IMPORTANT NOTICE:

INVESTOR REPRESENTATION AND OPPORTUNITIES TO BE HEARD

Halifax Investment Services Pty Limited (In Liquidation) (Halifax AU)

Halifax New Zealand Limited (In Liquidation) (Halifax NZ)

Part 1: Purpose of this Notice

This Notice outlines the opportunities which investors have to be heard in the court proceedings relating to the liquidations of Halifax AU and Halifax NZ. It prescribes the procedure which must be followed by investors wishing to be heard.

There is no requirement for investors to respond to this notice. Investor participation in this process is optional. The Trustees of the trust funds and the Liquidators of the two companies (referred to together below as the Liquidators) will be guided by the courts in determining how to return investor funds, and all investors (whether or not they participate directly in Court proceedings) will have that amount of their investments returned to them which the Court directs.

There are three matters in particular of which investors are put on notice:

1. The opportunity to be heard in respect of the Liquidators' applications for proposed cooperation between the Federal Court of Australia (**Australian Court**) dealing with the Halifax AU liquidation and the High Court of New Zealand (**NZ Court**) dealing with the Halifax NZ liquidation.
2. The opportunity to suggest to the Liquidators other issues, not already captured by the Liquidators' proposed represented investor groups, which investors believe bear on the proper way to distribute the trust funds, and the opportunity to indicate an interest in being a representative of a group, or to seek to be heard by the Australian and New Zealand Courts in respect of any relevant individual circumstances, in particular, the traceability of their individual investments.
3. The opportunity to be heard in respect of the Liquidators' application for directions and/or judicial advice to the effect that the Liquidators would be justified in selling, directing the sale of, closing out, or directing the closing out of open investments, open positions, and realising investments through various platforms.

These are dealt with in Part 4 of this Notice.

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Part 2: Brief summary of Liquidators' investigations

There are two primary issues that the Liquidators face in determining how to return investor funds (**Client Moneys**) to investors in Halifax AU and Halifax NZ: the **deficiency**, and the fact that investor funds of Halifax AU and Halifax NZ are **commingled**.

Deficiency

The deficiency in Client Moneys as at 23 November 2018 is estimated to be approximately $19.0 million before costs and any recoveries. The deficiency is equal to approximately 9% of Client equity positions.

The Liquidators' initial views as to the reasons for the deficiency is the improper application of Client Moneys, including to fund operational losses.

Commingling

In addition, investor funds across the majority of platforms and accounts operated by Halifax AU and Halifax NZ are commingled. This commingling is so extensive that it is not practically feasible in almost all cases for the Liquidators to identify which assets held on trust by either Halifax AU or Halifax NZ belong to which investor. Similarly, the Liquidators cannot identify which part of the $19 million deficiency is attributable to the investments of which investors of which company and on which investment platform.

As a result of the commingling, in the Liquidators' view there is a single deficient mixed fund.

The Liquidators' investigations indicate that about 98% of funds held on trust by the Halifax Group for the benefit of investors are affected by commingling across all investors and platforms and between Halifax AU and Halifax NZ.

Tracing

The Liquidators' investigations have determined that it is not practically feasible to trace the majority of individual investor deposits. The costs of tracing each individual investor (of which there are 11,900+) would be severely disproportionate to the amount of the deficiency and, therefore, to the benefit that investors would obtain from such an exercise.

The practical inability to trace is a result of the commingling and the deficiency.

There is one category of investors whose assets appear likely to be traceable: investors who transferred shares into Interactive Brokers (**IB**) through other stockbrokers, and have not sold or traded in the shares.

Part 3: The Court processes

Having regard to the extensive commingling of investor funds and to our investigations, which indicate that it is not practically feasible to trace individual investor entitlements, it is necessary for the Liquidators to seek directions from the Australian and NZ Courts as to how to proceed and to enable a distribution to investors.

Applications

The Liquidators have sought directions from the Australian Court (**Australian Application**) and the NZ Court (**New Zealand Application**).

