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### Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
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File Title:	IN THE MATTER OF HALIFAX INVESTMENT SERVICES PTY LTD (ADMINISTRATORS APPOINTED) ACN 096 980 522
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, which appears to read "Warwick Soden".

Dated: 31/07/2019 2:58:59 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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**Affidavit**

No. NSD2191 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

IN THE MATTER OF HALIFAX INVESTMENT SERVICES PTY LIMITED (IN LIQUIDATION)

ACN: 096 980 522

**PHILIP ALEXANDER QUINLAN, MORGAN JOHN KELLY AND STEWART McCALLUM IN  
THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF HALIFAX INVESTMENT  
SERVICES PTY LTD (IN LIQUIDATION) ACN 096 980 522**

Plaintiffs

Affidavit of: **Ian Phillip Sutherland**Address: Level 38, Three International Towers Sydney, 300 Barangaroo Avenue,  
Sydney, NSW 2000

Occupation: Chartered Accountant

Date: 26 June 2019

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Filed on behalf of **Philip Alexander Quinlan, Morgan John Kelly and Stewart McCallum,**  
Plaintiffs  
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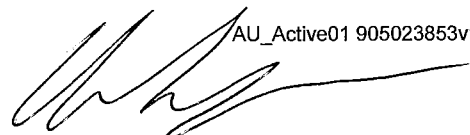
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I, Ian Phillip Sutherland of Level 38, Three International Towers Sydney, 300 Barangaroo Avenue, Sydney, NSW 2000 Chartered Accountant, say on oath:

1. I am a Director in the Deals, Tax & Legal Restructuring Services team of KPMG, under the supervision of Morgan John Kelly and Philip Alexander Quinlan (**Liquidators**), the Plaintiffs in these proceedings and partners of KPMG.
2. On 17 June 2019, Ferrier Hodgson merged with KPMG and is now called KPMG. Before that merger completed I was a Director in the Restructuring and Turnaround team of Ferrier Hodgson and the Liquidators were partners of Ferrier Hodgson.
3. I swear this affidavit in support of the Interlocutory Process filed contemporaneously with this affidavit seeking a range of orders, particularly:
  - (a) directions and/or judicial advice relating to issues concerning the money held on trust by Halifax Investment Services Pty Ltd (In Liquidation) ACN 096 980 522 (**Halifax AU**) for its clients; and
  - (b) an order that a letter of request be issued by the Federal Court to the High Court of New Zealand with a view to ensuring, so far as possible, an efficacious and co-ordinated resolution of the application in Australia and of a closely related application to be made to the High Court of New Zealand by a subsidiary of Halifax AU, Halifax New Zealand Limited (In Liquidation) (NZCN 2130897) (**Halifax NZ**).
4. The following facts are within my own personal knowledge except as otherwise stated.
5. Shown to me at the time of affirming this affidavit are:
  - (a) a folder of documents marked "IPS-1" (the **Exhibit**); and
  - (b) a folder of documents marked "**Confidential Exhibit IPS-1**" (**Confidential Exhibit**) which contains the Confidential Exhibit referred to in this affidavit.
6. References by me in this affidavit to:
  - (a) page numbers in the "**Exhibit**" are to the corresponding pages of the Exhibit, unless indicated otherwise; and
  - (b) "**CE**" numbers are references to the corresponding pages of the Confidential Exhibit.

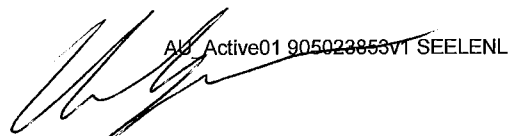



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7. The Confidential Exhibit contains material which identifies individual employees of Halifax AU, or which identifies individual clients of Halifax AU and Halifax NZ or which reveals assets acquired or positions entered into by individual clients.

### **Professional Experience**

8. I am a chartered accountant, a graduate member of the Australian Restructuring Insolvency and Turnaround Association and a member of Chartered Accountants Australia and New Zealand.
9. I have had over 12 years of experience in corporate turnaround and restructuring, financial advisory and insolvency. My experience includes insolvency processes, detailed investigations, stakeholder negotiation, strategic business reviews, financial modelling, working capital management, identification of restructuring strategies and the sale of distressed companies. Recent assignments and projects I have been involved in include:
- (a) Board advisory to a global retailer, including stakeholder management, detailed strategic review of operations and assistance with securing refinancing;
  - (b) Successful operational rightsizing and restructure of the Australian Topshop/Topman franchise;
  - (c) Strategic business review, performance improvement assessment and restructure of a major international wholesale business;
  - (d) Successful receivership and restructure of a 50% interest in the Callide C power station;
  - (e) Trade on receivership and closure of Dick Smith Electronics, a chain a about 430 consumer electronics stores;
  - (f) Restructuring advice and contingency planning options for a global oil and gas business;
  - (g) Financial restructure of one of the UK's largest casual dining chains with over 300 restaurants;
  - (h) Successful restructure and sale of the Sunshine Electricity Joint Venture, two renewable energy power plants;
  - (i) Strategic business review and restructure of Gourmet Food Group, including Rosella Foods;
  - (j) Receivership of Allco Finance Group; and
  - (k) Financial analysis for a large UK retailer to assist in their investment strategy

