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Details of Filing

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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 AND MORGAN JOHN KELLY 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: Level 38, Three International Towers Sydney, 300 Barangaroo Avenue, Sydney, NSW 2000

Occupation: Registered Liquidator

Date: 22 June 2020

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Filed on behalf of **Philip Alexander Quinlan and Morgan John Kelly in their capacities as joint and several liquidators of Halifax Investment Services Pty Ltd (In Liquidation), Plaintiffs**

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I, Morgan John Kelly of Level 38, 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) (**Halifax AU**) and of Halifax New Zealand Limited (In Liquidation) (**Halifax NZ**), a subsidiary of Halifax AU, together with Philip Alexander Quinlan (**Liquidators**).

2. I affirm this affidavit in support of paragraphs 6, 7, 8, 10 and 11 of the Interlocutory Process filed on 3 July 2019 (**AU Process**) in the Federal Court of Australia (**Federal Court**) in proceedings no NSD2191 of 2018 (**AU Proceedings**). I also affirm this affidavit in support of paragraphs 1(b)(iv)-(x) and (xii)-(xiii) of the Originating Application filed on 25 September 2019 (**NZ Application**) in the High Court of New Zealand in proceedings no CIV-2019-404-2049 (**NZ Proceedings**). In these paragraphs of the AU Process and the NZ Application, the Liquidators seek directions and judicial advice in relation to foreign currency, the realisation of assets held by Interactive Brokers (**IB**) on behalf of Halifax AU and its subsidiary, Halifax NZ, and the close-out of positions on the MT4 and MT5 trading platforms.

3. I refer to my affidavits affirmed in the AU Proceedings on 26 June 2019 (**June 2019 Affidavit**), 26 July 2019, 29 July 2019 and 25 March 2020. I also refer to my affidavit affirmed in the NZ Proceedings on 24 September 2019.

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 is a folder of documents marked "MJK-8" (the **Exhibit**). References by me to page numbers in this affidavit are to page numbers of the Exhibit.

6. Shown to me at the time of affirming this affidavit is a folder of documents marked "**Confidential Exhibit MJK-8**" (**Confidential Exhibit**). The Confidential Exhibit contains information of the investment positions contained in the Halifax portfolio which should not be disclosed to the representative defendants, their legal advisors or to any other third parties due to risks of market participants taking advantage of this information. The **Confidential Exhibit** also contains information that reveals assets acquired or positions

entered into by individual clients, and identifies individual clients of Halifax AU and Halifax NZ. References in this affidavit to "**CE**" page numbers are to the corresponding pages of the Confidential Exhibit. Also shown to me at the time of affirming this affidavit is a folder of documents marked "**Confidential Exhibit MJK-8.1**" (**Confidential Exhibit MJK-8.1**). Confidential Exhibit MJK-8.1 contains account statements of Mr Hingston, the Third Defendant in these proceedings, which include personal information, including taxation information, about Mr Hingston. I refer to the relevant parts of Mr Hingston's statements in the body of my affidavit. References in this affidavit to "**CE2**" page numbers are to the corresponding pages of the Confidential Exhibit.

7. Annexed to this affidavit is an **Annexure**, which contains nine hypothetical examples that I have prepared about how an *in specie* or a cash distribution could occur. I refer to these examples in Part II of this affidavit.

Purpose of the affidavit

8. The purpose of this affidavit is to identify practical considerations that are relevant to the distribution of investor funds.

9. The Liquidators have a duty to act in the best interests of creditors. I believe that an important element of acting in the bests interests of creditors is the timely and cost effective distribution of company assets to its creditors. The evidence that I provide in this affidavit is against this background (whilst recognising that the distributions to be made to investors/beneficiaries may not strictly be regarded as distributions to creditors).

10. I have also taken note of the views of investors, who have provided their views on whether distribution of their investments should be made by way of cash or transfer of their securities (**Distribution Responses and Communications**). In this affidavit, where I use the term "security" or "securities" I refer collectively to shares and derivatives. The Distribution Responses and Communications are at:

    (a) Exhibits IPS-8 and IPS-9 to the affidavit of Ian Phillip Sutherland sworn 11 December 2019, which contain responses from investors to the Investor Notice issued on 15 November 2019; and

    (b) pages 442-489 of Exhibit MJK-5 to my affidavit affirmed on 25 March 2020, which contains communications from Investors on whether or not extant investments should be realised.

11. The Distribution Responses and Communications raised the question of whether an *in specie* distribution is a feasible option to distribute investments. In this affidavit, amongst

other things, I set out information that relates to whether an *in specie* distribution accompanied by a cash distribution, or whether a cash only distribution, is more feasible.

12. When I refer to an *in specie* distribution I mean a distribution of assets (in this instance, open positions and securities on the Interactive Brokers (**IB**) Platform) to investors rather than a distribution of cash following the liquidation of those assets. The assets held by IB on behalf of Halifax AU and Halifax NZ are those set out in paragraphs 31-52 below.

13. When I refer to a cash distribution I mean that the assets on the IB Platform are realised and the net cash from that realisation (or part of it), and other cash held in the Accounts described in Annexure A to the AU Process and referred to in Paragraph 1(b)(i) of the NZ Application (**Accounts**), are distributed to investors.

14. There may be an *in specie* distribution of all open positions and securities on the IB Platform or of part of the open positions and securities on the IB Platform. However, as I discuss below, an *in specie* distribution is complicated by the existence of a deficiency in the single mixed fund. Any *in specie* distribution would also be accompanied by a cash distribution because the assets of Halifax AU and Halifax NZ are not only held in open positions and securities on the IB Platform. They are also held as cash in the Accounts.

15. In this affidavit, I:

    (a) describe the trading platforms used by Halifax AU and Halifax NZ and the assets and open positions on those platforms;

    (b) describe how an *in specie* distribution and a cash distribution may occur and the benefits and limitations of each type of distribution;

    (c) set out the methodology for determining whether an investor falls into the third category of representative defendants;

    (d) identify the number of accounts with negative account balances, and whether the accountholder has another account or other accounts with a positive cash balance; and

    (e) identify the accounts which hold less than A$100.

Summary of Distribution Responses and Communications

16. I have reviewed the Distribution Responses and Communications. The key issues raised by investors in support of this position were:

(a) an *in specie* distribution would cause less disruption to the investment strategy of individual investors;

(b) the close-out of investor positions would cause negative taxation implications;

(c) the close-out of investor positions would cause investors to incur costs relating to foreign currency exchange and reinvestment;

(d) in respect of investors who consider that their investments are traceable, positions should not be closed out because of their traceable nature;

(e) given that as at November 2018, there was a deficiency in Client Moneys (the total amount of assets held on trust for clients of Halifax AU and clients of Halifax NZ) of only around 9% of investor positions (see paragraph 24 of my June 2019 Affidavit):

    (i) it is not reasonable to realise all positions for the purpose of a distribution; and

    (ii) investors should be able to choose which open positions and securities to liquidate in order to effectively meet the deficiency, with the remaining assets being transferred to an alternate broker; and

(f) in respect of investors who are retirees, some investors adopt a buy-and-hold strategy and rely on the dividend income stream from their investments held with Halifax AU and Halifax NZ.

17. The key issues raised by investors in favour of the close-out of all positions – that is, in favour of distribution by way of cash alone – were that:

(a) the liquidation of all securities and payment of a cash distribution will result in a timelier distribution; and

(b) the close-out of investor positions will result in significant savings in platform costs.

PART I: TRADING PLATFORMS USED BY HALIFAX AU AND HALIFAX NZ AND ASSETS AND OPEN POSITIONS ON THE TRADING PLATFORMS

Halifax AU

18. Halifax AU held an Australian Financial Services Licence (**AFSL**) which authorised it to provide financial product advice on a range of financial products, deal in financial products and make a market for foreign exchange contracts and derivatives.

19. Halifax AU conducted its business by way of the following trading platforms:

    (a) Trader Workstation, also known as the IB Platform. Halifax AU's IB Platform is referred to as **IB AU**. Halifax AU also facilitated clients trading on Halifax NZ's IB Platform (also referred to as **IB NZ**);

    (b) MetaTrader 4, also known as Halifax Pro (**MT4**); and

    (c) MetaTrader 5, also known as Halifax Plus, (**MT5**).

20. The IB Platform, a single trading platform, was offered and provided by Interactive Brokers LLC to Halifax AU and Halifax NZ. Halifax AU and Halifax NZ then provided their own clients with access to the IB Platform for trading. Each of Halifax AU and Halifax NZ separately contracted with Interactive Brokers LLC to access and use the IB Platform on their own behalf and to enable their clients to use the IB Platform.

21. Halifax AU is not a market participant on any exchange. Clients with accounts on the IB Platform, MT4 and MT5 accessed these trading platforms and placed trades at their own discretion, or instructed Halifax AU to access the trading platform and place a trade on their behalf. Below at paragraphs 31-64, I describe the assets held on the IB Platform and positions on the MT4 and MT5 platforms.

Halifax NZ

22. Halifax NZ was a licensed derivatives issuer under a market service licence granted by the Financial Markets Authority. This licence allowed Halifax NZ (and Halifax AU) to issue derivatives in New Zealand, including contracts for difference (**CFDs**), futures, options and margin foreign exchange contracts. Halifax NZ also acted as a broker for its clients in respect of various exchange-traded products, including shares and warrants.

23. Halifax NZ is not a market participant on any exchange. It conducted its business by:

    (a) facilitating access to Halifax AU's MT4 platform;

(b) facilitating access to Halifax AU's MT5 platform;

(c) providing its clients with access to IB NZ, as described above at paragraph 20; and

(d) facilitating access to IB AU.

Financial products available on the trading platforms

24. Clients invested through Halifax AU or Halifax NZ in a range of different financial products. These financial products can be classified broadly as exchange-traded financial products and "over-the-counter" (**OTC**) financial products. I describe each of these products below.

25. Exchange-traded financial products were available for trading through IB AU and IB NZ. OTC financial products were available for trading through MT4 and MT5 and IB NZ.

26. I note that in paragraph 41 of my June 2019 Affidavit, I stated that exchange-traded financial products were also available for trading on the MT4 and MT5 platforms. This is incorrect. My understanding of the MT4 and MT5 platforms has evolved since the June 2019 Affidavit and is described below at paragraphs 53-64.

Exchange-traded financial products

27. Exchange-traded financial products are investments which are traded on a regulated exchange (such as the Australian Stock Exchange (**ASX**), New York Stock Exchange (**NYSE**), London Stock Exchange (**LSE**)). Exchange-traded financial products include shares, warrants, futures and options.

28. An example of an exchange-traded financial product is a share on the ASX in company A. The value of the share fluctuates according to market movements.

OTC products

29. OTC financial products, including OTC derivatives, are not listed on a regulated exchange such as the ASX. They are traded via private contracts between two parties. OTCs include CFDs and options, which derive their value from products such as shares, indexes, metals and commodities and foreign exchanges.

30. An example of an OTC financial product is a CFD relating to a share in company A. The financial outcome of the CFD is dictated by the market price of the share. If the value of the share in company A increases over the period of the CFD, party A to the contract

(the seller) owes party B to the contract (the buyer) money. If the value of the share in company B decreases over the period of the CFD, party B to the contract (the Buyer) owes party A to the contract (the seller) money.

Assets held with IB

31. The investments that IB hold on behalf of Halifax AU and Halifax NZ are largely shares and cash. Shares are held by IB on behalf of Halifax AU and Halifax NZ in the Client Sub-Accounts and the IB AU Prop Account, both of which are discussed below.

32. As stated above at paragraph 20, Halifax AU and Halifax NZ each had a contract with IB, pursuant to which they could access the IB Platform and provide access to the investors. These contracts continue in effect, although the platforms are now in "close only" mode, meaning investors can close positions but cannot place new trades.

33. Under each contract, each of Halifax AU and Halifax NZ hold an account with IB called a "consolidated account". I refer to these accounts as the IB AU Consolidated Account and the IB NZ Consolidated Account. Each of the consolidated accounts is comprised of three types of accounts.

34. The first account is the IB AU Master Account (in the IB AU Consolidated Account) and IB NZ Master Account (in the IB NZ Consolidated Account), which held a pool of funds from which amounts were paid into individual client accounts (**IB Client Sub-Accounts**).

35. The second accounts are the IB Client Sub-Accounts in connection with each of the IB AU Consolidated Account and the IB NZ Consolidated Account, which record the investments (cash, shares and other securities) held on behalf of clients on the IB AU and IB NZ platforms. Investors could log into their IB Client Sub-Account and execute a trade on the IB Platform or they could instruct Halifax AU or Halifax NZ to access their IB Client Sub-Account and execute a trade on their behalf.

36. Notwithstanding that assets were recorded in individual IB Client Sub-Accounts, the assets in those accounts were held by IB on behalf of Halifax AU or Halifax NZ. In turn, Halifax AU or Halifax NZ held their interest in the assets on behalf of their clients. Clients of Halifax AU and Halifax NZ did not have a contractual relationship with IB. The clients had a contractual relationship with either Halifax AU or Halifax NZ.

37. Since Halifax AU and Halifax NZ entered into administration in November 2018, IB has acted in accordance with clients' instructions (given by and through the logging into their IB Client Sub-Account) and the Liquidators' instructions as to the close-out of open

positions. IB has acted in accordance with the Liquidators' instructions as to the transfer of assets.

38. The third accounts are the IB AU Prop Account and IB NZ Prop Account, which hold:

(a) Halifax AU and Halifax NZ revenue derived from commissions and interest;

(b) in the case of the IB AU Prop Account, shares as hedges against MT5 investor positions as well as dividend income generated from these shares; and

(c) in the case of the IB AU Prop Account, a cash balance (which may result from the realisation of assets held as hedges, or cash that was transferred into the IB AU Prop Account from the IB AU Master Account to ensure there was sufficient collateral to open new hedge positions as required).

39. The assets in the IB AU Prop Account and the IB NZ Prop Account are assets held on behalf of Halifax AU and Halifax NZ, respectively. I discuss the IB AU Prop Account further below at paragraphs 66-71.