The Australian Application can be seen here: https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/1-redacted-interlocutory-process-3-july-2019-filed-31719.pdf

The New Zealand Application can be seen here: https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-new-zealand-limited/directions-application-25-september-2019.pdf.

The Liquidators have also requested that the Australian Court (**Australian Cooperation Application**) and the NZ Court (**NZ Cooperation Application**) cooperate in determining the Australian Application and the New Zealand Application.

The Liquidators consider this to be important given the commingling of assets held in two jurisdictions, to ensure that they are not faced with inconsistent directions and/or judicial advice from the Courts in respect of the same commingled pool of funds.

Federal Court of Australia

There has been an initial hearing of the Australian Cooperation Application.

The basis of that application was summarised by Gleeson J of the Australian Court in paragraphs 19 – 26 of her Honour's judgment dated 22 August 2019 (https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/kelly-in-the-matter-of-halifax-investment-services-pty-ltd-in-liq.pdf).

By way of summary:

- The liquidators have identified 61 accounts held in the name of Halifax AU with a balance of AU$147,810,754.04 as at 23 November 2018 and 14 accounts held in the name of Halifax NZ with a balance of NZ$51,671,556.36 as at 27 November 2018.
- The Liquidators' investigations have identified a total deficiency as at 23 November 2018 of approximately AU$19 million.
- The investigations show that it is not practically feasible to identify the total proportion of the deficiency attributable to each particular investor of Halifax AU and Halifax NZ or any particular statutory trust account in Halifax AU and Halifax NZ, or to trace investor deposits.
- The Liquidators' investigations indicate 98% of funds held on trust by the Halifax Group are affected by commingling, with this commingling being across all platforms and between Halifax AU and Halifax NZ.

- On the basis of the Liquidators' analysis, there was substantial commingling of funds held on trust by Halifax AU and Halifax NZ with the result that Halifax AU or its investors may have claims in relation to funds held in the name of Halifax NZ and vice versa.

Her Honour considered that this was a "classic candidate for cross-border cooperation between courts to facilitate the fair and efficient administration of the winding up of Halifax AU (and Halifax NZ) that will protect the interests of all relevant persons, particularly the investor clients of Halifax AU and Halifax NZ".

Her Honour also said that she did not have any difficulty with the idea that such cooperation could include concurrent hearings by the two Courts, provided that the NZ Court had no objection to that course.

To that end, the Committee of Inspection of Halifax AU resolved on 20 September 2019 that it had "no objection to the Australian Court proceedings (in respect of Halifax AU) and the NZ Court (in respect of Halifax NZ) progressing by way of one or more joint sittings".

High Court of NZ

The NZ Court has delivered a Minute in respect of the New Zealand Application (https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-new-zealand-limited/minute-of-venning-j--2-october-2019.pdf)

In that Minute, Venning J (the Chief Judge of the New Zealand Court) said:

> [8] Subject to any recoveries from third parties the corporate funds of each of Halifax NZ and Halifax AU appear minimal. The trust funds which following the realisation of all investments made by those who invested through the Halifax Group will be held by Halifax NZ (or the Trustees) and/or Halifax AU as Trustees for those clients and they appear to comprise one deficient mixed fund … There is therefore a deficiency of approximately AUD19 million (NZD20.4 million).
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> [9] Approximately 98 per cent of funds held by the Halifax Group are co-mingled across each of the trading platforms across the vast majority of the client accounts in the Halifax Group and as between clients investing through Halifax AU and clients investing through Halifax NZ. The Liquidators' view is that the funds held by the Halifax Group are essentially one deficient mixed trust fund. The affected New Zealand clients therefore have a direct interest in any directions the Federal Court of Australia may give with respect to how to deal with the co-mingled funds and the affected Australian clients have a direct interest in any directions this Court may give with respect to how to deal with the co-mingled funds in accordance with the liquidation of Halifax NZ.

Venning J also noted that "[I]n due course the applicants anticipate seeking further applications/interlocutory directions as to coordinating a hearing and case management of the substantive directions application [in the NZ Court] and the substantive directions application in the Australian Court together with various case management, (including representative) orders".