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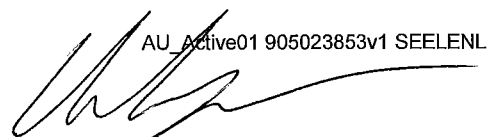
10. Exhibited at pages 1 to 2 of the **Exhibit** is a copy of my curriculum vitae which outlines my relevant professional qualifications and experience.

**The appointment of Liquidators to Halifax AU and Halifax NZ**

11. On 23 November 2018 (**Appointment Date**), the Liquidators and Stewart McCallum (**Mr McCallum**), a former partner of Ferrier Hodgson, were appointed to act as joint and several Voluntary Administrators of Halifax AU pursuant to section 436A(1) of the *Corporations Act 2001* (Cth).
12. On 20 March 2019, the Liquidators and Mr McCallum were appointed as Liquidators of Halifax AU pursuant to sections 439C(c) and 446A of the *Corporations Act 2001* (Cth).
13. Halifax NZ is a New Zealand company. Halifax AU holds 70% of the shares in Halifax NZ.
14. On 27 November 2018, the Liquidators and Mr McCallum were appointed to act as joint and several Voluntary Administrators of Halifax NZ pursuant to section 239(l) of the *Companies Act 1993* (NZ).
15. On 22 March 2019, the Liquidators and Mr McCallum were appointed as Liquidators of Halifax NZ pursuant to section 241(2)(d) of the *Companies Act 1993* (NZ).
16. On 9 May 2019, Mr McCallum resigned from his appointment as a Liquidator of Halifax NZ and on 13 May 2019 Mr McCallum resigned from his appointment as Liquidator of Halifax AU.
17. In this affidavit I refer to Halifax AU and Halifax NZ as the "**Halifax Group**".

**The trading platforms utilised by the Halifax Group**

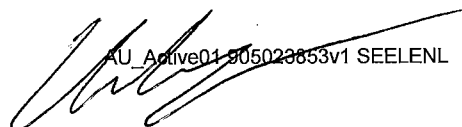
18. Halifax AU conducted its business by way of the following trading platforms:
- (a) Trader Workstation (**IB Platform**) (Halifax AU's IB Platform). Halifax AU also facilitated clients trading on Halifax NZ's IB Platform;
  - (b) MetaTrader 4 (also known as Halifax Pro) (**MT4**); and
  - (c) MetaTrader 5 (also known as Halifax Plus) (**MT5**).
19. Halifax NZ also conducted its business by way of the following trading platforms:
- (a) Halifax NZ's IB Platform. Halifax NZ also facilitated clients trading on Halifax AU's IB Platform;
  - (b) MT4, by facilitating access to Halifax AU's MT4 platform; and
  - (c) MT5, by facilitating access to Halifax AU's MT5 platform.

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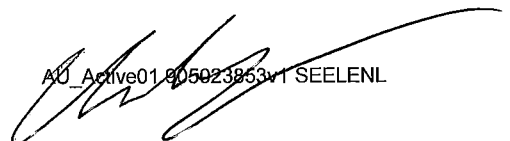
**My role in the liquidations of the Halifax Group - Drafting of Funds Flow Memorandum and Case Study Memorandum**

20. Since the appointment of the Administrators and subsequently Liquidators of Halifax AU and Halifax NZ, I have been actively involved in the day to day conduct of the external administrations of the Halifax Group, and in particular the investigations described in the Funds Flow Memorandum and Case Study Memorandum (which are referred to in detail further below in this affidavit) (**Investigations**). I provide regular updates to the Liquidators about the tasks I am conducting in the external administration of the Halifax Group, including the Investigations, to ensure that the Liquidators are kept abreast of the key issues.
21. My role in the Investigations has included, amongst other tasks, overseeing the investigative work into the way in which Halifax AU and Halifax NZ dealt with funds paid by, and assets held for the benefit of, their respective clients for investing and trading (**Client Moneys**).
22. The steps taken in the Investigations include the following:
- (a) Working with employees of Halifax AU to understand the operation of the various Trading Platforms and the interactions between the Halifax Group and clients;
  - (b) Corresponding with the directors and former directors of the Halifax Group, including interviewing Jeffrey Worboys, the director of Halifax AU;
  - (c) Interviewing the employees of Halifax AU;
  - (d) Engaging in correspondence with the Australian Securities and Investments Commission and the Financial Markets Authority (New Zealand) in relation to the ongoing operations of the business of Halifax AU and Halifax NZ, respectively;
  - (e) Undertaking investigations into the affairs of the Halifax Group, the events leading up to the appointment of the Liquidators and the reasons for the failure of the Halifax Group;
  - (f) Preparing an analysis of the data from each trading platform utilised by the Halifax Group to understand the number and quantum of client claims and the deficiency in Client Moneys;
  - (g) Undertaking, or overseeing my colleagues in undertaking, a review of over 30,000 transactions between bank accounts operated by the Halifax Group;
  - (h) Liaising with legal advisors of the Halifax Group in relation to various obligations with respect to the Client Monies Rules and implications of the conduct of the Halifax Group prior to the appointment of Administrators; and