40. As at approximately close of trading New York time on 22 November 2018 (being approximately commencement of trading on 23 November 2018 AEDT), the IB AU Consolidated Account held the following assets on behalf of Halifax AU:

Asset Class	**Total (A$)**
Cash	27,956,896
Warrants	9,684
Shares	112,534,311
Equity and Index Options	(80,119)
Options on Futures	(296,480)
Futures	(1,685,161)
Interest and dividend accruals	214,872
Total	**138,654,002**

41. At pages 26-435 of **Confidential Exhibit MJK-1** is a copy of the Activity Summary for the IB AU Consolidated Account as at 23 November 2018.

42. In the table above and the tables at paragraphs 43, 45, 47, 49, and 51:

(a) The positions in parentheses – ( ) – above are negative positions. They arise from products that are "out of the money". By "out of the money", I mean that the investors who hold these positions have a liability owing at the expiry of the relevant contract.

(b) The "Total" represents the net amount of all positive and negative investor positions on IB AU (or IB NZ as the case may be).

43. As at approximately close of trading New York time on 26 November 2018 (being approximately commencement of trading on 27 November 2018 AEDT), the IB AU Consolidated Account held the following assets on behalf of Halifax AU:

Asset Class	**Total (A$)**
Cash	26,968,534
Warrants	9,177
Stock	112,566,987
Equity and Index Options	166,454
Options on Futures	(277,527)
Futures	-
Interest and dividend accruals	220,415
Total	**139,654,040**

44. At **pages 1-445** of the **Confidential Exhibit** is a copy of the Activity Summary for the IB AU Consolidated Account as at 27 November 2018.

45. As at approximately close of trading New York time on 29 May 2020 (being approximately the morning of Saturday, 30 May 2020 AEST and May month end), the IB AU Consolidated Account held the following assets on behalf of Halifax AU:

Asset Class	**Total (A$)**
Cash	55,980,887
Warrants	1,826
Shares	107,372,259
Equity and Index Options	30,231
Options on Futures	9
Futures	-
Interest and dividend accruals	80,083
Total	**163,465,295**

46. At **pages 446-718** of the **Confidential Exhibit** is a copy of the Activity Summary for the IB AU Consolidated Account as at 30 May 2020.

47. As at approximately close of trading New York time on 22 November 2018 (being approximately commencement of trading on 23 November 2018 AEDT), the IB NZ Consolidated Account held the following assets on behalf of Halifax NZ:

Asset Class	**Total (NZ$)**	**Total (A$)**
Cash	15,319,416	14,391,185
Warrants	27,638	25,964
Shares	32,762,183	30,777,062
Equity and Index Options	311,494	292,620

Asset Class	Total (NZ$)	Total (A$)
Options on Futures	20,918	19,651
Futures	176,511	165,816
Mutual Funds	26,325	24,730
CFDs	(419,375)	(393,965)
Interest and dividend accruals	20,619	19,370
Total	**48,245,729**	**45,322,432**

48. At pages 436-709 of **Confidential Exhibit MJK-1** is a copy of the Activity Summary for the IB NZ Consolidated Account as at 23 November 2018.

49. As at approximately close of trading New York time on 26 November 2018 (being approximately commencement of trading on 27 November 2018 AEDT), the IB NZ Consolidated Account held the following assets on behalf of Halifax NZ:

Asset Class	Total (NZ$)	Total (A$)
Cash	16,840,478	15,793,377
Warrants	28,906	27,109
Stock	31,862,689	29,881,543
Equity and Index Options	263,406	247,028
Options on Futures	39,651	37,186
Mutual Funds	26,790	25,124
CFDs	(379,705)	(356,096)
Interest and dividend accruals	17,280	16,205
Total	**48,699,495**	**45,671,477**

50. At pages 710-1036 of **Confidential Exhibit MJK-1** is a copy of the Activity Summary for the IB NZ Consolidated Account as at 27 November 2018.

51. As at approximately close of trading New York time on 29 May 2020 (being approximately the morning of Saturday, 30 May 2020 and May month end), the IB NZ Consolidated Account held the following assets on behalf of Halifax NZ:

Asset Class	Total (NZ$)	Total (A$)
Cash	31,943,845	29,734,566
Warrants	22,122	20,592
Shares	26,026,705	24,226,664
Equity and Index Options	(3,392)	(3,157)
Options on Futures	-	-
Futures	-	-
Mutual Funds	-	-
CFDs	(18,347)	(17,078)
Interest and dividend accruals	8,891	8,276
Total	**57,979,824**	**53,969,863**

52. At **pages 719-868** of the **Confidential Exhibit** is a copy of the Activity Summary for the IB NZ Consolidated Account as at 30 May 2020.

Investor balances recorded in MT4 and MT5

53. The MT4 and MT5 software is owned by MetaQuotes Software Corp (**MetaQuotes**), an offshore entity. MetaQuotes licences the MT4 platform to Halifax AU and the MT5 platform to Halifax Capital Markets, a related entity of Halifax AU. Halifax Capital Markets provides the software for MT5, consisting of both a client and server component, to Halifax AU. The server component is run by Halifax AU. The client software is made available to clients, who use it to see live streaming prices and charts, to place orders, and to manage their accounts.

54. Halifax NZ did not have a licence with MetaQuotes for the MT4 and MT5 platforms.

55. The investments of clients on the MT4 and MT5 platforms occurred through a contract between Halifax AU as principal and the client. Although investors signed client services agreements with Halifax NZ, Halifax NZ was not a party to the contracts entered into with clients on the MT4 and MT5 platforms. It facilitated access to those platforms, which were operated by Halifax AU, as described above at paragraph 53, by acting as an introducing broker.

56. There are no assets held on the MT4 and MT5 platforms in the same way that assets are held with IB. The MT4 and MT5 platforms were "virtual" trading platforms. There was no acquisition by any client who traded on the MT4 and MT5 platforms of any underlying shares, options, or commodities. And, when a trade was placed on MT4 and MT5, Halifax AU did not buy the asset on that platform but rather held the moneys paid by the client and recorded the profit or loss in the client's account based on the movement in the value of the underlying asset (as described further below at paragraph 57). Consequently, there was no cash movement in or out of the MT4 or MT5 platform.

57. The value of the virtual positions on the MT4 and MT5 platforms were, depending on the nature of the position, referable to the price of an underlying product listed on an exchange (such as the ASX) or the price of an underlying currency on a currency market. When an investor decided to close out their position, the investor's account balance would either increase or decrease depending on the difference of the price of the underlying asset when the position was opened and the price when the position was closed (resulting in debits or credits to each party depending on the profit or loss of each trade).

58. Clients using the MT4 and MT5 platforms were split into two categories, being "A-Book" clients and "B-Book" clients. A client could be both an A-Book client and a B-Book client. The classification depended on the nature of each investment and a risk rating used by Halifax relating to the likelihood of that client making a profit. Certain investments in a client's account could be treated as A-Book and others as B-Book. A-Book clients included clients that had been identified by Halifax AU as being sophisticated Investors, as well as all MT5 clients who traded in shares.

59. Halifax AU hedged trades made by "A-Book" Clients and the virtual trades through the MT5 platform in shares and in CFDs relating to shares:

(a) in the case of shares and CFDs relating to shares, by making the underlying investment through the IB AU Prop Account (i.e., by purchasing the relevant share on its own account); and

(b) in the case of investments in other OTC derivatives (that is, other than CFDs relating to shares), by replicating the client's trade with entities trading in the names "Invast" and "Gain". (Gain has, since November 2018, unilaterally closed out all hedged positions and remitted to Halifax AU the funds yielded from that closing out.)

60. Halifax AU did not hedge investments made by "B-Book" Clients.

61. A hedge is a trading position intended to offset potential losses or gains that may be incurred in making an investment.

62. The assets acquired by Halifax AU in hedging trades outlined in paragraph 59(a) were held in the IB AU Prop Account. The shares held in the IB AU Prop Account were not held in an account in the name of any specific client of Halifax AU, but rather were held as part of a pool of shares in the IB AU Prop Account and were assets held by IB on behalf of Halifax AU.

63. When Halifax AU hedged trades made by A-Book clients on the MT5 platform, it simultaneously acquired the same position as the client trade. For example, if an investor entered into a virtual position of 50 shares in company A on 1 January 2018, Halifax AU bought 50 shares in company A on the same date, which it held in the IB AU Prop Account. The shares would have had a value referable to a price listed on an exchange like the ASX (for example, $200 / share). If the investor decided to close their position on 30 June 2019, Halifax AU would also sell the shares referable to that position on that date. If the value of the shares had increased to $500, the balance of the

investor's account on the MT5 platform would record this price increase and the investor could elect to redeem that amount in cash.

64. I note that there is a discrepancy between open positions entered into on the MT5 platform and assets held in the IB AU Prop Account. For example:

(a) As at 30 April 2020, there were 7,576 open positions in Retail Food Group Limited (**RFG**) held by investors on the MT5 platform. There should have been 7,576 shares in RFG held in the IB AU Prop Account; however, as at 30 April 2020, the IB AU Prop Account held 4,783 shares in RFG.

(b) As at 30 April 2020, there were 76,668 open positions in Woomera Mining Ltd (**WML**) held by investors on the MT5 platform. There should have been 76,668 shares in WML held in the IB AU Prop Account; however, as at 30 April 2020, the IB AU Prop Account held 77,148 shares in WML.

Summary of open positions as at 29 May 2020

65. The following table provides a summary of open positions held in the IB Client Sub-Accounts and on MT4 and MT5 as at close of trading New York time on 29 May 2020. Subsequent references to 29 May 2020 in this affidavit also refer to approximately close of trading New York time on 29 May 2020 unless otherwise stated. The table was prepared by Diogo Couto, an employee of Halifax AU who was head of Halifax Treasury from April 2008 to 1 July 2018 and was re-employed by Halifax AU in February 2019. The columns in the tables are as follows:

(a) The "Platform" column identifies the trading platform on which the position is recorded.

(b) The "Product Type" column identifies the type of product held on the trading platform.

(c) The "No of Investor Accounts" column identifies how many investor accounts in the IB Client Sub-Accounts hold a particular type of product and on MT4 and MT5 have a position in relation to a particular type of product. For example, if the same account holds 100 shares in Company A and 100 shares in Company B, this is recorded in the table below as one account.

(d) The "No of positions" column identifies the number of overall positions in a particular type of product on the platforms. For example:

(i) if an investor held 100 shares in Company A, which were purchased in five lots of 20, this is recorded in the table below as one position;

(ii) if an investor held 100 shares in Company A and 100 shares in Company B, this is recorded in the table below as two positions;

(iii) if two investors hold 100 shares in Company A, this is recorded in the table below as two positions.

(e) The "AU$ Notional value" column identifies the value of the positions in relation to each type of product. The value is taken from the platforms.

Platform	Product type	No of Investor Accounts	Number of positions	AU$ Notional value
IB AU	Shares	831	4,915	84,244,705.51
	Futures	1	1	19,556.50
	Options	6	26	30,231.35
	Futures Options	1	1	9.38
	Warrants	12	13	1,480.62
Sub-total IB AU		851	4,956	84,295,983.36
IB NZ	Shares	611	2,409	24,226,131.24
	Share CFDs	66	130	585,515.53
	Options	4	4	(3,156.91)
	Futures Options	-	-	-
	Funds	-	-	-
	Warrants	11	11	20,591.18
Sub-total IB NZ		692	2,554	24,829,081.04
MT4	FX	71	371	2,395,294.07
	Share CFD's	10	19	25,079.04
	Commodities	12	62	3,723,578.87
	Index CFD's	4	11	(1,480,979.90)
Sub-total MT4		97	463	4,662,972.09
MT5	FX	2	3	289,290.40
	Share CFD's	34	59	1,168,067.70
	Commodities	1	1	2,677.23
	Shares	515	1701	23,577,363.16
Sub-total MT5		552	1,764	25,037,398.48
Total		**2,192**	**9,737**	**138,825,434.97**

Summary of open positions on IB AU and IB NZ and held in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account

66. At **pages 869-937** of the **Confidential Exhibit** is a spreadsheet that summarises the shares held in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account as at 29 May 2020 (**Open Positions Share Spreadsheet**). I am informed by Ian Sutherland, a director in the employ of KPMG, that

he prepared the Open Positions Share Spreadsheet using data generated from the IB AU and the IB NZ trading platforms and provided to him by Mr Couto.

67. The Open Positions Share Spreadsheet has the following columns:

(a) Column A is called “AssetClass”. It indicates the type of financial product to which a row in the spreadsheet corresponds. In the Open Positions Share Spreadsheet, the asset class for all entries is “STK”. “STK” means stocks (which is a term often interchangeable for shares);

(b) Column B is called “Symbol”. It indicates the identifying code of the share on IB, which usually corresponds to the identifying code of that share on the exchange or trading venue where that share is traded and/or listed;

(c) Column C is called “ListingExchange”. It identifies the exchange or trading venue where the share is traded and/or listed;

(d) Column D is called “Description”. It identifies the company from which the share derives its underlying value and sometimes describes the share itself;

(e) Column E is called “SecurityID”. It provides an identifying number for each individual investment. This is extracted from the IB Platform. Where such a number is not recorded in IB, the relevant cell in the Open Positions Share Spreadsheet is blank;

(f) Column F is called “SecurityIDType”. It identifies that the SecurityID in column E is an International Securities Identification Number for each individual investment;

(g) Column G is called “Long”. It identifies the number of shares that are held with a particular company;

(h) Column H is called “Short”. It identifies the number of units in each share type that have been acquired as a short position by an investor or as a hedge in the IB AU Prop Account. A short position is created where an investor sells a security with the intention of repurchasing it at a later fixed time at a lower price;

(i) Column I is called “Current value (AUD)”. It contains the total value of the relevant shares in Australian dollars and is obtained from the IB Platform; and

(j) Column J is called "Value AUD". It records the total value in Australia Dollars of all shares on each respective exchange or trading venue.