Part 4: Issues on which investor responses are invited

Investors are now invited to respond in relation to the following issues. Each of these issues will be addressed in further detail in this section. In particular, investors are invited:

- to notify the Liquidators if they wish to be heard as to any particular objection they may have to the proposed cooperation between the Australian Court dealing with the Australian Application and the NZ Court dealing with the NZ Application (which may include the possibility of the two Courts sitting together and deliberating together, even though ultimately deciding each application separately). Those investors proposing to object to that course will be informed of the date of the next hearing of the Australian Application and the NZ Application respectively at which the Liquidators anticipate those investors will have the opportunity to be heard as to their objections, ahead of any joint hearing.
- to suggest to the Liquidators other issues, not already captured by the Liquidators' proposed represented investor groups, which they believe bear on the proper way to distribute the trust funds, or to indicate their intention to be a representative of an investor group or to seek to be heard by the Court in respect of arguments unique to them (in particular in relation to the traceability of their own investments).
- to notify the Liquidators if they wish to be heard in respect of the application for directions and/or judicial advice in respect of selling, directing the sale of, closing out, or directing the closing out of open investments, open positions, and realising investments through various platforms. The Liquidators consider this to be a relatively urgent matter, and anticipate that this issue would be heard at the first joint sitting if that is an approach the Courts are prepared to accommodate.

Investors may respond in respect of one or more of these issues.

There is no obligation to respond in respect of any of them.

Cooperation between the Courts

It is the Liquidators' intention to seek cooperation between the Australian Court and the NZ Court and coordination of the proceedings in each Court. The Liquidators intend to ask the Courts to make directions to facilitate this cooperation and coordination.

If any investor wishes to be heard by way of objection to the AU Cooperation Application or the NZ Cooperation Application, they should notify the Liquidators by completing the form at Annexure A and returning it to the Liquidators by 4pm NZDT / 2pm AEDT on 6 December 2019 in the manner indicated on that form. Those investors will be invited to appear at the next hearing of the Australian Court in respect of the Australian Application and of the NZ Court in respect of the New Zealand Application to make their objection and to articulate the reasons for it. All investors will be notified of the date of those hearings.

Participation in proceedings

It is the Liquidators' intention to facilitate the appointment of representative investors for particular issues (if the Courts agree) to ensure that all investors have an opportunity to be represented before the Courts in relation to issues that affect them, and that arguments are presented (both for and against) in relation to the issues to be determined by the Courts. The Liquidators consider that the appointment of representative investors is likely to assist with ensuring a timely and cost effective court process.

At this stage, it appears to the Liquidators that it may be that the categories of investors with common factual circumstances which may be relevant to the determination of the issues to be considered by the Australian Court and/or the NZ Court are:

- Investors whose proportionate entitlement to or share of funds from the single deficient mixed fund will be greater after the realisation of all investments by all investors than it was on the date administrators were appointed in November 2018;
- Investors whose proportionate entitlement to or share of funds from the single deficient mixed fund will be lower after the realisation of all investments by all investors than it was on the date administrators were appointed;
- Investors who transferred shares into the IB platforms from another stockbroker, and have not traded in those shares (and whose investments are therefore fully traceable) (and who wish to argue that they should not therefore share in the deficiency);
- Investors whose investments are not traceable (who wish to argue that all investors should share in the deficiency).

Membership of the first two of these groups, if the Court agrees to form such groups, would be finalised after all investments by all investors have been fully realised.

Further explanation in respect of each of these categories is available here: https://www.ferrierhodgson.com/au/-/media/ferrier/files/documents/corp-recovery-matters/halifax-investment-services/investor-notice--link--explanation-of-proposed-representative-investor-categories.pdf

Investors are invited to suggest to the Liquidators other issues, which they believe bear on the proper way to distribute the trust funds. Other issues which investors give notice that they wish to argue may or may not involve factual circumstances that are sufficiently common to the factual circumstances of other investors to justify the formation of additional represented groups.