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- (i) Undertaking a detailed review of a sample of client portfolios, which is further discussed at paragraphs 50 to 65 below.
23. The Investigations have identified that the deficiency in Client Moneys as at 23 November 2018 was approximately AU\$19.0 million (**Deficiency**) and that it is not practically feasible to identify the total proportion of the Deficiency attributable to each particular client of Halifax AU and Halifax NZ or any particular statutory trust account in the Halifax Group.
24. Those investigations and tasks have included seeking to identify:
- (a) The extent of commingling of funds and assets between the various accounts in the Halifax Group (including assets held by third parties); and
  - (b) Whether individual client deposits can be traced so that they can be identified within the accounts and assets held by the Halifax Group, including within the accounts and assets with Interactive Brokers LLC (**Interactive Brokers**) (which provides the IB Platform)
25. Results and conclusions in relation to those investigations have been set out in two separate memoranda prepared under my supervision being the "Funds Flow Memorandum" (referred to further in paragraphs 33 to 49 below) and the "Case Study Memorandum" (referred to further in paragraphs 50 to 65 below). The information contained within these documents is subject to change in the event that further investigations are undertaken or further information is received which would alter the views expressed. Both the Funds Flow Memorandum and Case Study Memorandum have been prepared progressively since the date of the appointment of the Liquidators. The copies exhibited to this affidavit (referred to in paragraphs 33 and 51 below) are the final drafts of those memoranda.
26. Identifying whether individual client deposits could be traced involved the following steps:
- (a) First I identified the account in the Halifax Group to which the deposit was credited;
  - (b) Secondly, I determined whether that deposit was transferred to another account within the Halifax Group (whether a trading platform account or otherwise), or whether there had been a transfer of an amount relating to that deposit between accounts in the Halifax Group. A transfer of an amount relating to a deposit occurred when, as explained in the Case Study Memorandum at paragraph 18, funds were credited to a trading platform on behalf of a client from an account into which there had been no transfer of the client's money. This appears to have

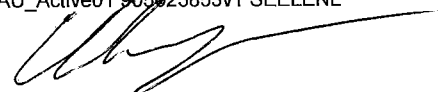


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occurred in order to facilitate an investment being made without waiting for the client's funds to clear or to be transferred to a trading platform account; and

- (c) Whether the initial or, if not, any subsequent account to which the deposit was credited was one which had been commingled with other accounts and assets within the Halifax Group. All of the accounts in the Halifax Group (which are identified in the Funds Flow Memorandum and which include the "IB Master Account", "IB NZ Master Account" and "IB Prop" accounts) were commingled by the time the Administrators were appointed, with the exception of the Halifax Pro Suspense Account and IB Suspense Account (although the funds in those accounts contains funds that were deposited by a number of different and clearly identifiable clients shortly before or after Halifax AU was placed into voluntary administration and the funds are commingled as between those clients only), the Unallocated Account and certain other old accounts with very minimal balances. I explain the commingling problem in more detail in the Funds Flow Memorandum.

- 27. This tracing process is set out in detail in the Case Study Memorandum.
- 28. As stated above, my Investigations have outlined that each of the Halifax Group accounts (with the exception of the Halifax Pro Suspense Account, IB Suspense Account, Unallocated Account and certain other old accounts with very minimal balances) were commingled, meaning they operated as a single mixed fund.
- 29. My Investigations have also outlined that the single mixed fund was in deficiency, either when each deposit went into that fund or became deficient at a later point in time and prior to the appointment of the Voluntary Administrators.
- 30. In circumstances where the individual client deposits referred to in paragraph 26 above (being the deposits the subject of the Investigations) had been deposited or transferred into a commingled account within this deficient single mixed fund, or a transfer of an amount relating to a deposit had occurred from (or to) a commingled account in this single mixed fund, I regarded the deposit as having ceased to be feasibly traceable to any individual client.
- 31. The reason why this meant that tracing was not feasible is explained in paragraph 61 below and in paragraphs 19, 20 and 23 of the Case Study Memorandum. In short, it is because it is not possible to determine to whom to attribute the Deficiency in Client Moneys to and so when a deposit or amount relating to a deposit is into or from a commingled account within the deficient single mixed fund, the funds ceased to be feasibly traceable to any entitlement on the part of the individual client.
- 32. Client deposits to which this problem relates are identified as "not feasible to trace" or "not traceable" in the Case Study Memorandum. They were classified as such because



