



UPDATE TO INVESTORS – 28 February 2020

HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (HALIFAX AU)

HALIFAX NEW ZEALAND LIMITED (IN LIQUIDATION) (HALIFAX NZ)

Update on joint sitting of Federal Court of Australia and High Court of New Zealand

A joint hearing of the Federal Court of Australia and the High Court of New Zealand took place (by way of audio-visual link) on 18 February 2020 for the hearing of the applications of Investors seeking to be joined as a representative defendant or seeking to be heard in the proceedings.

In relation to that joint hearing, the Federal Court of Australia made orders on 19 February 2020 and additional orders on 26 February 2020 and the High Court of New Zealand made orders on 21 February 2020. The orders made on 19 February and 26 February 2020 by the Federal Court of Australia are annexed and marked "A" and the orders made by the High Court of New Zealand on 21 February 2020 are annexed and marked "B".

We provide further details below in relation to some of the orders that were made by the Courts.

Orders made appointing representative defendants

At the hearing, representative defendants were appointed to the categories outlined in the Investor Notice dated 15 November 2019 as follows:

Category	Representative
All clients of Halifax AU and all clients of Halifax NZ whose proportionate entitlement to or share of funds from the "Deficient Mixed Fund" (as that phrase is defined in paragraph 189 of the Affidavit of Morgan John Kelly sworn 26 June 2019 in these proceedings) (Deficient Mixed Fund) will be higher after the realisation of all extant investments than it was on the date administrators were appointed to Halifax AU and Halifax NZ.	Choo Boon Loo
All clients of Halifax AU and all clients of Halifax NZ whose proportionate entitlement to or share of funds from the Deficient Mixed Fund will be lower after the realisation of all extant investments than it was on the date administrators were appointed to Halifax AU and Halifax NZ.	Elysium Business Systems Pty Ltd ACN 110 669 282
All clients of Halifax AU and Halifax NZ that transferred shares into the Trader Workstation (also known as Halifax AU's IB Platform or Halifax NZ's IB Platform) from another stockbroker and have not traded in those shares.	Jason Paul Hingston
All clients of Halifax AU and Halifax NZ whose investments are not traceable and who wish to contend that all clients should share in this deficiency regardless of whether investments are not traceable.	Atlas Asset Management Pty Ltd ACN 607 442 679 as trustee for the Atlas Asset Management Trust

We consider the appointment of the representative defendants to the above categories to be a key milestone in the proceedings.

Orders made in relation to further applications to be added as a defendant or to be heard

A number of other applications, being those of Mr Chen Wang, Andrew Philip Whitehead and Marlene Whitehead in their capacity as the trustees of the Beeline Trust, Andrew Philip Whitehead and Professor John



Knight (**the Other Applicants**), have been listed for further hearing on 3 April 2020, with a timetable also having been made for the filing and service of any notices of opposition or other material and submissions.

Orders in relation to subpoenas to produce documents

Some of the Other Applicants refer in their applications to the date of 1 July 2016 as being significant as reflecting the date of the deficiency in Client Moneys. That date is, however, a date by which the Liquidators have determined there was a deficiency. The Liquidators considered it necessary to obtain and consider further documents and materials from third parties (through the issue of subpoenas in the proceedings) and/or to file further evidence, including in relation to whether it was practically feasible to identify the date of deficiency in Client Moneys and, if so, when the deficiency in Client Moneys first arose.

Due to the lack of records maintained by Halifax and difficulties faced with third parties failing to provide information and documents to the Liquidators when requested, at this stage the Liquidators have not been able to determine the date by which the deficiency first arose. Although the deficiency appears to have existed by at least 1 July 2016, it is likely to have first occurred at an earlier date.