It will ultimately be the Courts that determine whether a particular issue common to a group of investors justifies being dealt with by way of the represented group procedure, on the basis that the Courts consider that:

- the proposed group would contain sufficient investors with common factual circumstances relevant to the determination of that issue;
- the relevant issue bears on the appropriate way to distribute the trust funds.

It will also be the Courts that determine whether it is appropriate that the costs of having the relevant issue dealt with should be funded from investor funds.

Investors seeking to be appointed as a representative investor will need to be prepared to be an active participant in the process. They will need to engage a firm of lawyers with appropriate qualifications, instruct those lawyers in relation to the preparation of detailed submissions and appearances at hearings and have a responsibility to represent a large body of investors (i.e. not just act in their own personal interest).

It may be that the Liquidators will make or support an application to the Courts to allow representatives' legal fees to be funded from investor funds, depending on the nature of the issue which is sought to be advanced.

Any individual investors who do not fall into any of the represented investor groups but who may have arguments unique to them (in particular in relation to the traceability of their own investments) will be given the opportunity to make submissions to the Court.

Any investor who wishes to:

- **suggest an issue not captured by the categories proposed by the Liquidators which should be considered by the Court because it bears on the way in which the trust fund should be distributed;**
- **nominate themselves to be a representative of any such group;**
- **have the opportunity to be heard about their individual circumstances, in particular, the traceability of their investment(s)**

is invited to complete the form at Annexure B to this Paper and to return it to the Liquidators by 4pm NZDT / 2pm AEDT on 6 December 2019 in the manner indicated on that form. The Liquidators will then email those investors to provide further information and detail in relation to the process.

Closing out

The Liquidators have sought directions and/or judicial advice in each of the Australian Application and the NZ Application that they would be justified in selling, directing the sale of, closing out, or directing the closing out of open investments, open positions, and realising investments through various platforms.

Retaining open investments and positions requires the maintenance of investment trading platforms, which incurs a significant ongoing cost, as well as some risk particularly given the foreign ownership of the platforms and resulting limited control which the Liquidators have over their continuation. If open positions and investments are closed, the Liquidators may be able to reduce or even eliminate those ongoing costs and risk.

The Liquidators consider this to be relatively urgent, and a matter which ought to be dealt with at the first joint or coordinated hearing of the Australian Court and the NZ Court, assuming the Courts take that approach.

If any investor wishes to be heard on the Liquidators' application in relation to selling, directing the sale of, closing out, or directing the closing out of open investments, open positions, and realising investments through various platforms, they should notify the Liquidators by completing the form at Annexure C and returning it to the Liquidators by 4pm NZDT / 2pm AEDT on 6 December 2019 in the manner indicated on that form. The Liquidators will then email those investors to provide further information and detail in relation to the process.

Part 5: Next Steps

Step 1: The Liquidators anticipate that the next step will be an initial hearing before the NZ Court in respect of the New Zealand Application in order to:

- hear the attitude of investors through Halifax NZ to cooperation between the Courts;
- ascertain whether any investors wish to be heard on selling, directing the sale of, closing out, or directing the closing out of open investments, open positions, and realising investments through various platforms;
- obtain directions in respect of the next steps to be taken in the proceedings.

Step 2: The Liquidators intend that a hearing in the Australian Court in respect of the same issues as they relate to the Australian Application will take place soon after the hearing in the NZ Court.

Step 3: Subject to the attitude of the Courts, the Liquidators envisage a joint (audio-visually linked) case management hearing of the NZ Court and the Australian Court soon after the separate hearings referred to above at which the Courts would:

- ascertain the number and identity of investors who wish to be heard;
- ascertain whether or not there are any investors who intend to raise additional issues which they consider impact on the questions for the Courts;
- make directions in respect of a substantive joint hearing at which the Courts would determine the groups to be represented and by which person and whether any individuals who wish to be heard should be granted leave to do so;
- give directions and/or judicial advice in respect of selling, directing the sale of, closing out, or directing the closing out of open investments, open positions, and realising investments through various platforms;
- deal with other case management issues, including subsequent hearings, the extent to which those hearings should be linked/coordinated/joint and matters to be determined at those hearings.