of the view that it would not be practically feasible for those accounts and all deposits through the accounts to be traced in the relevant sense, as is sometimes referred to as "cash tracing". These matters are expanded upon further in paragraphs 19 to 23 of the Case Study Memorandum.

### **The Funds Flow Memorandum**

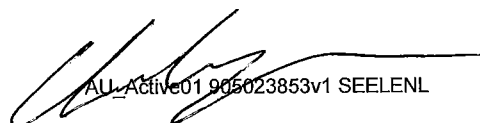
33. The results and conclusions in relation to the extent of commingling of assets between the various accounts in the Halifax Group (including assets held by third parties) is set out in the document titled "**Funds Flow Memorandum**" and its various annexures. The Funds Flow Memorandum, excluding its annexures, is at pages **3 to 50** of the **Exhibit**. The Annexures referred to in the Funds Flow Memorandum are contained in the **Confidential Exhibit** at CE pages **1 to 12**.
34. In my role overseeing the investigative work into the way in which the Halifax Group dealt with Client Moneys I have supervised the preparation of the Funds Flow Memorandum.
35. The purpose of the Funds Flow Memorandum is to identify the results of the Investigations insofar as they were concerned with the flow of funds between Halifax Group accounts and identifying the extent of commingling, and the memorandum sets out, based on those Investigations, the extent to which assets held in the accounts within the Halifax Group (including assets held by third parties) have been affected by the commingling of funds.

### *Persons responsible for investigations into the flow of funds within the Company*

36. The work involved in the preparation of the Funds Flow Memorandum was conducted by me, primarily together with the assistance of the following employees of KPMG (which were formerly employees of Ferrier Hodgson before the merger with KPMG):
  - (a) Paul Harlond, Director in KPMG (and formerly a Director in the Restructuring and Turnaround team of Ferrier Hodgson); and
  - (b) Sarah Arnfield, Manager in KPMG (and formerly a Manager in the Restructuring and Turnaround team of Ferrier Hodgson).

Other KPMG employees have assisted in this process in relation to smaller, discrete tasks.

37. I have worked closely with Mr Harlond and Ms Arnfield in undertaking the Investigations. I supervised the analysis that they conducted and the documents prepared that set out the results of those Investigations. I am intimately familiar with the analysis conducted and the conclusions drawn.

38. As part of the process of undertaking the Investigations referred to above, where required I have also been assisted by, and I have worked closely with, the following employees of Halifax AU (being employees that were employed as at the date of the appointment of the Liquidators to Halifax AU and that remain employed):

- (a) Diogo Couto, Head of Treasury;
  - (b) Michael Clissold, IT Support;
  - (c) Joseph Lum, IT and Administrative Support;
  - (d) Antony Wong, IT and Administrative Support; and
  - (e) Pradika Ghimire, Administrative Support,
- (the **Halifax Employees**).

39. The Halifax Employees assisted me during the Investigations undertaken by providing information and source documents about the way in which the accounts in the Halifax Group operated. The Halifax Employees have also provided their views and input in relation to the operation and flow of funds across and within the Halifax Group.

*Investigations into the flow of funds*

40. The following source documents were reviewed as part of those Investigations:

- (a) Bank account statements (in both PDF and excel format) in relation to each of the bank accounts operated by the Halifax Group;
- (b) Statements provided by third party providers, including Interactive Brokers, Invast Financial Services Pty Ltd (**Invast**) or Gain Capital (**Gain**);
- (c) Information extracted directly from the trading platforms (MT4, MT5 and IB Platform);
- (d) Information extracted from various customer relationship management (**CRM**) systems, including Act and InfusionSoft,
- (e) Halifax Group email records;
- (f) Excel spreadsheets created and maintained by the treasury team of Halifax AU. The worksheets included detailed reconciliations of each of the bank accounts, operated by the Halifax Group including itemised transactions. Where the worksheets have been used for the purposes of our analysis, we have conducted cross-checks of both balances and individual transactions to the statements provided by third party sources, including against the bank statements and the statements from third party providers; and



- (g) Further spreadsheets were provided by Halifax employees including individual client details and reconciliations of deposits received and redemptions paid. Where the worksheets have been used for the purposes of our analysis, we have conducted cross-checks to details within individual client accounts.