68. The Open Positions Share Spreadsheet indicates that, as at 29 May 2020:

(a) Halifax AU and Halifax NZ held positions in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account in 2,915 shares;

(b) Halifax AU and Halifax NZ held the shares in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account on 32 exchanges or trading venues worldwide;

(c) Halifax AU and Halifax NZ held around 411,004,485 long positions in shares and 22,647 short positions in shares;

(d) total shares in 32 companies in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account had a negative value;

(e) total shares in 103 companies in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account had a value of zero;

(f) total shares in 378 companies in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account had a value of less than $100;

(g) Halifax AU and Halifax NZ held shares in 154 delisted entities, which are designated with the "ListingExchange" "VALUE" in the Open Positions Share Spreadsheet;

(h) The exchanges or trading venues that held the largest proportion of shares held by Halifax AU and Halifax NZ include:

(i) ASX where shares in 824 companies are held;

(ii) NASDAQ, where shares in 442 companies are held; and

(iii) NYSE where shares in 422 companies are held;

69. At **pages 938-944** of the **Confidential Exhibit** is a spreadsheet that summarises the open positions of derivatives held in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account (**Open Positions Derivatives Spreadsheet**) as at 29 May 2020. I am informed by Mr Sutherland, that he prepared the Derivatives Spreadsheet using data generated from the IB AU and the IB NZ trading platforms and provided to him by Mr Couto.

70. The Open Positions Derivative Spreadsheet has the following columns:

(a) Column A is called “AssetClass”. It indicates the type of financial product to which a row in the spreadsheet corresponds. The "AssetClass" entries are:

(i) "CFD" which means contracts for difference;

(ii) "FOP" which means future options;

(iii) "FUT" which means futures:

(iv) "OPT" which means options;

(v) "WAR" which means warrants.

(b) Column B is called “Symbol”. It indicates the identifying code of the underlying asset on IB, which usually corresponds to the identifying code of that financial product on the exchange or trading venue where that financial product is traded and/or listed;

(c) Column C is called “ListingExchange”. It identifies the exchange or trading venue where the financial product is either traded and/or listed;

(d) Column D is called “Description”. It identifies the financial product. For example:

(i) in relation to warrants and options, column D shows the symbol for the company to which the warrant or option relates, the date at which the warrant or option expires, the price of that option or warrant, and whether it is a call or a put option;

(ii) In relation to CFDs, column D shows the underlying financial product from which the value of the contract is derived;

(iii) In relation to future options (line 199), column D shows the contract code, the date at which the future option expires, the exercise price, and whether it is a put or a call option;

(iv) In relation to futures (line 200), column D shows a future contract with an expiry date of March 2021;

(e) Column E is called “SecurityID”. It provides an identifying number for each individual investment. This is extracted from the IB Platform. Where such a number is not recorded in IB, the relevant cell in the Open Positions Derivatives Spreadsheet is blank;

(f) Column F is called “SecurityIDType”. It identifies that the SecurityID in column E is an International Securities Identification Number for each individual investment. Where such a number is not recorded in IB, the relevant cell in the Open Positions Derivatives Spreadsheet is blank;

(g) Column G is called "Multiplier". It identifies how many financial positions are held in each unit of the financial product that is traded and/or listed;

(h) Column H is called “Long”. It identifies the quantity of positions held in respect to a derivative. For example:

(i) In relation to CFDs and warrants, column G identifies the quantity of positions that relate to the number of underlying financial products to which the CFD or warrant relates;

(ii) In relation to options, futures and future options, column G relates to the number of each of these products taking into account the multiplier. For example, a multiplier of 100 and a quantity of 5 means there are 500 options, futures or future options (as the case may be);

(i) Column I is called “Short”. It identifies the number of units in each derivative that have been acquired as a short position by an investor or as a hedge in the IB AU Prop Account. A short position is created where an investor sells a security with the intention of repurchasing it at a later fixed time at a lower price; and

(j) Column J is called “Current value (AUD)”. It contains the total market value of the relevant investment in Australian dollars and is obtained from the IB Platform as at 29 May 2020.

71. The Open Positions Derivatives Spreadsheet indicates that, as at 29 May 2020:

(a) Halifax AU and Halifax NZ held positions in the IB AU Consolidated Account (the IB AU Prop Account) and the IB NZ Consolidated Account in 150 types of investments in derivatives;

(b) Halifax AU and Halifax NZ held the assets in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account on 11 exchanges or trading venues worldwide;

(c) Halifax AU and Halifax NZ held around 644,240 derivative positions. This figure is taken from the total of column H ("Long") and is referred to at paragraph 70(f) above;

(d) 10 positions in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account had a negative value;

(e) No positions in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account had a value of zero;

(f) 78 positions in the IB AU Consolidated Account (including the IB AU Prop Account) and the IB NZ Consolidated Account had a balance of less than $100; and

(g) Set out below is an overview of the quantity of derivative positions held in Halifax portfolio in respect according to each "AssetClass" taken from column A of the Open Positions Derivatives Spreadsheet as at 29 May 2020:

AssetClass	**Long positions**	**Short positions**	**Value**
Contracts for difference	38,569	436	A$585,516
Future options	1	0	A$9.38
Futures	1	0	A$19,557
Options	85	1	A$27,074
Warrants	605,584	0	A$22,417
Total	**644,240**	**437**	**A$654,573**

(h) The exchanges or trading venues where the largest proportion of derivatives held by Halifax AU and Halifax NZ were traded include:

(i) Stock Exchange of Hong Kong (324,804 positions);

(ii) Australian Securities Exchange (306,509 positions); and

(iii) NASDAQ (9,421 long positions and 94 short positions).

PART II: DISTRIBUTION OPTIONS

72. In this part of the affidavit, I describe how an *in specie* distribution or a cash distribution might be undertaken by the Liquidators of Halifax AU and Halifax NZ, and the benefits and limitations of each distribution option. For the reasons below, I consider that an *in specie* distribution would be more challenging to undertake than a cash distribution. The main reason for this is that the value of assets is constantly moving, which makes it difficult to calculate, with accuracy, the value of the assets to be distributed at a fixed point in time. I discuss this further at paragraphs 124-127 below.

73. In this part of the affidavit, I have assumed that the Courts would direct that the assets of Halifax AU and Halifax NZ be pooled and that investors are entitled to a proportionate share of those assets, based on their account balance at the date on which the Courts direct that investor claims are to be valued (**Adjudication Date**).

74. Except to the extent that I discuss the process of effecting an *in specie* distribution at paragraphs 90-105, my evidence below does not concern investors whose assets might be traceable (if the Courts were to regard traceability as relevant). It only applies to other investors who would receive a distribution from the single deficient mixed fund. The single deficient mixed fund is comprised of cash and other assets held on the IB AU Platform (like shares).

75. In addition, *in specie* distribution would only be relevant to investors on the IB AU and the IB NZ platforms with open positions. As set out in the table at paragraph 65 above, as at 29 May 2020, there were 851 IB AU Client Sub-Accounts and 698 IB NZ Client Sub-Accounts with open positions. In theory, it may be possible to conduct an *in specie* distribution of all open positions; however, in practice, it may not be possible to undertake an *in specie* distribution of all open positions because the rules governing the transfer of assets on the different exchanges and trading venues where those open positions are listed may prevent this. In setting out certain parts of the process of an *in specie* distribution in paragraphs 90-105 below, I have assumed that all open positions (1,549 in total, being 851 IB AU Client Sub-Accounts + 698 IB NZ Client Sub-Accounts with open positions including shares) would be able to be distributed *in specie*.

76. An *in specie* distribution would not be available for investors on the MT4 and MT5 platforms because, as stated above at paragraphs 56-57, these are "virtual" trading platforms.

77. Also, an *in specie* distribution would not be available for assets in the IB AU Prop Account, which are held as hedges against investor positions on the MT5 platform. As

noted above at paragraph 62, these assets are held in the IB AU Prop Account as an asset of IB on behalf of Halifax AU, not as an asset of an investor on the MT5 platform. When an investor made a trade on the MT5 platform, Halifax AU automatically acquired the same position as the investor trade in the IB AU Prop Account. However, Halifax AU does not hold the assets acquired on behalf of investors on the MT5 platform.

78. In my experience as a liquidator, liquidators may distribute assets to creditors by one of three methods. The first is by a realisation of all assets into cash and distribution of that cash to creditors. The second is by an *in specie* distribution of assets to creditors. The third method is a combination of a cash distribution and an *in specie* distribution.

79. In my experience, most distributions of assets happen by way of a cash distribution as this is the easiest method to facilitate a distribution in accordance with the order of priorities outlined in s 556 of the *Corporations Act 2001* (Cth) when there are multiple creditors and limited assets. *In specie* distributions are rarer and generally occur where there are fewer creditors and a smaller number of easily valued assets (eg, a property) where those assets could be distributed to creditors without being converted to cash. For example, if there is one creditor who is owed $1 million and the company in liquidation only holds one asset – a house valued at $800,000 – the quickest, cheapest and easiest way to undertake a distribution may be to transfer that house to the creditor rather than selling the house and distributing the cash proceeds. This is most commonly undertaken in a Members Voluntary Liquidation.

80. In the situation of Halifax AU and Halifax NZ, only the first and third methods are, in theory, available. It is not possible to do only an *in specie* distribution – that is, the second method – because not all investors have accounts on the IB Platform and not all investors on the IB Platform hold open positions in their accounts. As stated above at paragraph 75, investors with accounts not on the IB Platform – that is, on MT4 and MT5 – cannot receive an *in specie* distribution. And, of those investors on the IB Platform, some investors have already realised their positions and converted their account balances to cash. However, it is theoretically possible to distribute the assets held by Halifax AU and Halifax NZ by way of a combination of an *in specie* distribution for investors who hold open positions in their IB Client Sub-Account and a cash distribution. As explained below at paragraphs 122-128, I believe that a combination of an *in specie* distribution and a cash distribution would be practically complex.

Calculating the value of an investor's claim and the value of assets available for distribution

81. In an *in specie* distribution or cash distribution, the Liquidators and their team would:

(a) determine the claim or entitlement of each investor by ascertaining the account balances as at the Adjudication Date – that is, the date on which the Courts direct that investor claims are to be valued; and

(b) calculate the value of the assets available to be distributed to investors.

82. Depending on the orders of the Courts, the Adjudication Date may be different to the date on which the value of the assets available to be distributed to investors is calculated.

83. The calculations undertaken in steps (a) and (b) would identify the value of the assets to be distributed to each investor.

84. An example of how the Liquidators and their team would calculate the value of an investor's claim as at the Adjudication Date and the value of the assets available to be distributed to that investor is below:

(a) If the Adjudication Date is directed by the Courts to be 1 June 2020, the Liquidators would need to ascertain the total balance of all investor accounts held on the IB AU, IB NZ, MT4 and MT5 platforms as at that date. For the purpose of this example, I assume that the total balance of investor accounts as at 1 June 2020 equals A$250 million and, of this amount, investor A is owed A$10 million.

(b) Assuming that the Courts have ordered a cash distribution, by 1 December 2020, all assets have been realised and the Liquidators are in a position to distribute the assets of Halifax AU and Halifax NZ to the investors. That is, 1 December 2020 is the date used to calculate how much will actually be distributed to investors. As at 1 December 2020, the assets available for distribution total A$230 million. This means that investors will receive a distribution equal to 92% of their claim – that is, 92% of their account balance as at the Adjudication Date.

(c) Investor A will receive a distribution of A$9.2 million. This is calculated by applying the percentage of 92% to investor A's account balance as at the Adjudication Date of 1 June 2020.

85. If the Courts order an *in specie* distribution and a cash distribution, how the Liquidators and their team calculate the value of an investor's claim as at the Adjudication Date and the value of the assets available to be distributed to that investor is more complicated. As described below in paragraph 92, as a result of market fluctuations which affect the

value of assets, there is no point in time at which the value of the assets to be distributed can be fixed with certainty.

86. Based on my experience as a liquidator, I believe that it may take three months for the Liquidators to complete the process of assessing each investors' claim and notifying each investor of the value of their claim or entitlement as at the Adjudication Date. This process would involve the following steps:

(a) The Liquidators would make a preliminary determination of the value of each investor's claim as at the Adjudication Date (**Liquidators' preliminary determination**).

(b) The Liquidators would send a notice to investors notifying them of the value of their claim and asking the investors to confirm the value of their claim within 21 days. This is the same timeframe that creditors would be given, under regs 5.6.65 and 5.6.66 of the *Corporations Regulations 2001* (Cth), in a liquidation where the liquidators give notice of an intention to declare a dividend and creditors are given the opportunity to make a formal proof of debt in respect of that notice.

(c) After the Liquidators receive the investors' confirmations in relation to the value of their claims (**investors' confirmations**), the Liquidators would assess any differences in the value of claims between the Liquidators' preliminary determination and the investors' confirmations. The time that it will take the Liquidators to undertake this assessment depends on the number of investors' confirmations that state a claim value that is different to the Liquidators' preliminary determination. I have assumed that this process could be completed within two months.

(d) After the Liquidators undertake their assessment, they would notify investors of the value of their claims.

87. If the Adjudication Date and the date at which the value of assets to be distributed to investors is calculated are the same, by the process described above at paragraph 86, the Liquidators would also inform investors of the value of the assets they will actually receive.

88. If the Adjudication Date and the date at which the value of assets to be distributed to investors is different, the process described above at paragraph 86 may happen twice – first, in relation to notifying investors of the value of their claim as at the Adjudication

Date; second, in relation to notifying investors of how much will be distributed to them, once all, or a proportion of, assets have been realised or, in the case of an *in specie* distribution, the Liquidators are otherwise in a position to notify investors of this amount.

In specie distribution

89. In this section, I describe the process of transferring assets to investors and the time and costs associated with this process. I also describe the benefits and limitations of an *in specie* distribution. As explained below at paragraphs 122-127, because of ongoing market movements which affect the value of the assets available for distribution, I consider that it would be complex, time consuming and costly to effect an *in specie* distribution.

Process of an **in specie** ***distribution***

90. The process of transferring assets from accounts held with IB AU or IB NZ might involve, in theory, the following steps. Except where otherwise stated, the explanation below is based on my experience as the joint and several administrator and as the joint and several liquidator of Halifax AU and Halifax NZ, and other liquidations.

91. <u>First</u>, each investor would be advised of the value of their claims – this is the notice referred to in paragraph 86(b) above. Those investors on IB AU and IB NZ with open positions would, in theory, be entitled to the transfer of some of their open positions without liquidating those positions. The notice would advise investors that:

    (a) the value of any shares or other open positions is subject to market fluctuations, and investors would only receive the amount calculated in accordance with paragraphs 81-83 above. (That is, the notice would not state the value of the assets available to be distributed to investors.);

    (b) investors on IB AU and IB NZ with open positions or shares had a period of time (say, by way of example, four weeks) in which to advise the Liquidators which assets (in whole or in part), if any, they would like to be transferred to them by way of an *in specie* distribution to satisfy their entitlement, as calculated in in accordance with paragraph 81(a) above; and

    (c) the balance of an investor's distribution, if any, would be paid to them in cash. (The Liquidators would realise any other open position remaining in that investor's account.).

