

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/07/2019 7:02:15 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD2191/2018  
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, reading "Warwick Soden".

Dated: 26/07/2019 7:07:42 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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## Affidavit

No. NSD 2191 of 2018

Federal Court of Australia  
 District Registry: New South Wales  
 Division: General

**IN THE MATTER OF HALIFAX INVESTMENT SERVICES PTY LTD (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: **Morgan John Kelly**  
 Address: Tower Three, International Towers Sydney, 300 Barangaroo Avenue, Sydney  
 NSW 2000  
 Occupation: Registered Liquidator  
 Date: 26 July 2019

### Contents

Document number	Details	Paragraph	Page
1.	Affidavit of Morgan John Kelly sworn 26 July 2019	1-15	1-5

**Philip Alexander Quinlan, Morgan John Kelly and Stewart McCallum,**  
**Plaintiffs**  
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[Form approved 01/08/2011]

I, Morgan John Kelly of Tower Three, International Towers Sydney, 300 Barangaroo Avenue, Sydney NSW 2000, Registered Liquidator, affirm:

1. I am a joint and several liquidator of Halifax Investment Services Pty Ltd (In Liquidation) ACN 096 980 522 together with Philip Alexander Quinlan.
2. On 26 June 2019 I affirmed an affidavit in these proceedings (**First Affidavit**). I make this further affidavit primarily to correct and qualify certain matters addressed in my First Affidavit.
3. Unless otherwise stated, undefined capitalised terms in this affidavit have the same meaning as given in my First Affidavit.

**Clarification about the number of clients of Halifax AU and Halifax NZ**

4. Where I refer to "individual clients" of Halifax AU and Halifax NZ, I am referring to the legal entities who hold accounts with Halifax AU and Halifax NZ.
5. At paragraphs 83 to 87 of my First Affidavit I refer to details of the number of "active client accounts" and data that the IT team has downloaded in relation to "clients" of Halifax AU and Halifax NZ.
6. The reference to "clients" where it appears in paragraphs 84 to 87 of my First Affidavit should be a reference to "active client accounts". At the time of swearing this affidavit the precise number of individual clients of Halifax AU and Halifax NZ is not known to me. The best information at this time in relation to the number of clients is the number of active client accounts, the details of which are set out in paragraph 83 of my First Affidavit. It is not yet known to me if, and the extent to which, any individual clients may have more than one active client account. It may be that, although there are a total of 11,938 active client accounts, the individual number of clients may not be that numerous. If there are any such clients with multiple accounts, the total number of clients would be less than 11,938. There is no way within the trading platforms to identify investors who have multiple accounts. In order to determine whether there are investors with multiple accounts it would be necessary to undertake a manual review of all investor accounts and CSAs to identify each individual investors.
7. In the circumstances, the matters stated in paragraphs 84 to 87 of my First Affidavit need to be revised. The correct position is set out in paragraphs 8 to 11 below, which replace the matters set out in paragraphs 84 to 87 of my First Affidavit.
8. Based on my investigations, there are 9,890 active client accounts invested through MT4, MT5 or Interactive Broker AU and 2,048 active client accounts invested through Interactive Broker NZ. In relation to the active client accounts referred to in paragraph 83




of my First Affidavit, there are 9,859 CSAs entered into with Halifax AU and 1,777 CSAs entered into with Halifax NZ.

9. There are also approximately 302 additional active client accounts within the Halifax Group that do not have a related signed CSA. These active client accounts are in respect of clients who held accounts with Forex Capital Markets and who were transferred to the Halifax Group in 2016.
10. The data obtained provides a geographical area that is linked to the active client accounts. That data indicates that:
  - (a) 6,772 of the active client accounts are connected with clients in Australia;
  - (b) 1,351 of the active client accounts are connected with clients in China;
  - (c) 499 of the active client accounts are connected with clients in New Zealand;
  - (d) 1,121 of the active client accounts are connected with clients other countries; and
  - (e) 2,195 of the active client accounts are connected with clients that the Liquidators cannot determine a place of residence.
11. The Liquidators have not been able to locate in Halifax AU's or Halifax NZ's books and records the geographical location for the clients in connection with those 2,195 active client accounts referred to in paragraph 10(e) above. Despite being unable to locate the geographic location of the clients in connection with those active client accounts, the Liquidators have taken extensive steps to make contact with as many clients as possible as required by orders of this Court.
12. The Liquidators currently have 11,630 unique email addresses in their mailout database. That figure does not indicate how many individual clients there are in the Halifax Group (as one client may have multiple email addresses, multiple clients may use the same email address, and some clients may not have provided an email address). The number of unique email addresses does provide a further indication of the approximate number of clients within the Halifax Group.

**Typographical error**

13. I have noticed a typographical error in paragraph 159 of my First Affidavit which I wish to correct. In paragraph 159 of my First Affidavit, I refer to the "IB Master Account" however I ought to have referred to the "IB AU Master Account, IB NZ Master Account".





### Consideration about making early repayments

14. In paragraphs 213 to 214 of my First Affidavit I refer to considerations in relation to whether it may be appropriate to make payments or distributions to certain categories or classes of clients early and in advance of all issues in this proceeding being determined. At the time of affirming my First Affidavit the Liquidators had formed the view that any such early payments to those clients within the category of having made the On or After Appointment Date Deposits was not appropriate at that stage.
15. The Liquidators have considered that issue further. The Liquidators are now of the view that:
  - (a) In relation to clients of Halifax AU that made the On or After Appointment Date Deposits, subject to certain exceptions, it may be appropriate to make an early payment of:
    - (i) all deposits received on and after 24 November 2018; and
    - (ii) deposits received on 23 November 2018, but only to the extent that either:
      - (A) it can be established that the deposits were made before 10.00 am; or
      - (B) the deposits were made into either the IB Suspense Account or the Halifax Pro Suspense Account; and
  - (b) In relation to clients of Halifax NZ that are within the category of having made the On or After Appointment Date Deposits, subject to certain exceptions, it may be appropriate to make an early payment of all deposits.
16. The exceptions to the return of the On Or After Appointment Date Deposits identified in 15(a) and 15(b) above are:
  - (a) The Liquidators do not consider it is appropriate to return any funds to a client who also has a negative net account balance, unless the Liquidators first deduct from the amount of the On or After Appointment Date Deposit made by the client the amount of the negative net balance(s) by which they are in debit in another account or accounts; and
  - (b) To the extent that there is a possibility that any open position of a client subsequently closed out will result in a negative net account balance for that



client, the Liquidators do not consider it is appropriate to return to that client any funds held on their behalf by way of On or After Appointment Date Deposits.

Affirmed by the deponent


at Sydney

in NSW

on 26 July 2019

Before me:

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Signature of deponent



Signature of witness

Name of witness: Catherine Louise Crawford

Address of witness: Level 31, 1 O'Connell Street Sydney NSW 2000

Qualification of witness: Solicitor