41. To prepare the Funds Flow Memorandum, Mr Harlond, Ms Arnfield and I undertook the following key actions:

- (a) Review of transactions in the various trust accounts in the name of Halifax AU with Bankwest for the 6 months prior to the Appointment Date, which totalled approximately 4,900 Transactions;
- (b) Review of transactions in the various Foreign Currency Accounts maintained by Halifax AU with National Australia Bank (**Various NAB Foreign Currency Accounts**) for the 2 years prior to the Appointment Date, which totalled approximately 4,500 transactions;
- (c) Review of transactions between the Halifax NZ IB Platform and Halifax AU "IB Allocated Account" for the 3 years prior to the Appointment Date;
- (d) Review of all the transactions to and from the IB Allocated Account of Halifax AU (which totalled more than approximately 20,000 transactions) and the Halifax Pro Allocated Account of Halifax AU (which totalled more than approximately 7,000 transactions), to ascertain the quantum and volume of transactions which have involved commingled funds on the trading platforms used by the Halifax Group;
- (e) Reviewed the timing of transactions into the IB Allocated Account and the Various NAB Foreign Currency Accounts to identify whether the IB Platform was credited on the same day that funds were received;
- (f) Reviewed the payments made to the hedging providers of Invast and Gain to determine the source of the funds; and
- (g) Reviewed the transactions in the master accounts that each of Halifax AU and Halifax NZ had with Interactive Brokers, including all payments to and from those accounts.

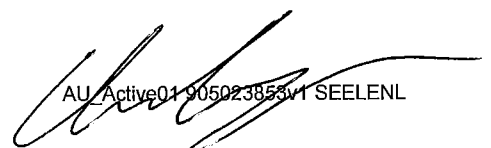
42. As part of those investigations and the actions referred to above, I oversaw the preparation by Mr Harlond and Ms Arnfield of worksheets which provided detailed analysis of transactions in the accounts that were investigated. The purposes of the worksheets were to:

- (a) Identify the volume of transactions between the IB Allocated Account and the Halifax Pro Allocated Account to identify the extent of commingling of funds



between each of the trading platforms. This analysis is outlined in paragraph 3.2 of the Funds Flow Memorandum;

- (b) Identify the source of funds in the **"IB AU Master Account"** and **"IB NZ Master Account"**, being the accounts that Halifax AU and Halifax NZ, respectively, had with Interactive Brokers which was used to fund individual client accounts in connection with Halifax AU's clients and Halifax NZ's clients that trade the IB Platform. Investigations into those accounts involved reviewing the timing of crediting of client accounts post client deposits being received into trust accounts operated by Halifax AU and Halifax NZ, and the sources of deposits into the respective Master Accounts. This analysis was undertaken to determine the extent of pooling and commingling of funds in the IB AU Master Account and IB NZ Master Account with funds in different accounts within the Halifax Group. This analysis is outlined in paragraphs 3.3, 3.4, 3.5, 3.12 and 3.14 of the Funds Flow Memorandum;
- (c) Identify the volume of transactions between accounts held by Halifax NZ (including the **"ANZ HNZ Account"** and the various accounts of Halifax AU to identify the extent to which funds are commingled between the accounts of Halifax AU and accounts of Halifax NZ. This analysis is outlined in paragraphs 3.6 of the Funds Flow Memorandum;
- (d) Identify the commingling of funds between clients who used different trading platforms (being Halifax AU's IB Platform, Halifax NZ's IB Platform and the MT4 or MT5 platforms), and other accounts in the Halifax Group, in the **"BWA Merchant Account"** of Halifax AU. This analysis is outlined in paragraphs 3.7 of the Funds Flow Memorandum;
- (e) Identify the transactions in each of the Various NAB Foreign Currency Accounts that demonstrate both commingling of funds between clients on the various trading platforms offered by the Halifax Group including between clients of Halifax AU and clients of Halifax NZ. This analysis particularly focused on key transactions in the days leading up to the Appointment Date, the outcome of which showed the difficulties in identifying individual client deposits. This analysis is outlined in paragraphs 3.8, 3.10 and 3.11 of the Funds Flow Memorandum;
- (f) Identify the source of funds held by third parties including Invast and Gain. This work was completed by reviewing the payments made from accounts within the Halifax Group (in particular the **"NAB USD Account"** of Halifax AU). This analysis is outlined in paragraphs 3.9 of the Funds Flow Memorandum;

