

## UPDATE TO INVESTORS AND CREDITORS – 12 March 2019

### Halifax Investment Services Pty Limited (Administrators Appointed) (Halifax) Halifax NZ Limited (In Administration) (Halifax NZ) (together the Group)

The Voluntary Administrators have now issued a detailed report about the investigations undertaken by them to date and important matters to consider in advance of the upcoming second meeting of creditors. Investors and creditors should refer to that report (which can be accessed at the link provided at the end of this update) for further and more detailed information.

Below is a very short summary of some of the matters referred to in the report and a very high-level update to investors and creditors.

#### Administrators' investigations

We have undertaken a wide scale investigation into Halifax's financial position and have identified the following:

- The deficiency in client funds across the Group at 23 November 2018 is approximately **A\$19.7 million** (before costs);
- This equates to approximately **9%** of investor funds;
- The primary cause of the deficiency appears to be use of client monies to fund operating losses since at least January 2017;
- The management accounts, audited accounts and lodgements with ASIC all appear to present with accounting irregularities; and
- There appears to be contraventions of Client Money Rules and the *Corporations Act 2001* in connection with dealing with client monies, including payment of operating expenses directly from client funds.

We are working closely with ASIC in relation to these issues and other lines of investigation.

#### Co-mingling of funds

Based on our review of over 10,000 transactions, there appears to be extensive co-mingling of client monies.

As a result, the funds invested by MT4 and MT5 investors may have been used to 'top up' the accounts of IB investors (and vice versa). In simple terms, the monies of other investors may have been used to credit the IB platform.

Our investigations indicate that while the IB platform may appear to be 'whole' in that it is fully funded, we have determined that investor funds may have been mixed or co-mingled in a way that affects the claims of all investors on all three platforms in both the Australian and New Zealand businesses.

#### Entitlement to trust assets

Although IB funds are held by an external party, these funds are held on a non-disclosed basis (i.e. the contractual arrangement is between Halifax and IB, and not between individual investors and IB). As such, all funds are held on trust by IB for Halifax and not for individual investors.

Given the significant co-mingling of funds between the different platforms, it is not possible to trace individual deposits to funds held by IB. Accordingly, the deficiency will affect the claims of all investors on all platforms in both Australia and NZ.

Due to this deficiency in client funds it will be necessary to seek Court directions in respect of the relative entitlement of investors as well as a number of other matters.

### **Funds tracing**

From our preliminary tracing work undertaken, direct tracing of investor deposits to crediting of account platforms (i.e. to determine a direct trust relationship between an investor and specific assets) does not appear possible as:

- There is no pattern behind the transfer of funds between client accounts (i.e. frequency, where funds were directed to, purpose of transfers);
- Funds appear to have been transferred on an 'as needs' basis by Halifax; and
- Halifax made transfers to maintain a balance of funds in various client accounts (effectively running accounts on an intermingled basis).

Due to the co-mingling and tracing issues identified, the Court may determine that pooling of investor funds (or a series of pools) and distributing funds in proportion to investor entitlements may be appropriate.

### **Deed of Company Arrangement (DOCA)**

We have explored options for a potential DOCA at length, whereby investors agree to share the deficiency proportionally to expedite the distribution process.

After careful legal consideration, it has been determined that a DOCA is not achievable. Investors are beneficiaries for the assets held on trust for them by Halifax and a DOCA cannot bind trust beneficiaries or purport to deal with trust assets.

### **Next steps**

Given a DOCA is not achievable, the only outcome available is for investors and creditors to resolve at the Second Meeting that Halifax be placed into liquidation.

Following the Second Meeting, it is our intention to apply to the Court to seek orders and directions in relation to:

- Client entitlements to trust funds and proceeds realised from investments;
- Payment of the Administrators' (and any liquidators') remuneration, costs and expenses from trust monies;
- How the money in various client accounts and different product lines should be treated; and
- The ultimate distribution of funds.

We anticipate that an application will be filed within 60 days of the Company being placed in liquidation.

### **Court directions**

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

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.

### **Timeframe for distribution of funds**

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 and matters that will require directions from the Court it is difficult at this time to provide an estimate as to when investors can expect to receive a distribution.

We do not anticipate the application will be determined any earlier than 6-12 months after being commenced.

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

- Realise a significant volume of stocks; and
- Adjudicate on approximately 12,600 investor claims

#### **Further information**

Please visit the Ferrier Hodgson website for a copy of the Voluntary Administrator's report and an updated Frequently Asked Questions document:

- **Halifax Australia:** <https://www.ferrierhodgson.com/au/creditors/halifax-investment-services-pty-ltd>
- **Halifax New Zealand:** <https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>