Orders in relation to not closing out investor positions

We take this opportunity to remind Investors that the Liquidators have decided to refrain (subject to receiving judicial advice or directions from the Court that they would be justified in so refraining) from closing out all extant investments until the final determination of the matters referred to in paragraphs 4 to 6 and 9 to 11 of the Interlocutory Application filed on 3 July 2019 in the Federal Court of Australia and in paragraphs 1(a), 1(b)(i)-(v), and 1(b)(xi)-(xiii) of the Originating Application filed on 25 September 2019 in the High Court of New Zealand (in effect, until the main issues in the proceedings have been determined by the Courts). It follows that Investor positions and, accordingly, the value of the Halifax portfolio as a whole, continue to be subject to market movements. Individual investors are reminded that it is open to them to elect to close out their position(s) at any time, if they deem this appropriate.

The Liquidators have made this decision in light of the fact that the vast majority (being 86%) of the 57 investors who expressed a view for or against closing out in response to the request for their views in relation to the closing out of positions stated that they did not want investor positions to be closed out. Only 8 investors were in favour of closing out.

Accordingly, the Liquidators intend to seek further directions or judicial advice from both the Federal Court of Australia and the High Court of New Zealand in the following terms:

1. In the Federal Court of Australia proceedings, pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations)* (being Schedule 2 to the *Corporations Act 2001* (Cth)) and/or section 63 of the *Trustee Act 1925* (NSW), that the Plaintiffs would be justified in refraining from closing out all extant investments until the final determination of the matters referred to in paragraphs 4 to 6 and 9 to 11 of the Interlocutory Application filed on 3 July 2019.
2. In the High Court of New Zealand proceedings, pursuant to section 284 of the *Companies Act 1993* and/or section 66 of the *Trustee Act 1956*, a direction or judicial advice that the Applicants would be justified in refraining from closing out all extant investments until the final determination of the matters referred to in paragraphs 1(a), 1(b)(i)-(v), and 1(b)(xi)-(xiii) of the Originating Application filed on 25 September 2019.

A separate notice is being issued to those Investors who responded to Annexure C of the Investor Notice dated 15 November 2019 on the issue of closing out investor positions, in which we set out further and more detailed information in relation to that issue and the orders made by the Courts in relation to the Liquidators' application for directions or judicial advice (referred to above).



Next steps

A joint directions hearing is scheduled for 3 April 2020, at which time a timetable will be set for any substantive argument on the issue of closing out and for the hearing of the applications of the Other Applicants that are seeking to be added as a defendant or to be heard in the proceedings. The Liquidators anticipate by that time being in a position to file further evidence in relation to their ability to identify the date on which the deficiency in Client Moneys is likely to have arisen.

In relation to a timeframe for the distribution of Investor funds, we are unable to provide an update as to when Investors can expect to receive a distribution. This will ultimately be dependent on the time taken to reach a final hearing and for each of the Courts to make final directions and orders. Our previous estimate that, following receipt of final Court directions and orders, we anticipate it will take at least 6 months to make a distribution due to the time required to adjudicate on approximately 12,600 investor claims and distribute available assets in accordance with Orders from the Court has not changed.

Further information

Please visit the links to the following websites for a copy of all correspondence issued to Investors:

— **Halifax Australia:** <https://www.ferrierhodgson.com/au/creditors/halifax-investment-services-pty-ltd>

— **Halifax New Zealand:** <https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>

Enquiries

Please direct any queries you may have via email to au-fmhalifax@kpmg.com.au.

"A"



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD2191/2018

IN THE MATTER OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (ACN 096 980 522)

MORGAN JOHN KELLY AND PHILIP ALEXANDER QUINLAN AS JOINT AND SEVERAL LIQUIDATORS OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (ACN 096 980 522) and another named in the schedule
First and Second Plaintiffs

ORDER

JUDGE: JUSTICE GLEESON

DATE OF ORDER: 19 February 2020

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Appointment of Representative Defendants