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- (g) Conduct analysis of the extent of commingling in the various Foreign Currency Accounts of Halifax NZ. This analysis is outlined in paragraphs 3.13 of the Funds Flow Memorandum; and
  - (h) Conduct analysis of the extent of commingling of cash, securities and other assets in the prop accounts that each of Halifax AU (being account: [REDACTED]) and Halifax NZ (being account: [REDACTED]) held with Interactive Brokers, including the source of such funds. This analysis is outlined in paragraphs 3.14 of the Funds Flow Memorandum.
43. Following the preparation of those spreadsheets, I reviewed all workings conducted to ensure that I had a full understanding of all analysis undertaken, including the source of the documents and any assumptions used in this analysis. I then oversaw the preparation of the Funds Flow Memorandum.
44. From this review, I formed the following conclusions, which are particularised in detail in the Funds Flow Memorandum:
- (a) The only noticeable pattern of transfers between accounts is the crediting of a client account on the relevant trading platform shortly following a client deposit being allocated to an individual client. Otherwise, there is no pattern behind the transfer of funds between the various accounts in the Halifax Group. There is no pattern in frequency of transfers, where funds were directed to, or the purpose of the transfers;
  - (b) Funds appear to have been transferred on an "as needs" basis. When I refer to an "as needs basis", I mean that funds were transferred between the various Halifax Group accounts in round sum figures and on an ad hoc basis with no noticeable pattern other than to ensure sufficient funds remained in each of the accounts to facilitate ongoing operational requirements, such as ensuring sufficient funds were available to meet client redemptions, credit the platforms with Interactive Brokers, or make necessary company payments;
  - (c) Halifax AU and Halifax NZ both made transfers to maintain a balance of funds in various client accounts (effectively running pooled accounts on an intermingled basis);
  - (d) Most transfers of funds do not appear to relate to individual client deposits or redemptions (with the exception of transfers between suspense accounts and allocated accounts); and
  - (e) Tracing of client deposits appears not to be practically feasible in most instances.

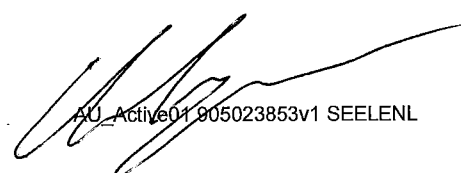
45. I have further formed the view that the funds and assets held in accounts in the name of Halifax AU can be categorised as follows:

Category	Number of Accounts	Balance at 23 November 2018 AUD	% of funds
Commingled	13	144,651,293.72	98%
Commingled and Traceable	4	203,026.91	0%
Commingled and Partially Traceable	3	80,730.32	0%
Subject to 25 January 2019 Court Order	3	2,210,165.57	2%
More information required	13	665,308.06	0%
Minimal balances	25	229.56	0%
<b>Total</b>	<b>61</b>	<b>147,810,754.04</b>	<b>100%</b>

46. I have also formed the view that the funds and assets held in accounts in the name of Halifax NZ can be categorised as follows:

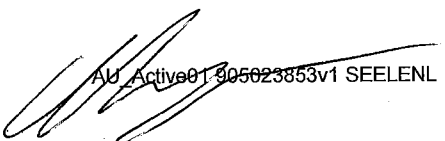
Category	Number of accounts	Balance at 27 November 2018 NZD	% of funds
Commingled	5	50,456,419.78	98%
Company funds	3	1,209,909.99	2%
More information required	4	5,200.69	0%
Minimal balances	2	25.90	0%
<b>Total</b>	<b>14</b>	<b>51,671,556.36</b>	<b>100%</b>

47. Following the formation of these views I prepared (with the assistance of Ms Arnfield) the Funds Flow Memorandum and briefed the Liquidators in respect of the work conducted to date and the conclusions formed. This briefing was in addition to ongoing discussions that I had with the Liquidators during the process of these investigations and tasks being undertaken.
48. I am satisfied that the work completed to date and the information and views set out in the Funds Flow Memorandum provides an accurate indication of the extent of commingling of funds. This work is subject to change should further investigations be undertaken or information become available which would alter my views. However, I am not aware of any further material investigations which are required at this point in time or would likely change the conclusions reached in my work to date.
49. Given my extensive work analysing the information available, I agree with the methodology outlined in the Funds Flow Memorandum and the views set out in that document.