92. If an *in specie* distribution is available to investors on IB AU and IB NZ with open positions, the Adjudication Date needs to be a date in the past (ie prior to the date on which the assets are realised). The reason for this is that the value of an account balance with open positions will fluctuate with the market, as described below at paragraphs 124-127, making it impossible to predict the value of an investor's claim at a future point in time. If there is only a cash distribution, the Adjudication Date could be a date in the past (ie a date that is prior to the date on which the assets are realised) or in the future after assets have realised. If in the future, the investor would be entitled to a share of the assets (corresponding with their entitlement) based on their account balance at the date on which all assets, or a portion of the assets, are realised.

93. Similarly, if an *in specie* distribution is available to investors on IB AU and IB NZ with open positions, the reason that the notice in paragraph 86(b) would not state the value of the assets available to be distributed to investors is that it is not possible to provide investors with an accurate figure as to the sum of the assets to be distributed to them because the value of those assets will fluctuate until distribution: see below at paragraphs 124-127. If there is only a cash distribution, after the assets have been realised, it is possible to provide investors with an accurate figure as to the amount of the cash available to be distributed to them.

94. Secondly, investors would advise the Liquidators about their decision by completing a form, setting out the assets which they would like to be transferred to an alternate broker as part of an *in specie* distribution.

95. Thirdly, so that assets can be transferred *in specie*, an investor would need to have an account with an alternate broker – that is, not with Halifax AU or Halifax NZ. This means that an investor would need to open an account with an alternate broker, if they do not already have such an account. The process for opening an account with an alternate broker can be time consuming due to "know your customer" (**KYC**) processes. KYC processes would be required even where the incoming broker is IB because IB does not currently hold details relating to individual investors.

96. So that the distribution of assets can progress without delay, the Liquidators would give investors a timeframe – say, for example, one month – within which to open an account with an alternate broker, if they did not already have such an account. To avoid delays associated with the opening of accounts, in the notice referred to in paragraph 86(b) above, the Liquidators would encourage investors of IB AU and IB NZ with open positions – that is, those investors who may be eligible to receive an *in specie* distribution – to open accounts with alternate brokers.

97. Based on discussions with Mr Couto, who is familiar with the process of opening accounts with brokers from his work at Halifax AU, I believe that it would take less than 1 week for Australian investors to open accounts with alternate brokers in Australia, assuming all information is provided to the broker in the correct form.

98. I do not have experience in opening accounts with alternate brokers overseas and so do not know how long this process would take. From my work over the course of the liquidation of Halifax AU and Halifax NZ, I believe that to open a new account on IB will likely take longer because the form to be completed to open a new account is detailed and requires a substantial amount of supporting documentation. At **pages 1-43** of the **Exhibit** is a copy of screenshots from the IB website, showing the supporting documentation needed to open an account with IB. The address of the website is https://www.interactivebrokers.com/en/index.php?f=4119&nhf=T.

99. Fourthly, Halifax staff would process each individual transfer form completed by investors and provide instructions to IB for the transfer of assets. Assets would be transferred from an investor's IB Client Sub-Account to the investor's account with another broker. The name of the account of the investor into which an asset is to be transferred needs to be identical to the name associated with the IB Client Sub-Account. Discrepancies in the names of these accounts could increase the time that it takes for Halifax staff to process transfer forms. Assuming each investor wanted an *in specie* distribution, I estimate that it would take Halifax staff around one month to process transfer forms.

100. My estimate is based on information provided to me by Mr Couto, who has worked in monitoring and maintaining the trading platforms used by clients of Halifax AU and Halifax NZ. On 17 June 2020, Mr Couto said words to the following effect to me:

> *It takes approximately 20 minutes for Halifax staff to process a share transfer form for an investor transferring ASX listed shares from their IB Client Sub-Account to an Australian-based broker, assuming the transfer form has been completed correctly.*
>
> *Where investors hold shares listed on multiple exchanges, or where they haven't completed their transfer form correctly, it may take up to one hour to process the transfer form.*
>
> *Once the transfer form has been processed by Halifax staff, the time taken for the transfer to be executed is outside of their control and depends on the incoming broker.*

101. I have assumed that:

(a) 1,549 investors would like an *in specie* distribution (851 IB AU Client Sub-Accounts + 698 IB NZ Client Sub-Accounts with open positions);

(b) there would be 1,549 transfer forms to be processed by Halifax staff;

(c) it would take about 20 minutes to process each form or a total of 516 hours to process 1,549 forms;

(d) the five current Halifax staff members would process the forms;

(e) each staff member works 37.5 hours per week;

(f) it would take around 3 weeks for the Halifax staff members to complete 516 hours of work (516 hours divided by 5 staff is 103 hours of work; 103 hours divided by one working week of 37.5 hours is 2.75 weeks); and

(g) it would take longer than 3 weeks to complete 1,549 transfer forms because Halifax staff have other tasks to perform and because it may take longer than 20 minutes to complete some forms.

102. Fifthly, IB would process the transfer of assets. I estimate that this could take about 4-6 weeks to complete. I directed Mr Sutherland to make enquiries with IB about the time it would take for IB to transfer assets from one account to another account. On 17 June 2020, I had a conversation with Mr Sutherland and he said words to the effect of:

> *It would usually take IB approximately 2 to 3 days to transfer Australian stocks to another external Australian-based broker. The cost for this transfer is generally A$50 per investor. However, given the volume of investor accounts which may need to be transferred IB will need to give further consideration to the resources required to undertake this task. If the transfers were able to be executed without complication, IB advised that the transfers of all accounts could be effected within 4 weeks.*
>
> *If complications arise, there might be delays in the transfer of assets. The reasons why there might be complications include where investors hold stocks on overseas exchanges; investors elect to transfer stocks to an overseas based broker; and details provided to IB may be different to the instructions provided by the investor to the incoming broker.*

The time taken to execute the transfers may be reduced if IB and the Liquidators figure out how to streamline the process. For example, if investors are encouraged to open an account with IB, it may be possible to execute a bulk transfer which would reduce the duration and cost of the process.

103. Sixthly, once the transfers have been effected, the Liquidators would undertake the close-out of remaining investor positions. By remaining investor positions, I mean assets that still remain in IB Client Sub-Accounts for which the Liquidators have not received a form seeking an *in specie* distribution. The time that it will take to complete the close-out of the remaining assets will depend on the liquidity or illiquidity of those assets, including whether there is a market for their realisation. I do not have the expertise to make any further observations on this issue.

104. All cash realised from the sale of the remaining investor positions (and any other cash held in IB Client Sub-Accounts) would be transferred from the IB Client Sub-Accounts to an account controlled by the Liquidators. The cash in the account controlled by the Liquidators would then be distributed into nominated bank accounts of investors according to each investor's proportionate entitlement. The timeframe for the transfer of cash depends on several variables, including:

(a) the number of investors to whom cash is to be transferred – in theory, cash may need to be transferred to 11,938 investors – which is the number of accounts with positive balances at 23 November 2018 held on IB AU, IB NZ, MT4 and MT5 – across 60 countries; (Mr Sutherland obtained this data from the IB AU, IB NZ, MT4 and MT5 platforms and provided it to me.)

(b) the ease with which the Liquidators can communicate with investors to obtain their nominated bank account details – not all investors have email and based on previous correspondence with investors, not all investors respond to requests for information;

(c) whether investors provide accurate and complete account details and proof of identification to the Liquidators;

(d) the number of payments in foreign currencies – in order to make payments in foreign currencies, the Liquidators will need to ensure that they have sufficient funds to make those payments, which is challenging due to currency fluctuations;

(e) the processes for and restrictions on payments to investors located overseas – for example, some countries, like China, have restrictions on cash transferred from overseas; other countries may have anti-money laundering regulations which affect the transfer of funds from overseas; and

(f) whether payments are executed via electronic funds transfer or cheque.

105. I have assumed that the process of undertaking a cash distribution, including realising open positions on IB AU and IB NZ, distributing cash and transferring cash into nominated bank accounts of investors, could take up to six months.

Time taken for an* in specie *distribution

106. I estimate that an *in specie* distribution process could take around 13-14 months to complete if there were an *in specie* distribution coupled with a cash distribution. This is a rough estimate and is based on the estimates of time in paragraphs 9081-105 above and, as to the time to complete the cash component of the distribution, it is subject to the views of Mr Simmonds who has been engaged as an expert to opine on the time it would be likely to take to complete the liquidation of a number of apparently illiquid assets.

107. The table below summarises the estimated time for undertaking an *in specie* distribution:

Event	Estimated time	Pinpoint reference
Liquidators calculate the value of an investor's claim	Three months	Paragraph 86
Investors advise the Liquidators of assets they would like transferred by way of *in specie* distribution	One month	Paragraphs 91(b), 94
Investors open an account with an alternate broker	One month	Paragraph 96
Halifax staff process transfer forms completed by investors and provide instructions to IB for the transfer of assets	One month	Paragraphs 99-101
IB process the transfer of assets	Four to six weeks	Paragraph 102

Event	Estimated time	Pinpoint reference
Liquidators undertake the close-out of remaining investor positions and cash distribution of remaining assets	Six months (but again subject to the views of Mr Simmonds)	Paragraphs 103-105
	Total: 13-14 months	

108. As explained below in paragraphs 142-143, I believe that a cash distribution would be quicker than an *in specie* distribution. Also, an *in specie* distribution may hold up the process of a cash distribution because open positions on IB AU and IB NZ cannot be realised until the Liquidators know which positions are to be transferred to an investor rather than realised.

Costs of an* in specie *distribution

109. The costs involved in an *in specie* distribution are brokerage and commission costs; continued platform operating costs; and Liquidators' remuneration. The amount of the platform operating costs and the Liquidators' remuneration depends on the time that it takes to complete an *in specie* distribution. Below, I describe the brokerage and commission costs and platform operating costs that would arise in an *in specie* distribution.

110. Brokerage and commission costs: Several investors have expressed a view (including in the Distribution Responses and Communications) that an *in specie* distribution may result in lower brokerage and commission costs than a realisation of all positions. It is difficult to calculate with any certainty the costs that would be incurred by investors in transferring positions to another broker as part of an *in specie* distribution. The brokerage and commission costs may vary, depending on the following factors:

(a) the country to which the assets are being transferred – eg, all Australian transfers will cost A$50 per transfer request; some overseas exchanges may cost substantially more per transfer request; other overseas exchanges may charge less for each transfer;

(b) the specific broker cost structure related to the transfer – eg, some brokers may waive transfer fees when accepting an incoming client; and

(c) how many transfers are undertaken – eg, if an investor requests that assets be transferred to two brokers, brokerage and commission costs may be incurred twice.

111. Although, in light of the variables identified above, it is difficult to estimate the brokerage and commission costs for one transfer, a rough estimate is that each transfer of assets may cost $0 to US$85.

112. If the Courts make an order for an *in specie* distribution, my view is that only those investors who opt for an *in specie* distribution should pay the brokerage and commission costs associated with their transfer.

113. Platform operating costs: The liquidators currently incur A$102,000 (incl GST) in monthly operating costs. These costs are comprised of (a) A$55,000 in software costs required to maintain the MT4 and MT5 platforms and (b) A$47,000 in employment and occupancy costs, including wages and rent. I do not expect these costs to change substantially in the short to medium term. A further breakdown of the monthly platform costs, which is current as at June 2020 is contained in the table at **page 44** of the **Exhibit**.

114. Employment of the Halifax Treasury Team and their office space is required in order to maintain the IB AU, IB NZ, MT4 and MT5 platforms. The Halifax Treasury Team deal with technical inquiries from investors, produce reports from the platforms and attend to the maintenance of the platforms from an IT perspective. These costs would continue during an *in specie* distribution because regular reports would need to be prepared in relation to investor account balances and the value of the assets to be distributed to investors, and the Halifax Treasury Team would transfer assets from the IB Client Sub-Accounts to an account with another broker, as described above at paragraph 99.

115. Using the current amount of weekly operating costs (A$102,000), if the *in specie* distribution process took at least 13-14 months, operating costs could be at least A$1.5 million. A question may arise as to whether some or all of these costs should be borne only by those who wish to have an *in specie* distribution. If that were to occur, though, that would give rise to further complexities.

116. The costs of an *in specie* distribution are likely to be higher than the costs of a cash distribution only, as set out in paragraphs 144-148 below.

Benefits of* in specie *distribution to investors

117. At paragraph 16 above, I have summarised investors' views about the benefits of an *in specie* distribution. Below at paragraphs 118-121, I comment on some of the matters raised by investors.

118. First, an *in specie* distribution could be a suitable way in which to distribute illiquid stocks to investors who themselves place value in those stocks. For example, if an investor holds a significant portion of stocks in a company with a small capital value, that investor may see long-term benefits in those stocks and prefer to continue to hold them. The liquidators may otherwise have difficulty in selling the stocks.

119. Secondly, some investors appear to consider that an *in specie* distribution would be less costly than the close-out of positions because, for example, in a close-out of positions investors would incur costs relating to foreign currency exchange and reinvestment. However, as set out at paragraphs 109-116, I believe that the cost of an *in specie* distribution would be higher than the cost of a cash distribution.

120. Thirdly, some investors consider that an *in specie* distribution would be beneficial from a tax perspective. I do not have the expertise to comment on this.

121. Fourthly, as set out immediately below, I consider that there are a number of significant practical difficulties and an *in specie* distribution is not feasible.

Limitations of an* in specie *distribution

122. I believe that an *in specie* distribution would be complex because of complications arising from movements in the market and would take longer than a cash distribution. I discuss how market movements affect an *in specie* distribution at paragraphs 124-127 below. I discuss the time it may take to effect an *in specie* distribution at paragraphs 106-108 above.

123. Also, some investors have suggested in the Distribution Responses and Communications that they could contribute cash to account for the deficiency associated with their account and the assets in that account could be transferred in their entirety to the investors, that is, in effect to fund their proportion of the deficiency with cash (**Contribution Proposal**). This method of undertaking an *in specie* distribution would also be very difficult to achieve in practice because of complications arising from movement in the market, discussed below at paragraphs 121-127, and because of the administrative burden in executing this, discussed below at paragraph 128.

