not received these forms.

**20. 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 be calculated).

**21. 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.

**22. 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.

**23. 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).