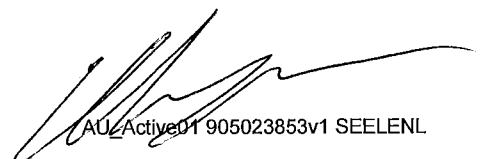
**The Case Study Memorandum and individual case studies**

50. In addition to the preparation of the Funds Flow Memorandum, as part of the Investigations I reviewed source documents relating to specific clients to identify whether deposits from particular clients are able to be traced so that they can be identified within the accounts in the Halifax Group, including the accounts with Interactive Brokers.
51. The result of this aspect of the Investigations has been set out in the document titled "**Case Study Memorandum**" and 20 individual case studies annexed to the Case Study Memorandum. The Case Study Memorandum and its annexures are at CE pages **13 to 224** of the **Confidential Exhibit**.
52. As part of this aspect of the Investigations, I instructed the Halifax Employees to demonstrate and explain to me the process by which a client opened an account with Halifax AU or Halifax NZ, deposited funds into that account, traded on the relevant platform and redeemed their investment (**Investor Lifecycle**).
53. To undertake this exercise, I reviewed the processes that Halifax Employees undertook throughout the entire Investor Lifecycle. I reviewed and witnessed Halifax Employees generate the source documents for a sample of clients on the MT4 and MT5 platform and clients of each of Halifax AU and Halifax NZ on the IB Platform.
54. Following a review of all information which I witnessed Halifax Employees generate, I, together with my colleague Ms Arnfield, prepared four memoranda (one for a sample client on each of the MT4, MT5, Halifax AU IB Platform and Halifax NZ IB Platform) outlining the Investor Lifecycle process and the source information available. These memoranda largely took the form of the memoranda which are annexed to the individual investor tracing and Case Study Memorandum.
55. In the process of undertaking the Investigations, which included me discussing the results and findings with the Liquidators, the Liquidators and I formed the view that it was appropriate to conduct additional investigations into the Investor Lifecycle for a wider sample of clients. The reason for my view that this was required was to ensure that there was no variation in the process at different points in time (i.e. that the process in mid-2016 was the same as in 2018) and that clients who deposited funds through other trust accounts held by the Halifax Group were treated in a similar manner.
56. I then instructed the Halifax Employees to select, at random, a number of clients who fit into 10 different categories, the details of which are set out in the Case Study Memorandum.
57. I then instructed the Halifax Employees to compile all documents identified in the original case studies discussed at paragraph 54 above.



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58. Given the very large volume of deposits that the sample clients have made over the course of their investments, I requested bank statements verifying one deposit per client and attempted to trace the deposit. For those clients who opened their account and deposited funds prior to June 2016 and have made various deposits, withdrawals and trades post June 2016, I requested all those deposits be attempted to be traced. Following this approach, 64 individual client money deposits were reviewed in detail, which included a review of the source bank statements relating to each deposit.
59. Once the source documents had been compiled and reviewed, individual case studies were prepared. Those individual case studies were prepared either by me or under my supervision by a combination of the following persons:
- (a) the Halifax Employees;
  - (b) Ms Arnfield;
  - (c) Corinne Kim, Analyst at KPMG (and formerly an Accountant of Ferrier Hodgson); and
  - (d) Melanie Khoo, Associate Director at KPMG (and formerly a Senior Manager of Ferrier Hodgson).
60. Once the individual case studies were prepared, I reviewed each of them as well as the accompanying source documents. As part of that review, I ensured that the conclusions reached within and in connection with each of the individual case studies was a conclusion that I agreed with.
61. Based on those individual case studies, I prepared the Case Study Memorandum. The Case Study Memorandum sets out my views and conclusions in relation to the ability to trace specific deposits the subject of the individual case studies. In my view, apart from some very specific exceptions referred to in the Case Study Memorandum, tracing of client deposits is not practically feasible. This is largely because the client deposits were transferred into a commingled account (such as the IB Allocated or Halifax Pro Allocated Account, Various NAB Foreign Currency Account or ANZ HNZ Account) that was in effect part of a single deficient mixed fund, or a credit was made to an account on a trading platform for the benefit of an individual client that came from such an account. Since it is not possible to identify the total proportion of the Deficiency attributable to each particular client of Halifax AU and Halifax NZ, in my view it is not feasible to trace individual client deposits to any entitlement on the part of the individual clients.
62. Using this information, I briefed the Liquidators on the outcome of the tracing work completed and the results of the investigations.



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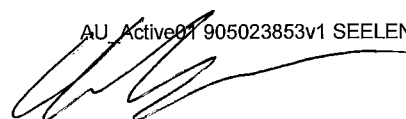
63. I agree with the methodology used, the information contained within, the conclusions reached and the final form and content of the Case Study Memorandum and the individual case studies annexed to that document. Although the work may be subject to change should further investigations be undertaken or information becomes available which would alter my views, I am not aware of any further material investigations which in my view would be appropriate at this point in time or would likely change the conclusions reached in my work to date.
64. I am satisfied that, in the time that has been available, the work completed to date to trace individual client deposits is the best which could have been completed and presents an accurate view of the inability to trace client deposits (with the exception of select categories of clients that I identify above).
65. I am of the view that the conclusions I have reached in the Case Study Memorandum in relation to tracing are generally applicable to the wider body of clients in the Halifax Group. I have formed that view based on the following:
- (a) The detailed discussions and interviews I have had with Halifax Employees in relation to the way in which accounts in the Halifax Group were operated;
  - (b) The analysis that I have undertaken and considered in relation to the movement of funds between the accounts in the Halifax Group has substantiated and supported what has been said by the Halifax Employees in relation to the way in which accounts in the Halifax Group were operated; and
  - (c) My review of the 41 individual investor case studies referred to in the Case Study Memorandum and other aspects of the Investigations has supported what has been said by Halifax Employees in relation to the way in which accounts in the Halifax Group were operated.