Market movements

124. The assets held in the IB Client Sub-Accounts are subject to market movements, which cannot be predicted. The value of an asset changes over the course of one day. As a result of ongoing market movements, there is a risk that:

(a) at least one investor (**Investor A**) will be distributed assets in excess of the amount that they should have received as a proportion of all assets available for distribution; and

(b) the remaining assets (other assets subject to an *in specie* distribution, assets to be realised to cash, and cash) available to other Halifax investors decreases such that those investors do not receive the same pro rata distribution.

125. Examples 1, 2 and 11 of the **Annexure** illustrate the problems identified in paragraph 124 above. The amounts identified in the examples are hypothetical only.

126. In theory, it may be possible to overcome the complications in market movements by the following methods:

(a) The investor could pay the amount that it has been overpaid to Halifax AU or Halifax NZ. In my experience as a Liquidator, I have not seen a situation in which investors repay assets distributed to them. The Liquidators would also need to expend resources in undertaking the collection of these overpaid amounts from investors. It is possible that some may prove to be irrecoverable.

(b) The Liquidators could undertake an *in specie* distribution at a value that is less than the value of an investor's claim and could undertake a cash distribution that would pay the investor an additional amount up to the value of their claim (that is, the difference between the value of an investor's claim and the value of the *in specie* distribution). Setting the value of an *in specie* distribution very low could avoid an investor receiving an amount that is greater than the value of their entitlement – see, for example, Example 8 of the **Annexure**. However, as there is no limit to the amount by which those assets may increase in value, it is not possible to set the value of an *in specie* distribution to a level which ensures that there is no risk of the investor being overpaid – see, for example, Example 9 of the **Annexure**.

(c) Investors could put up a certain amount of cash security to cover the risk of them receiving a distribution in assets that is greater than the distribution to which they are entitled.

127. However, even if it was possible to set the value of an *in specie* distribution to an amount that minimised the level of overpayment or even if investors could put up a cash security to minimise this risk, I am concerned about the additional time that it would add to the distribution process, the additional costs that would be incurred (even if these are to be borne by those who have opted for an *in specie* distribution) and the additional administrative burden that it would place on the liquidation. In this respect, I note that:

(a) A cash distribution would be available to all investors. There are 11,938 investor accounts. An *in specie* distribution would only be available to investors on IB AU and IB NZ who have open positions. As at 29 May 2020, there were 1,549 investor accounts with open stock positions held with IB AU and IB NZ: see above at paragraph 65. Investor accounts on IB AU and IB NZ with open positions comprise 13% of all investor accounts.

(b) The total value of investor account balances in the IB AU, IB NZ, MT4, MT5 as at 29 May 2020 was A$258,772,027. The total value of open positions recorded in IB Client Sub-Accounts on IB AU and IB NZ as at this date was A$109,125,064. That is, open positions recorded on IB Client Sub-Accounts represent 42% of the value of the Halifax portfolio.

(c) Before any assets on IB AU and IB NZ can be realised for a cash distribution, investors with open positions on IB AU and IB NZ would be given the opportunity to confirm which assets they would like transferred and those assets would need to be transferred. Open positions cannot be realised until the Liquidators know which assets are to be transferred to investors and are not available to be realised.

(d) While the Liquidators are waiting for investors on IB AU and IB NZ with open positions to indicate whether they would like a transfer, the Liquidators could effect a cash distribution of cash held in the Accounts. After the assets to be transferred to investors have been identified or transferred, the Liquidators could realise open positions, which are not to be distributed *in specie*, and could then effect another cash distribution. This will add significant additional costs to the liquidation because the Liquidators will be undertaking different types of distributions and multiple cash distributions. However, I note that even in a cash-only distribution, it is likely that the Liquidators would undertake more than one cash distribution, as explained below at paragraphs 130- 141.

(e) Any process which involves investors electing to receive certain assets and the Liquidators facilitating the transfer of those assets will require greater interaction between the investors and the Liquidators including the processing of multiple forms and other administrative tasks as described in paragraph 90-105 above. This will add significant additional costs to the liquidation.

Administrative burden of the Contribution Proposal

128. I believe that the Contribution Proposal would involve additional administrative tasks beyond those described at paragraphs 90-105 in relation to an *in specie* distribution. These tasks may include:

(a) Forms to be exchanged between the Liquidators and those investors opting for the Contribution Proposal, such as forms recording amounts to be contributed, bank account details and investor account numbers;

(b) The Liquidators preparing calculations of amounts to be paid by each investor who had opted for the Contribution Proposal. These amounts would be communicated to investors. The calculations would be complex given the issues associated with market movements;

(c) The Liquidators recording and accounting for funds deposited by investors;

(d) Making adjustments to IB AU and IB NZ investor balances to reflect funds deposited by investors; and

(e) The possibility that Liquidators may be required to refund amounts deposited by investors.

Cash distribution – process of realising assets and distributing cash to investors

129. In this section, I describe the process of undertaking a cash distribution and the time and costs associated with this process. I also describe the benefits and limitations of a cash distribution. For the reasons below, I consider a cash distribution to be more efficient than an *in specie* distribution.

Process of a cash distribution

130. If the Courts order a cash distribution and the Adjudication Date is in the future, the Liquidators would write to investors of Halifax AU and Halifax NZ, notifying them that the close-out of positions will commence after a period of time, say, for example, four weeks. As the value of an investor's claim would not have been determined yet, giving the investors the opportunity to manage the order in which their assets are realised may enable them to maximise the value of their claim or minimise risk.

131. If the Courts order a cash distribution and the Adjudication Date is in the past (ie a date that is prior to the date on which the remaining assets are realised), the value of an investor's claim would already have been set and so investors would not be given the opportunity to close out their positions.

132. The Liquidators would then commence the process of realising assets in the IB Client Sub-Accounts and the IB AU Prop Account. In realising open positions either in the IB Client Sub-Accounts or the IB AU Prop Account:

(a) the Liquidators may consult an equity markets expert to receive advice as to the most appropriate way to conduct a controlled sale of the assets;

(b) the Liquidators may instruct IB to realise all assets held on the IB Platforms; and

(c) the Halifax Treasury Team could close out positions manually.

133. The time that it would take to complete the close-out of by the Liquidators would depend on the liquidity or illiquidity of those assets, including whether there is a market for their realisation. As noted above at paragraph 103, I do not have the expertise to comment on this issue.

134. However, I have assumed that it would take around two weeks to realise the majority of assets or a large enough pool of assets to make an interim distribution, which I discuss below at paragraph 140.

135. Once an asset in an IB Client Sub-Account or the IB AU Prop Account had been sold, cash realised from the sale of the asset would be deposited into the relevant IB Client Sub-Account or into the IB AU Prop Account. The cash would then be transferred to an account controlled by the Liquidators.

136. In addition, the Liquidators would manually close out open positions on the MT4 and MT5 platforms. I have assumed that this would be instantaneous. There would be no realisation of assets on the MT4 and MT5 platforms because, as stated above at paragraph 56, there are no assets on the MT4 and MT5 platforms. However, if positions on MT4 and MT5 were hedged through Invast, as described above at paragraph 59, the closure of the position would automatically liquidate the hedge resulting in a cash balance remaining with Invast. The Liquidators would then request that Invast remit that cash balance to the Liquidators' bank account.

137. After the assets in the IB Client Sub-Accounts and the IB AU Prop Account have been realised and the positions on MT4 and MT5 have been closed, the Liquidators would

undertake the process of calculating the value of investor entitlements and the amount of cash available to satisfy those entitlements, as set out in paragraphs 81-86 above.

138. The cash in the account controlled by the Liquidators, referred to in paragraphs 135-136, would be distributed into nominated bank accounts of investors according to each investor's proportionate entitlement. As set out at paragraphs 104-105, I have assumed that the process of transferring cash into nominated bank accounts of investors could take 1-2 months.

139. The account controlled by Liquidators to which cash is transferred, referred to in paragraphs 135-136, could be a term deposit, which accrues at a particular interest rate. When investors receive the cash to which they are entitled, they could be paid this cash and the interest that has accrued on that cash in the term deposit.

140. The steps outlined in paragraphs 132-135 and 137-138 may happen in tranches, depending on the speed with which assets can be realised. An interim distribution could be paid to all investors where the majority of assets have been realised and there is a small amount of assets remaining to be realised which may delay a distribution to investors. At each interim distribution, all investors would receive the proportion of the pool of cash to which they are entitled. There would not be a risk of distributing an amount of cash to an investor that is greater than their entitlement because the value of cash does not change and the proportionate entitlement of each investor to a pool of cash can be calculated easily and quickly. An example of how an interim distribution could occur is at Example 7 of the **Annexure**. The amounts used in this example are hypothetical only.

141. The explanation at paragraphs 130-140 above is based on my experience as a liquidator.

Time taken for a cash distribution

142. Based on the steps outlined in paragraphs 81-88 and 129-140, I estimate that a cash distribution could take around 6 months to complete from the receipt of final orders from the Courts to the transfer of cash to investors. This is a rough estimate and, as noted above at paragraph 106 above, it is subject to the views of Mr Simmonds as to the time it would be likely to take to complete the liquidation of a number of assets. The table below summarises the estimated time for undertaking a cash distribution:

Event	Estimated time	Pinpoint reference
If the Adjudication Date is in the future, the Liquidators write to investors of Halifax AU and Halifax NZ, notifying them that the close-out of positions will commence after a period of time	One month	Paragraph 130
Liquidators realise assets	Two weeks (but again subject to the views of Mr Simmonds)	Paragraphs 134
Liquidators close out open positions on MT4 and MT5	Instantaneous	Paragraph 136
Liquidators calculate the value of investor claims and the amount of cash available for distribution	Three months	Paragraph 86
Deposit cash into investors' nominated bank accounts	One to two months	Paragraph 138
	Total: 6 months	

143. The steps identified above could be shorter or longer – for example, if it is difficult to realise certain assets, there would likely be an interim distribution and the final cash distribution would occur at a later date.

Costs of a cash distribution

144. The costs involved in a cash distribution are brokerage and commission costs; platform operating costs; and Liquidators' remuneration.

145. In relation to platform operating costs and Liquidators' remuneration, the amount of these costs depends on the time that it takes to compete a cash distribution. As a cash distribution is likely to be shorter than an *in specie* distribution, the platform operating

costs and the Liquidators' remuneration for a cash distribution are likely to be less than for an *in specie* distribution.

146. Also, I believe that the process of closing out open positions and distributing cash only will be less resource-intensive than the process of undertaking an *in specie* distribution. This is because the Liquidators do not need to provide investors with time to indicate whether they would like an *in* specie distribution or time to open an account with a new broker and transfer requests do not need to be processed in a cash distribution. In an *in specie* distribution, the steps outlined at paragraphs 91-102 above need to be undertaken as well as the steps involved in a cash distribution.

147. I refer to the Liquidators' current platform operating costs at paragraph 113 above. Using the current amount of monthly operating costs (A$102,000), if a cash distribution process took at least 6 months, operating costs could be at least A$600,000. Once all MT4 and MT5 positions are closed out and investors' entitlements have been set, the Liquidators would be able to achieve cost savings by ceasing to incur costs associated with maintenance of the MT4 and MT5 platforms. This could result in software cost savings of approximately A$37,000 per month. There are no software costs associated with the IB Platform.

148. In relation to brokerage and commission costs, as noted above at paragraph 110, several investors have expressed a view that a cash distribution may result in higher brokerage and commission costs than an *in specie* distribution. I estimate that the brokerage and commission costs associated with a cash distribution would be approximately A$130,000. This figure was based upon the brokerage and commission charged by IB which varies based on the exchange, currency and the volume of the individual trade or sale. At **pages 45 to 99** of the **Exhibit** is a copy of screenshots from the IB website, showing the pricing structure. The address of the website is https://www.interactivebrokers.com.au/en/index.php?f=39753&p=stocks1.

Benefits of cash distribution to investors

149. At paragraph 17 above, I have summarised investors' views about the benefits of a cash distribution to investors – namely, a cash distribution will be quicker than an *in specie* distribution and less costly.

150. I believe that the limitations described in paragraphs 122-127 above relating to an *in specie* distribution, in particular complications arising from market price movements of open positions, do not arise in a cash distribution because all open positions are closed out to cash. Once an open position has been realised, except in relation to foreign

currency movements discussed below at paragraph 159, the value of the cash obtained following realisation does not change. Accordingly, there is no risk of an investor being paid an amount that is greater than what they are entitled to receive.

151. Examples 4, 5 and 7 of the **Annex** illustrate how a cash distribution might look and show that it is not subject to market movements like an *in specie* distribution. The amounts identified in the examples are hypothetical only.

Limitations of cash distribution

152. I believe that a cash distribution involves the following limitations, although there are ways of overcoming some of these limitations. In addition, these limitations will arise in any event because (unless investors "fund" their proportion of the deficiency with cash) an *in specie* distribution will be accompanied by a cash distribution. As part of the cash distribution arising with an *in specie* distribution, assets that are not transferred to investors would need to be realised.

153. First, some assets could be illiquid causing difficulties in converting these assets to cash. As noted above at paragraph 106, I do not have the expertise to comment on this issue, but an expert, Mr Simmonds, has been engaged to opine on this. However, as stated above at paragraph 143, it would be possible to undertake an interim distribution of liquid assets followed by a distribution of illiquid assets once they have been realised. Two or more cash distributions would involve more cost than one distribution but this may be unavoidable. Also, these costs would be incurred in an *in specie* distribution to the extent that investors elect not to receive illiquid assets and those illiquid assets had to be realised. In addition, if Halifax AU or Halifax NZ receives funds from any recoveries from third parties, there will be multiple cash distributions to investors.

154. Secondly, as noted above at paragraph 16, some investors have raised concerns that the conversion of assets to cash may disrupt their investment strategy and result in dividends no longer being received. However, in my view, there is no way to avoid this in a cash distribution process.

155. Thirdly, in a cash distribution an issue arises as to how foreign currency, and the risk of currency fluctuations, should be managed. In this regard:

(a) cash and assets in the IB Client Sub-Accounts and the IB AU Prop Account are held in multiple currencies, which means that their value fluctuates on a daily basis. This in turn means that it is difficult to determine the value of the total pool of assets available to investors and each investor's proportionate entitlement to that pool;

(b) investors who have an account in a particular currency or in multiple currencies may have an expectation that they will receive cash in the same currency or currencies as their account; and

(c) the currency in which investors are paid will determine the currency or currencies in which cash needs to be held for distribution.