#### **Costs associated with undertaking a tracing exercise**

66. From 22 March 2019 (being the date the Liquidators were appointed as liquidators to Halifax AU) to 31 May 2019 it has taken 282.3 hours of KPMG (formerly Ferrier Hodgson) staff time to conduct the funds flow work and investigations into commingling and tracing, as well as the individual investor tracing exercises described above. That time equates to a cost of approximately \$159,437.50. This is in addition to the cost of employing the Halifax Employees on an ongoing basis, which I refer to further below.
67. That amount is comprised of \$68,756.00 of costs in relation to funds flow investigations and \$90,681.50 of costs in relation to individual investor tracing (**Tracing Costs to Date**) (and does not include costs directly incurred in preparing this affidavit, conferences with legal advisors or legal costs).

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68. As stated above, in undertaking the individual investor tracings and analysis (which includes the individual case summaries and Case Study Memorandum), 41 individual investors were reviewed and, among other things, over 64 separate deposits were attempted to be traced.
69. There are a total of 11,938 active clients in the Halifax Group, and there appear to have been 26,489 deposits since 2016 alone. Going back even further, there have been 24,863 deposits on the IB Platform alone since 2007. This means that the Liquidators have, as part of the specific tracing exercises referred to above, looked at approximately 0.34% of clients, or approximately 0.24% of deposits since 2016.
70. By extrapolating the Tracing Costs to Date out (by reference to the numbers referred to in paragraphs 66 to 67) above to reflect 100% of clients and 100% of deposits since 2016, the \$90,681.50 incurred to date relating to individual investor tracing would become approximately \$26.4 million or \$37.5 million. Should such an exercise be undertaken there would be efficiencies achieved through implementing streamlined processes and gaining experience as the exercise would be undertaken. However, even if only 50% of these costs were incurred the total costs would be disproportionate in the sense that the total of the costs could almost be equal to the amount of the Deficiency.
71. In addition, the tracing work was undertaken over an eight week period, with much of the time consisting of Halifax Employees sourcing the documents to support the case studies. During this period of time, the Liquidators of Halifax AU and Halifax NZ continued to employ the Halifax Employees in Australia and pay other ongoing operational costs, including rent and the cost to continue to have access to the investor trading platforms, being MT4, MT5 and IB. These costs would continue to be required to be paid for as long as a detailed level of investor tracing was undertaken.
72. The ongoing weekly cost of employing the Halifax Employees is approximately \$10,895 and the ongoing weekly costs of maintaining the premises of Halifax AU and the trading platforms is \$34,757.
73. I estimate that over the eight week period from 22 March 2019, the individual client case study tracing work accounted for approximately 50% of employee time. The ongoing operational costs would have been required to have been incurred while the tracing exercises were undertaken. On this basis, the approximately weekly cost specifically relating to client tracing is \$40,204.50.
74. The total cost of the work done to date by the Halifax Employees (including relevant trading costs) in respect of the two memoranda I have referred to in this affidavit is, therefore, approximately \$321,636.
75. On the basis set out in the preceding paragraphs, in my view it would be an extremely time consuming and expensive exercise to undertake tracing of all deposits into the



accounts in the Halifax Group, or to replicate the work done in respect of the 41 clients across all clients and deposits. In light of the conclusions I have reached above, even if it were theoretically possible to trace some or all deposits in respect of each client of Halifax AU and Halifax NZ, the amount of time and money involved in that exercise would be excessive and disproportionate to the amount of Client Moneys held and the quantum of the Deficiency, in the sense that the total of the costs involved may almost be equal to or greater than the amount of the Deficiency.


76. For these reasons, I am of the view that it is not practically feasible to identify money in any particular accounts or that is held by Interactive Brokers, Gain and Invast as belonging to any individual client of Halifax AU or Halifax NZ (with the minor exceptions identified in the Funds Flow Memorandum).

Sworn by the deponent  
at Sydney  
in New South Wales  
on 26 June 2019  
Before me:

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Signature of deponent

  
Signature of witness

Name of witness:	Lewis Robert Hugh Seelenmeyer
Address of witness:	Level 31, 1 O'Connell Street Sydney NSW 2000
Qualification of witness:	Solicitor