156. In paragraph 6 of the AU Process and paragraph 1(b)(iv) and (v) of the NZ Application, the Liquidators have asked the Courts for a direction and judicial advice as to:

(a) whether the Liquidators are justified in converting funds held in foreign currency into AUD for the purpose of calculating the quantum of the funds to be distributed;

(b) if the funds should not be converted into AUD, how and when the value of any funds held in foreign currency should be calculated for the purposes of distribution to clients of Halifax AU and Halifax NZ; and

(c) whether the Liquidators are justified in converting funds held in AUD to NZD for the purposes of making distributions to clients of Halifax NZ.

157. The cash realised from the close-out of open positions (including any foreign currency positions not in the base currency) will be credited to IB Client Sub-Accounts and the IB AU Prop Account in the base currency. The base currency of the IB AU Prop Account is Australian dollars. A summary of the various base currencies of the IB Client Sub-Accounts as at 29 May 2020 is set out below.

Base currency	**Number of accounts**	**Balance in base currency**	**Balance in AU$**
AUD	6,315	162,551,193	162,551,193
CAD	1	3,204	3,490
CHF	1	5,502	8,587
EUR	43	663,732	1,105,645
GBP	29	201,264	372,901
NZD	1,761	51,978,252	48,381,877
SGD	12	136,839	145,405
USD	3,776	30,799,900	46,202,929
Total	**11,938**		**258,772,027**

158. Ordinarily, in my experience, in a liquidation, in order to calculate a dividend entitlement for each creditor, the liquidator would convert all assets into one currency. The liquidators would then pay a distribution in that currency. If a creditor wishes to receive funds in other currencies, conversion to that currency would be at that creditor's cost and risk. This enables the most straightforward calculation and distribution process.

159. In the case of the liquidation of Halifax AU and Halifax NZ, the assets are held and the base currencies are in multiple currencies. In my experience, the simplest distribution method would be to convert all assets to one currency, the most logical of which is Australian dollars, given the high proportion of accounts in that base currency. The Liquidators would then distribute the assets in this currency.

160. Fourthly, as described above at paragraph 104, practical difficulties may arise in the payment of cash to investors in overseas locations. Clients of Halifax AU and Halifax NZ reside in at least 60 countries. These difficulties will also arise in an *in specie* distribution because it will be accompanied by a cash distribution.

Conclusion as to whether an *in specie* distribution or a cash distribution is preferable

161. In light of my description of an *in specie* distribution and a cash distribution above, I believe that an *in specie* distribution is more complex to undertake than a cash distribution and that a cash distribution is likely to be more efficient and cost effective. The reasons for my belief are, by way of summary of what appears above, as follows:

(a) In an *in specie* distribution, due to market movements, there is a risk that an investor will receive more assets than they are entitled to receive in an *in specie* distribution, as explained above at paragraphs 124-127. For the reasons above at paragraphs 130-140, a cash distribution does not give rise to the risk that an investor will receive more assets than they are entitled to receive.

(b) A possible solution to the complications arising from market movements is to conduct an *in specie* distribution of a small portion of assets; however, as noted above at paragraphs 124-128, this would place an additional administrative burden on the liquidation.

(c) A cash distribution is likely to take less time and cost less than an *in specie* distribution, as set out above at paragraphs 142-143 and 107-108.

(d) The practical difficulties that arise in a cash distribution are also likely to arise in an *in specie* distribution because any *in specie* distribution will (except to the extent that investors "fund" their proportion of the deficiency) be accompanied by a cash distribution, as explained above at paragraphs 103-105.

162. As a final comment, I note that during the distribution process, assets will need to be held in reserve to pay the remaining costs and expenses of the liquidation and remuneration of the Liquidators. The amount of any *in specie* distribution or interim distribution of cash will need to account for this. At paragraphs 109-116 above, I have commented on the costs that would be involved in an *in specie* distribution. At paragraphs 144-148, I have commented on the costs that would be involved in a cash distribution, including an interim distribution.

<u>PART III: METHODOLOGY FOR DETERMINING WHETHER AN ACCOUNT FALLS WITHIN CATEGORY 3</u>

163. The category represented by the Third Defendant is "investors of both Halifax AU and Halifax NZ who transferred shares into the IB platform from another stockbroker and have not traded in those shares" (**Category 3**).

164. Shares transferred from an external broker into the IB Platform, which have not been traded, may be traceable because the funds used to acquire the shares have not passed through a commingled account.

165. Investors falling within Category 3 are identifiable from the "transfers", "open positions" and "trades" sections of statements produced in respect of the IB Client Sub-Accounts (**Client Account Statements**). These sections identify where investors transferred in

from another broker, what trades occurred post the transfer and what shares remain in the account at the time a statement is generated. By way of example, the Client Account Statements for the Third Defendant, Mr Hingston, for 2017, 2018 and 2019 is at **pages 1** to **22** of **Confidential Exhibit MJK-8.1** (**Third Defendant Account Statements**).

166. The “transfers” section of the Client Account Statements shows whether shares have transferred into the account, the date of any transfer, the quantity, and the method by which shares were transferred in an IB AU or IB NZ account. The code “internal” in the “type” column of the “transfers” section normally refers to a transfer either from another client account within IB or from the IB AU Prop Account. There are various codes which indicate that the transfer has come from an external broker. For example on **page 12** of the **Confidential Exhibit MJK-8.1** "SRN_AU" appears in the "type" column, which means that the shares have been transferred from an external broker. The Third Defendant Account Statement shows that on 19 March 2018, 225,212 ALU shares were transferred into IB from an external broker.

167. The “open positions” section of the Client Account Statements shows a listing of the stocks held as at the date the statement was generated. The “open positions” section of the Third Defendant Account Statements for 2018 and 2019, at **pages 9** and **17** of the **Confidential Exhibit MJK-8.1**, refers to 160,460 ALU shares as at 31 December 2018 and the same number of shares as at 31 December 2019. The reason that the “open positions” section does not record 225,212 ALU shares is because Mr Hingston sold the difference prior to that date (the details of which is shown in the "trades" section of the Client Account Statement for 2018 as described below).

168. I note that the Third Defendant Account Statement for 2018 Third Defendant Account Statement for 2018, at **page 8** of the **Confidential Exhibit MJK-8.1**, also refers to the Third Defendant’s IB Client Sub-Account holding 188,914 ALU shares as at 31 December 2017. These shares were not transferred to IB from an external broker and were sold by Mr Hingston between 20-27 February 2018. These sales are recorded at **pages 10** to **12** of the **Confidential Exhibit MJK-8.1**.

169. The “trades” section of the Client Account Statements shows any trades placed in the client's IB account during the period of the statement. For example, the Third Defendant Account Statement for 2018 shows at **page 12** of the **Confidential Exhibit MJK-8.1** that after the transfer of 225,212 ALU shares into his account, Mr Hingston sold a total of 64,752 ALU shares from 21 March 2018 to 30 August 2018.

170. Using the Third Defendant Account Statement as an example, the Third Defendant falls within Category 3 because, so far as the available documents reveal:

(a) he transferred 225,212 ALU shares into his account from an external broker on 19 March 2018; and

(b) of those 225,212 ALU shares 160,460 of the ALU shares remain in the account.

171. If shares transferred to the IB Platform from an external broker have been sold, the cash proceeds from that sale were recorded in the relevant IB Client Sub-Account (**Cash Proceeds**). I do not think it is likely that any investor had only Cash Proceeds and no other cash in their IB Client Sub-Account. That is because in order to open an IB Client Sub-Account, some cash had to be deposited into that account. Any such cash, has likely passed through the IB AU Master Account or the IB NZ Master Account, which contain commingled funds as explained in paragraphs 171-174 in my June 2019 Affidavit.

172. As explained in paragraph 203 of my June 2019 Affidavit, tracing of client deposits is not practically feasible. I also refer to the memorandum prepared by Mr Sutherland titled "*Investor tracing and case studies*", which is contained at pages 1049 to 1067 Confidential Exhibit MJK-1 to my June 2019 Affidavit. For the reasons set out in detail in paragraphs 200-212 of my June 2019 affidavit, in my view it is not practically feasible for the Liquidators to search for individual instances of traceability. For this reason my view is that the category of investments represented by the Third Defendant (being those investments which are shares transferred into the IB platform from another stockbroker and which have not been traded) is the extent of investments which can be feasibly traced.

PART IV: NEGATIVE ACCOUNT BALANCES

173. I asked Mr Sutherland to check whether any of the accounts with the negative account balances were accounts of investors who had other accounts with positive cash balances. I believe that Mr Sutherland worked with Mr Couto to undertake this exercise. Below is a summary of the results of their search. I understand that this information was obtained from the IB AU, IB NZ, MT4 and MT5 platforms.

174. As at 29 May 2020, there were 271 accounts with negative account balances and the total value of the negative account balances was -A$541,735.10. The table below breaks down the number and value of negative account balances by platform:

Platform	Number of accounts with negative account balances	Total value of negative account balance
IB AU	12	(A$1,575.11)
IB NZ	37	(A$2,206.70)
MT4	141	(A$191,205.72)
MT5	81	(A$346,747.56)
Total	**271**	**(A$541,735.10)**

175. Of the 271 accounts with a negative account balance, 172 accounts have a negative balance of A$0 to -A$100, with a total sum of -A$2,808.44. The remaining 99 accounts with a negative account balance have a negative account balance lower than -A$100 (**<-100 Accounts**), with a total sum of -A$538,926.65.

176. Of the <-100 Accounts, the investors associated with 27 of those accounts have other accounts with a positive balance, totalling A$1,157,335.11.

177. At **pages 945-946** of the **Confidential Exhibit** is a table which identifies the 99 accounts with a negative account balance lower than -A$100 and the accounts with a positive account balance held by the same investor.

PART V: ACCOUNTS WHICH HOLD LESS THAN A$100

178. Set out below is a summary of accounts which had a credit balance between A$0.00 and A$49.99 as at 23 November 2018:

Platform	Number of accounts $0 - $49.99	Total value of accounts $0 - $49.99	Mean account balance $0 - $49.99
IB AU	202	3,786.03	18.74
IB NZ	122	1,570.92	12.88
MT4	1,909	26,759.13	14.02
MT5	608	9,638.89	15.85
Total	**2,841**	**41,754.97**	**14.70**

179. Set out below is a summary of accounts which had a credit balance between A$50.00 and A$99.99 as at 23 November 2018:

Platform	Number of accounts $50 - $99.99	Total value of accounts $50 - $99.99	Mean account balance $50 - $99.99
IB AU	206	13,852.51	67.25
IB NZ	57	4,373.85	76.73
MT4	443	32,365.52	73.06
MT5	183	13,558.92	74.09
Total	**889**	**64,150.80**	**72.16**

180. Set out below is a summary of accounts which had a credit balance between A$100.00 and A$149.99 as at 23 November 2018:

Platform	Number of accounts $100 - $149.99	Total value of accounts $100 - $149.99	Mean account balance $100 - $149.99
IB AU	57	6,853.44	120.24
IB NZ	28	3,370.81	120.39
MT4	320	38,458.14	120.18
MT5	102	12,035.91	118.00
Total	**507**	**60,718.29**	**119.76**

181. Set out below is a summary of accounts which had a credit balance between A$0.00 and A$49.99 as at 29 May 2020:

Platform	Number of accounts $0 - $49.99	Total value of accounts $0 - $49.99	Mean account balance $0 - $49.99
IB AU	176	4,017.33	22.83
IB NZ	87	1,729.93	19.88
MT4	1,926	26,804.29	13.92
MT5	609	9,661.99	15.87
Total	**2,798**	**42,213.54**	**15.09**

182. Set out below is a summary of accounts which had a credit balance between A$50.00 and A$99.99 as at 29 May 2020:

Platform	Number of accounts $50 - $99.99	Total value of accounts $50 - $99.99	Mean account balance $50 - $99.99
IB AU	211	14,242.14	67.50
IB NZ	54	4,075.41	75.47
MT4	440	32,013.85	72.76
MT5	182	13,517.67	74.27
Total	**887**	**63,849.06**	**71.98**

183. Set out below is a summary of accounts which had a credit balance between A$100.00 and A$149.99 as at 29 May 2020:

Platform	Number of accounts $100 - $149.99	Total value of accounts $100 - $149.99	Mean account balance $100 - $149.99
IB AU	60	7,367.85	122.80
IB NZ	40	4,827.13	120.68
MT4	311	37,267.94	119.83
MT5	106	12,491.32	117.84
Total	**517**	**61,954.24**	**119.83**

184. I am informed by Mr Sutherland that he obtained the information in the table above from the IB AU, IB NZ, MT4 and MT5 platforms.

185. It is difficult to quantify the costs associated with distributing funds to each investor with an account with a balance of less than A$100. The steps set out in paragraphs 86-88 would need to be undertaken. The remuneration of the Liquidators' and the cost of staff of Halifax AU in undertaking these steps will depend on the time taken to calculate the value of each investor's claim as at the Adjudication Date and the ease with which they can contact an investor and the extent to which there is "back and forth" between the investor and the Liquidators or staff about the value of their claim, the amount of cash that is being distributed to them and the investor's account details.

PART VI: PRODUCT DISCLOSURE STATEMENTS

186. I am aware of the following Product Disclosure Statements (**PDS**) of Halifax AU, which are at **pages 100** to **626** of the **Exhibit:**

(a) PDS dated 30 January 2008. Exhibited at **pages 100** to **162** of the **Exhibit** is a copy of this PDS;

(b) PDS titled 'Contracts for Difference' dated 28 February 2008. Exhibited at **pages 163** to **193** of the **Exhibit** is a copy of this PDS;

(c) PDS titled 'Foreign Exchange' dated 28 February 2009. Exhibited at **pages 194** to **224** of the **Exhibit** is a copy of this PDS;

(d) PDS titled 'Future Contracts and Options Contracts' dated 28 February 2009. Exhibited at **pages 225** to **254** of the **Exhibit** is a copy of this PDS;

(e) PDS titled 'Future Contracts and Futures Options Contracts' dated 28 July 2014. Exhibited at **pages 255** to **291** of the **Exhibit** is a copy of this PDS;

(f) PDS titled 'Contracts For Difference' dated 20 October 2014. Exhibited at **pages 292** to **344** of the **Exhibit** is a copy of this PDS;

(g) PDS titled 'Margin Foreign Exchange' dated 7 May 2015. Exhibited at **pages 345** to **402** of the **Exhibit** is a copy of this PDS;

(h) PDS titled 'Contracts for Difference' dated 21 July 2016. Exhibited at **pages 403** to **454** of the **Exhibit** is a copy of this PDS;

(i) PDS titled 'Contracts for Difference' dated 28 July 2016. Exhibited at **pages 455** to **506** of the **Exhibit** is a copy of this PDS;

(j) PDS titled 'Margin Foreign Exchange' dated 28 July 2016. Exhibited at **pages 507** to **561** of the **Exhibit** is a copy of this PDS; and

(k) PDS titled 'Contracts for Difference | Foreign Exchange Products' dated 4 April 2018. Exhibited at **pages 562** to **626** of the **Exhibit** is a copy of this PDS.

187. I am aware of the following Product Disclosure Statements (**PDS**) of Halifax NZ, which are at **pages 627** to **860** of the **Exhibit:**

(a) Schedule to the PDS titled 'Schedule dated 26 May 2015 Relating to the Product Disclosure Statement dated 26 May 2015 for Contracts for Difference Issued by Halifax New Zealand Limited'. Exhibited at **pages 627** to **639** of the **Exhibit** is a copy of this schedule;

(b) PDS titled 'Contracts for Difference' dated 30 June 2016. Exhibited at **pages 640** to **665** of the **Exhibit** is a copy of this PDS;

(c) PDS titled 'Exchange Traded Option Contracts' dated 26 May 2015. Exhibited at **pages 666** to **687** of the **Exhibit** is a copy of this PDS;

(d) Schedule to the PDS titled 'Schedule dated 26 May 2015 Relating to the Product Disclosure Statement dated 26 May 2015 for Contracts for Difference Issued by Halifax New Zealand Limited'. Exhibited at **pages 688** to **700** of the **Exhibit** is a copy of this schedule;

(e) PDS titled 'Futures Contracts and Futures Option Contracts' dated 26 May 2015. Exhibited at **pages 701** to **725** of the **Exhibit** is a copy of this PDS;

(f) Schedule to the PDS titled 'Schedule dated 26 May 2015 Relating to the Product Disclosure Statement dated 26 May 2015 for Futures Contracts and Futures Option Contracts Issued by Halifax New Zealand Limited'. Exhibited at **pages 726** to **733** of the **Exhibit** is a copy of this schedule;

(g) PDS titled 'Margin Foreign Exchange and Foreign Exchange Options' dated 30 June 2016. Exhibited at **pages 734** to **761** of the **Exhibit** is a copy of this PDS.

(h) Schedule to the PDS titled 'Schedule dated 26 May 2015 Relating to the Product Disclosure Statement dated 26 May 2015 for Margin Foreign Exchange and Foreign Exchange Options Issued by Halifax New Zealand Limited'. Exhibited at **pages 762** to **773** of the **Exhibit** is a copy of this schedule;

(i) PDS titled 'Margin Foreign Exchange and Foreign Exchange Options' dated 26 May 2015. Exhibited at **pages 774** to **818** of the **Exhibit** is a copy of this PDS; and

(j) PDS titled 'Contracts for Difference' dated 26 May 2015. Exhibited at **pages 819** to **860** of the **Exhibit** is a copy of this PDS.

Affirmed by the deponent at Sydney in New South Wales on ~~19~~ 22 June 2020 Before me:	)))))	Signature of deponent

Signature of witness

Name of Witness: LES MAROUN

Address of Witness: LEVEL 20, 1 CASTLEREAGH ST, SYDNEY NSW

Qualification of Witness: SOLICITOR

"Annexure" Hypothetical in specie distribution and cash distribution"

This is the annexure marked "Annexure-Hypothetical in specie distribution and cash distribution" referred to in the affidavit of Morgan John Kelly affirmed at Sydney this 22nd day of June 2020 before me:

a person duly authorised to administer oaths and affirmations in New South Wales: Les Maroun Solicitor Sydney

ANNEXURE – HYPOTHETICAL *IN SPECIE* DISTRIBUTION AND CASH DISTRIBUTION

Example 1 (in specie distribution and portfolio decreases)

188. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at 30 June 2020 – that is, the Adjudication Date is 30 June 2020.

(b) As at 30 June 2020, total balance of individual investor accounts (**total client equity positions**) are equal to A$250 million and the total assets held by Halifax AU and Halifax NZ (**Halifax portfolio**) is equal to A$230 million, resulting in a deficiency of A$20 million or 8% of client positions.

(c) As at 30 June 2020, all investors are entitled to a distribution of 92 cents in the dollar on a pro rata basis. However, this is subject to change as the value of the portfolio changes.

(d) As at 30 June 2020, Investor A has an equity balance of A$100,000 consisting only of shares. Investor A is entitled to 0.04% of the assets available to be distributed.

(e) On 31 July 2020, the Liquidators notify Investor A that they are entitled to a distribution of 0.04% of assets available to be distributed (**Investor A Entitlement**) and that they can elect to receive an *in specie* distribution up to that value. That is, Investor A can elect that shares up to the value of the Investor A Entitlement be transferred to another broker. In this affidavit, I refer to the notification provided by the Liquidators to investors about their entitlement as the **Distribution Declaration**. I refer to the date on which the Liquidators issue the Distribution Declaration as the **Distribution Declaration Date**.

(f) On 31 August 2020, Investor A notifies the Liquidators that it elects to receive an *in specie* distribution of all of the Investor A Entitlement.

(g) As at 31 August 2020, the Halifax portfolio is still equal to A$230 million, meaning that investors are still entitled to 92 cents in the dollar on a pro rata basis. Based on the Investor A Entitlement, A$92,000 in assets should be distributed to Investor A.

(h) Also, on 31 August 2020, Investor A's shares are worth A$92,000 and the process of effecting a transfer of those shares from Investor A's IB Client Sub-Account to an account with another broker commences.

(i) Three months later, on 30 November 2020, the *in specie* distribution takes place (**Investor A Distribution Date**). That is, the Investor A Entitlement is transferred from Investor A's IB Client Sub-Account to another broker.

(j) Between 31 August 2020, when the transfer process commenced, and 30 November 2020, the Investor A Distribution Date, the Halifax assets reduces from A$230 million to A$200 million, resulting in a deficiency of $50 million or 20% of client positions.

(k) As a result of the reduction in the value of the Halifax portfolio, the assets available to distribute to Investor A are now only A$80,000 (0.04% of A$200 million); however a process to effect a distribution of assets valued at A$92,000 to Investor A has already been undertaken.

189. In Example 1, if the *in specie* distribution in the amount of A$92,000 to Investor A was effected, Investor A would have received assets having a value greater than the amount they are entitled to and other investors would consequently receive assets having a value lower than the amount they are entitled to. The additional assets distributed to Investor A above the Investor A Entitlement should have been distributed to other investors.

Example 2 (impact of market movements on investors not receiving* in specie *distribution)

190. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at 30 June 2020 – that is, the Adjudication Date is 30 June 2020.

(b) As at 30 June 2020, total client equity positions are equal to A$250 million and the Halifax portfolio is equal to A$230 million, resulting in a deficiency of A$20 million or 8% of client positions.

(c) As at 30 June 2020, all investors are entitled to a distribution of 92 cents in the dollar on a pro rata basis. However, this is subject to change as the value of the portfolio changes.

(d) As at 30 June 2020, 1,000 investors have an equity balance of A$100 million consisting only of shares. Those investors are entitled to 40% of the assets available to be distributed (**Example 2 Entitlement**).

(e) In Distribution Declarations issued on 31 July 2020, the Liquidators provide investors on IB AU and IB NZ with open positions with the option of transferring assets *in specie* in the same way as Example 1. That is, those 1,000 IB AU and IB NZ investors who hold assets other than cash are given the opportunity to elect whether to transfer those assets to another broker or to realise those assets.

(f) After the Distribution Declaration Date by around 31 August 2020, 1,000 investors elect to receive an *in specie* distribution of all of their Example 2 Entitlement.

(g) As at 31 August 2020, the Halifax portfolio is still equal to A$230 million, meaning that investors are still entitled to 92 cents in the dollar on a pro rata basis. Based on the Example 2 Entitlement, A$92 million in assets should be distributed to the 1,000 investors who elected to receive an *in specie* distribution.

(h) Also, on 31 August 2020, the 1,000 investors' shares are worth A$92 million and the process of effecting a transfer of those shares from investors' IB Client Sub-Accounts to accounts with other brokers commences.

(i) As a result of the election, the remaining assets of the Halifax portfolio, which total A$138 million as at 31 August 2020, are due to be distributed in cash to investors. To generate A$138 million in cash, some shares need to be sold.

(j) Three months later, on 30 November 2020, the *in specie* distribution takes place and the shares valued at A$92 million on 31 August 2020 are transferred from the investors' IB Client Sub-Accounts to other brokers (**Example 2 Distribution Date**).

(k) Between 31 August 2020, when the transfer process commenced, and 30 November 2020, being the Example 2 Distribution Date, the Halifax portfolio reduces from A$230 million to A$200 million, resulting in a deficiency of A$50 million or 20% of client positions. Also, the shares valued at A$92 million as at 31 August 2020 are now valued at A$85 million, representing a 9% decrease in value.

(l) As a result of the reduction in the value of the Halifax portfolio, investors should now receive 80 cents in the dollar on a pro rata basis (A$200 million / $250 million). For those investors who elected for an *in specie* distribution and who had an equity balance of A$100 million as at the Adjudication Date, a distribution of only A$80 million should have been received. For those investors who elected for a cash distribution and who had an equity balance of A$150 million as at the Adjudication Date, a distribution of A$120 million should have been received.

(m) However, the assets that have been distributed to those who elected for an *in specie* distribution are now valued at A$85 million, leaving A$115 million to be distributed in cash to investors. This results in investors receiving an *in specie* distribution of 85 cents in the dollar and other investors receiving a cash distribution of 77 cents in the dollar.

191. Example 2 shows how an *in specie* distribution can lead to the amount of assets available for a cash distribution reducing such that those investors who receive a cash distribution do not receive the same pro rata distribution as those investors who receive an *in specie* distribution.

Example 3 (*in specie *distribution and portfolio increases)

192. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at 30 June 2020 – that is, the Adjudication Date is 30 June 2020.

(b) As at 30 June 2020, total client equity positions are equal to A$250 million and the Halifax portfolio is equal to A$230 million, resulting in a deficiency of A$20 million or 8% of client positions.

(c) As at 30 June 2020, all investors are entitled to a distribution of 92 cents in the dollar on a pro rata basis. However, this is subject to change as the value of the portfolio changes.

(d) As at 30 June 2020, Investor C has an equity balance of A$100,000 consisting only of shares. Investor C is entitled to 0.04% of the assets available to be distributed.

(e) On 30 June 2020, the Liquidators issue a Distribution Declaration to Investor C, notifying the investor that they are entitled to a distribution of 0.04% of assets to be distributed (**Investor C Entitlement**) and that they can elect to receive an *in specie* distribution up to that value. That is, Investor C can elect that shares up to the value of the Investor C Entitlement be transferred to another broker.

(f) On 31 August 2020, Investor C notifies the Liquidators that it elects to receive an *in specie* distribution of all of the Investor C Entitlement.

(g) As at 31 August 2020, the Halifax portfolio is still equal to A$230 million, meaning that investors are still entitled to 92 cents in the dollar on a pro rata basis. Based on the Investor C Entitlement, A$92,000 in assets should be distributed to Investor C.

(h) Also, on 31 August 2020, Investor C's shares are worth A$92,000 and the process of effecting a transfer of those shares from Investor C's IB Client Sub-Account to an account with another broker commences.

(i) Three months later, on 30 November 2020, the *in specie* distribution takes place (**Investor C Distribution Date**). That is, the Investor C Entitlement is transferred from Investor C's IB Client Sub-Account to another broker.

(j) Between 31 August 2020, when the transfer process commenced, and 30 November 2020, the Investor C Distribution Date, the Halifax portfolio increases from A$230 million to A$240 million, decreasing the deficiency to $10 million or 4% of client positions (which would, in theory, result in a distribution of 96 cents in the dollar to all investors on a pro rata basis).

(k) As a result of the increase in the value of the Halifax portfolio, the assets available to distribute to Investor C should have been A$96,000 (0.04% of A$240 million).

193. In Example 3, Investor C would have received assets lower in value than the amount they are entitled to. In addition, Example 3 may result in a situation where there would be surplus assets remaining in the accounts of Halifax AU and Halifax NZ. This issue could be resolved by distributing the surplus assets to investors in a subsequent cash distribution.

Example 4 (cash distribution – adjudication date as at 30 June 2020)

194. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at 30 June 2020 – that is, the Adjudication Date is 30 June 2020.

(b) As at 30 June 2020, total client equity positions are equal to A$250 million.

(c) By 30 June 2020, all shares in the IB AU and IB NZ Client Sub-Accounts and the IB AU Prop Account have been realised. All assets held by Halifax AU and

Halifax NZ are now in the form of cash. Following realisation, Halifax AU and Halifax NZ hold A$230 million all of which is available for distribution to investors.

(d) There is a deficiency of A$20 million or 8% of client positions (A$250 million – A$230 million). Accordingly, all investors receive a cash distribution of 92 cents in the dollar on a pro rata basis.

(e) As at 30 June 2020, Investor D has an equity balance of A$100,000. Given that all assets have been realised, this balance consists of cash only.

(f) On 31 July 2020, the Liquidators issue a Distribution Declaration to Investor D, notifying the investor that they are entitled to a cash distribution of A$92,000 (**Investor D Entitlement**).

(g) On 31 August 2020, the Liquidators transfer A$92,000 to Investor D's nominated bank account (**Investor D Distribution Date**)

195. In Example 4, Investor D receives a distribution of A$92,000, which is equal to the Investor D Entitlement. Between 31 July 2020, the Distribution Declaration Date, and 31 August 2020, the Investor D Distribution Date, there is no movement in the value of the assets of Halifax AU and Halifax NZ. This is because all assets have been converted into cash and there are no shares or other financial products, the value of which would be subject to market fluctuations other than foreign currency movements.

Example 5 (cash distribution – adjudication date as at 22 November 2018)

196. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at close of business on 22 November 2018, being the day before the Liquidators were appointed as voluntary administrators – that is, the Adjudication Date is 22 November 2018.

(b) As at 22 November 2018, total client equity positions were equal to A$210 million.

(c) By 30 June 2020, all shares in the IB AU and IB NZ Client Sub-Accounts and the IB AU Prop Account have been realised. All assets held by Halifax AU and Halifax NZ are now in the form of cash. Following realisation, Halifax AU and Halifax NZ hold A$230 million all of which is available for distribution to investors.

(d) There is a surplus of A$20 million. Accordingly, leaving to one side any question of any investor (e.g., those within Category 3) having a traceable entitlement, all investors receive a cash distribution of 110 cents in the dollar on a pro rata basis.

(e) As at 30 June 2020, Investor E has an equity balance of A$100,000. Given that all assets have been realised, this balance consists of cash only.

(f) On 31 July 2020, the Liquidators issue a Distribution Declaration to Investor E notifying the investor that they are entitled to a cash distribution of A$110,000 (**Investor E Entitlement**).

(g) On 31 August 2020, the Liquidators transfer A$110,000 to Investor E's nominated bank account (**Investor E Distribution Date**)

197. In Example 5, Investor D receives a distribution of A$110,000, which is equal to the Investor E Entitlement. Between 31 July 2020, the Distribution Declaration Date, and 31 August 2020, the Investor E Distribution Date, there is no movement in the value of the assets of Halifax AU and Halifax NZ. This is because all assets have been converted into cash and there are no shares or other financial products, the value of which would be subject to market fluctuations.

Example 6 (*in specie *distribution and adjudication Date as at 22 November 2018)

198. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at close of business on 22 November 2018, being the day before the Liquidators were appointed as voluntary administrators of Halifax AU – that is, the Adjudication Date is 22 November 2018.

(b) As at 22 November 2018, total client equity positions were equal to A$210 million.

(c) As at 22 November 2018, Investor F has an equity balance of A$100,000 consisting only of shares. Investor F is entitled to 0.048% of assets available to be distributed.

(d) As at 30 June 2020, the Halifax portfolio is equal to A$250 million, resulting in a surplus of A$40 million. Accordingly, as at that date, again leaving to one side any question of any investor (e.g., those within Category 3) having a traceable entitlement, all investors are entitled to a distribution of 119 cents in the dollar on a pro rata basis. However, this is subject to change as the value of the portfolio changes.

(e) On 31 July 2020, the Liquidators issue a Distribution Declaration to Investor F, notifying Investor F that they are entitled to a distribution of 0.048% of assets available to be distributed (**Investor F Entitlement**) and that they can elect to receive an *in specie* distribution up to that value. That is, Investor F can elect that shares up to the value of the Investor F Entitlement be transferred to another broker.

(f) On 31 August 2020, Investor F notifies the Liquidators that it elects to receive an *in specie* distribution of all of the Investor F Entitlement.

(g) As at 31 August 2020, the Halifax portfolio is still equal to A$250 million, meaning that investors are still entitled to 119 cents in the dollar on a pro rata basis. Based on the Investor F Entitlement, A$119,000 in assets should be distributed to Investor F.

(h) Also on 31 August 2020, Investor F's shares are worth A$119,000 and the process of effecting a transfer of those shares from Investor F's Client Sub-Account to an account with another broker commences.

(i) Three months later, on 30 November 2020, the *in specie* distribution takes place (**Investor F Distribution Date**). That is, the Investor F Entitlement is transferred from Investor F's IB Client Sub-Account to another broker.

(j) Between 31 August 2020, when the transfer process commenced, and 30 November 2020, the Investor F Distribution Date, the Halifax portfolio decreases from A$250 million to A$200 million, resulting in a deficiency of $10 million or 5% of client positions.

(k) As a result of the reduction in the value of the Halifax portfolio, the assets available to distribute to Investor F should have been only A$95,000; however a process to effect a distribution of assets valued at A$119,000 to Investor F has already been undertaken.

199. In Example 6, if the *in specie* distribution in the amount of A$119,000 to Investor F was effected, Investor F would have received more assets than they are entitled to and other investors would receive less assets than they are entitled to. The additional assets distributed to Investor F above the Investor F Entitlement should have been distributed to other investors.

Example 7 (interim cash distribution)

200. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at close of business on 22 November 2018, being the day before the Liquidators were appointed as voluntary administrators of Halifax AU – that is, the Adjudication Date is 22 November 2018.

(b) As at 22 November 2018, total client equity positions are equal to A$210 million.

(c) As at 22 November 2018, Investor G has an equity balance of A$100,000. Investor G is entitled to 0.048% of the assets available to be distributed.

(d) By 28 February 2021, the value of the assets (including shares held in the IB AU and IB NZ Client Sub-Accounts and the IB AU Prop Account) is A$230 million. Of those assets, 75% have been realised and are now in the form of cash, which equals A$172 million (**Interim Distribution Pool**). This means that A$172 million can be distributed to investors in cash and 25% of assets (around A$58 million as at 28 February 2021) in the IB AU and IB NZ Client Sub-Accounts, the IB AU Prop Account remain unrealised.

(e) The Liquidators undertake an interim distribution because they have formed the view that the remaining 25% of assets may take some considerable time to sell.

(f) Based on the A$172 million in cash available for distribution, all investors receive an interim cash distribution of 82 cents in the dollar on a pro rata basis. That is calculated (again leaving to one side any issue of traceability, e.g., in relation to those in Category 3) by dividing the assets available for distribution of A$172 million by total equity positions of A$210 million.

(g) On 28 February 2021, the Liquidators issue a Distribution Declaration to Investor G notifying the investor that they are entitled to a cash distribution of A$82,000 (**Investor G Interim Entitlement**). That is, a distribution of 82 cents in the dollar based on their equity balance of A$100,000 as at November 2018. (A$82,000 is approximately equal to 0.048% of A$172 million.)

(h) By 31 August 2021, the Liquidators have realised the remaining assets in the IB AU and IB NZ Client Sub-Accounts and the IB AU Prop Account. The value of those assets is now A$70 million. The A$12 million increase in the value of these assets between February 2021 and August 2021 arose as a result of favourable market movements.

(i) Following the second tranche of realisation between February 2021 and August 2021, there is an additional A$70 million to be distributed to investors. All investors receive a second cash distribution of 33.333 cents in the dollar on a pro rata basis. That is calculated by dividing the assets available for distribution of A$70 million by total equity positions of A$210 million.

(j) On 31 August 2021, the Liquidators issue a further Distribution Declaration to Investor G notifying the investor that they are entitled to a further cash distribution of A$33,333 (**Investor G Second Entitlement**). That is, a distribution of 33.333 cents in the dollar based on their equity balance of A$100,000 as at November 2018. (A$33,333 is approximately equal to 0.048% of A$70 million.)

201. This example illustrates that even though there has been an increase in the value of the assets in the Halifax portfolio, there is no risk of Investor G receiving any more or any less than what they are entitled to receive based on the value of their claim as at the Adjudication Date. The same would apply where there was a decrease in the value of the assets in the Halifax portfolio between 28 February 2021 and 31 August 2021.

Example 8 (small* in specie *distribution and cash distribution)

202. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at 30 June 2020 – that is, the Adjudication Date is 30 June 2020.

(b) As at 30 June 2020, total client equity positions are equal to A$250 million and the value of the Halifax portfolio is equal to A$230 million, resulting in a deficiency of A$20 million or 8% of client positions.

(c) As at 30 June 2020, all investors are entitled to distribution of 92 cents in the dollar on a pro rata basis. However, this is subject to change as the value of the portfolio changes.

(d) As at 30 June 2020, Investor H has an equity balance of A$100,000 consisting only of shares in Company A. Investor H is entitled to 0.04% of the assets available to be distributed.

(e) On 31 July 2020, the Liquidators issue a Distribution Declaration notifying Investor H that they are entitled to a distribution of 0.04% of assets available to be distributed (**Investor H Entitlement**); that they can elect to receive an *in specie* distribution of 10% of the Investor H Entitlement, and the remainder of the Investor H Entitlement will be distributed in cash. That is, Investor H can elect that assets up to the value of 10% of the Investor H Entitlement be transferred to another broker.

(f) On 31 August 2020, Investor H notifies the Liquidators that it elects to receive an *in specie* distribution of 10% of the Investor H Entitlement, consisting of shares in Company A.

(g) As at 31 August 2020, the Halifax portfolio is still equal to A$230 million, meaning that investors are still entitled to 92 cents in the dollar on a pro rata basis. Based on the Investor H Entitlement and Investor H's election to receive 10% of its entitlement in shares, A$9,200 in shares should be distributed to Investor H.

(h) Also, on 31 August 2020, Investor H's shares are worth A$9,200 and the process of effecting a transfer of those shares from Investor H's IB Client Sub-Account to an account with another broker commences.

(i) Three months later, on 30 November 2020, the *in specie* distribution takes place (**Investor H Distribution Date**). That is, 10% of the Investor H Entitlement is transferred from Investor H's IB Client Sub-Account to another broker. At the date of transfer, the shares transferred to Investor H are worth A$20,000.

(j) Between 31 August 2020, when the transfer process commenced, and 30 November 2020, the Investor H Distribution Date, the Halifax portfolio reduces from A$230 million to A$150 million, resulting in a deficiency of $100 million or 40% of client equity positions.

(k) As a result of the reduction in the value of the Halifax portfolio, the assets available to distribute to Investor H should have been only A$60,000 (which is 0.04% of A$150 million).

203. In Example 8, Investor H has received more than 10% of the Investor H Entitlement in shares because it received shares worth A$20,000 instead of shares worth A$6,000 (which is 10% of the amount available for distribution as at the Investor H Distribution Date). However, Investor H has *not* received assets in excess of the Investor H Entitlement. In a cash distribution, Investor H would receive the difference between their entitlement and the value of the assets transferred to them as at the date of transfer.

Example 9 (small* in specie *distribution and shares to be transferred increase in value at the time of transfer)

204. I have assumed that:

(a) The Courts direct that investor claims are to be valued as at 30 June 2020 – that is, the Adjudication Date is 30 June 2020.

(b) As at 30 June 2020, total client equity positions are equal to A$250 million and the value of the Halifax portfolio is equal to A$230 million, resulting in a deficiency of A$20 million or 8% of client positions.

(c) As at 30 June 2020, all investors are entitled to a distribution of 92 cents in the dollar on a pro rata basis. However, that is subject to change as the value of the portfolio changes.

(d) As at 30 June 2020, Investor I has an equity balance of A$100,000 consisting only of shares. Investor I is entitled to 0.04% of the assets available to be distributed.

(e) On 31 July 2020, the Liquidators issue a Distribution Declaration notifying Investor I that they are entitled to a distribution of 0.04% of assets available to be distributed (**Investor I Entitlement**), that they can elect to receive an *in specie* distribution of 10% of the Investor I Entitlement, and the remainder of the Investor I Entitlement will be distributed in cash. That is, Investor I can elect that assets up to the value of 10% of the Investor I Entitlement be transferred to another broker.

(f) On 31 August 2020, Investor I notifies the Liquidators that it elects to receive an *in specie* distribution of 10% of the Investor I Entitlement, consisting of shares in Company A.

(g) As at 31 August 2020, the Halifax portfolio is still equal to A$230 million, meaning that investors are still entitled to 92 cents in the dollar on a pro rata basis. Based on the Investor I Entitlement and Investor I's election to receive 10% of its entitlement in shares, A$9,200 in shares should be distributed to Investor I.

(h) Also, on 31 August 2020, Investor I's shares are worth A$9,200 and the process of effecting a transfer of those shares from Investor I's IB Client Sub-Account to an account with another broker commences.

(i) Three months later, on 30 November 2020, the *in specie* distribution takes place (**Investor I Distribution Date**). That is, the shares that have been marked for an *in specie* distribution to Investor I are transferred from Investor I's IB Client Sub-Account to another broker. However, at the date of transfer – that is, the Investor I Distribution Date – the shares are worth A$70,000. Between 31 August 2020, when the transfer process commenced, and 30 November 2020, the date of transfer of the shares, the value of the shares to be transferred to Investor I in satisfaction of the *in specie* distribution significantly increased.

(j) Also between 31 August 2020 and the Investor I Distribution Date, the Halifax portfolio reduces from A$230 million to A$150 million, resulting in a deficiency of $100 million or 40% of client equity positions.

(k) As a result of the reduction in the value of the Halifax portfolio, the assets available to distribute to Investor I should have been only A$60,000 (which is 0.04% of A$150million). This means that Investor I has received assets in excess of their entitlement.

205. In Example 9, Investor I has received an *in specie* distribution of more than 10% of his entitlement (that is, more than 10% of the Investor I Entitlement). As at 31 August 2020, when the transfer of shares commenced, the value of Investor I's entitlement to an *in specie* distribution was A$9,200; however, on the Investor I Distribution Date, Investor I received shares worth A$70,000 as an *in specie* distribution.

206. It may be possible to make a correlative negative adjustment to the cash entitlement of Investor I such that any overpayment in shares is offset by a smaller cash distribution. However, if upon realisation of all assets, Investor I is not entitled to any cash distribution because it has received more than its entitlement through the *in specie* distribution, it will not be possible to offset the overpayment of the *in specie* distribution by reducing the cash which Investor I would receive in a cash distribution.

207. In circumstances where investors were given the option of receiving a 10% *in specie* interim distribution and Investor I opted to receive a 10% *in specie* distribution (as in Example 9 above), for Investor I to receive an overall distribution greater than the Investor I Entitlement, the value of the portfolio would need to reduce to less than A$23 million, which is unlikely to occur. However, this calculation assumes that the underlying value of Investor I's assets remain static as against the Halifax portfolio as a whole, which is unlikely to be realistic. In other words, this example does not account for the continuous movement of investments within the portfolio as against the point at which the investor elects to receive the *in specie* distribution and the Liquidators are able to process the *in specie* transfer. Owing to market movements, which affect the value of the Halifax portfolio available for distribution and the value of assets that may be available for an *in specie* distribution, it is difficult to identify a level at which an *in specie* distribution could be undertaken which would eliminate the risk of overpayment.