1. Pursuant to rule 2.13(3) and (5) of the *Federal Court (Corporations) Rules 2000* (**Rules**) and/or section 90-15(1) of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the *Corporations Act 2001* (Cth) (**IPS**), Choo Boon Loo be added as first defendant and appointed to represent all clients of Halifax Investment Services Pty Ltd (In Liquidation) (**Halifax Australia**) and all clients of Halifax New Zealand Limited (In Liquidation) (**Halifax NZ**) whose proportionate entitlement to or share of funds from the "Deficient Mixed Fund" (as that phrase is defined in paragraph 189 of the Affidavit of Morgan John Kelly sworn 26 June 2019 in these proceedings) will be higher after the realisation of all extant investments than it was on the date administrators were appointed to Halifax Australia and Halifax NZ.
2. Pursuant to rule 2.13(3) and (5) of the *Rules* and/or section 90-15(1) of the *IPS*, Elysium Business Systems Pty Ltd ACN 110 669 282 be added as second defendant and appointed to represent all clients of Halifax Australia and all clients of Halifax NZ whose proportionate entitlement to or share of funds from the "Deficient Mixed Fund" (as that phrase is defined in paragraph 189 of the Affidavit of Morgan John Kelly



sworn 26 June 2019 in these proceedings) will be lower after the realisation of all extant investments than it was on the date administrators were appointed to Halifax Australia and Halifax NZ.

3. Pursuant to rule 2.13(3) and (5) of the Rules and/or section 90-15(1) of the IPS, Jason Paul Hingston be added as third defendant and appointed to represent all clients of Halifax Australia and Halifax NZ that transferred shares into the Trader Workstation (also know as Halifax Australia's IB Platform or Halifax NZ's IB Platform) from another stockbroker and have not traded in those shares.
4. Pursuant to rule 2.13(3) and (5) of the Rules and/or section 90-15(1) of the IPS, Atlas Asset Management Pty Ltd ACN 607 442 679 as trustee for the Atlas Asset Management Trust be appointed as fourth defendant to represent all clients of Halifax Australia and Halifax NZ whose investments are not traceable and who wish to contend that all clients should share in any deficiency regardless of whether investments are traceable or not.

Further applications for appointment of additional Representative Defendants or to be joined as a party or to be heard

5. The following be granted leave to make any application to be added as a defendant or granted leave to be heard in these proceedings: (a) Chen Wang; (b) John Gordon Knight; (c) Andrew Philip Whitehead and Marlene Whitehead in their capacity as the trustees of the Beeline Trust; and (d) Andrew Philip Whitehead.
6. Any application made in accordance with Order 5 above, be listed for hearing on 3 April 2020.
7. The Plaintiffs to file and serve any submissions or other material in response to the applications referred to in Orders 5 and 6 above by 25 March 2020.
8. The applicants in the applications referred to in Orders 5 and 6 above to file and serve any submissions in reply by 1 April 2020.

Costs of Representative Defendants

9. The representative defendants appointed pursuant to Orders 1 to 4 above be indemnified in respect of their legal expenses reasonably incurred in so acting, such



expenses to be paid out of the accounts described in Annexure A to the Plaintiffs' Interlocutory Process filed 31 July 2019, as agreed by the Liquidators or taxed.

Subpoenas

10. The Plaintiffs are granted leave to have the Federal Court of Australia issue subpoenas to the following:
 - (a) G.R Caldwell & R.H Jones & H.S Yu & P Breedon & M.T Free & M.E Perez & S.A Alford & A.J Dyson & C.S Oosthuizen, trading as Moore Stephens (NSW) ABN 35 234 663 278;
 - (b) Bentleys NSW Audit Pty Limited;
 - (c) Stature Wealth Management Pty Ltd;
 - (d) Saxo Capital Markets Pty Ltd;
 - (e) Saxo Capital Markets (Australia) Pty Ltd.
11. The Plaintiffs in these proceedings and in High Court of New Zealand proceedings number CIV-2019-404-2049 are granted leave to use any documents produced in response to the subpoenas issued pursuant to Order 11 in those proceedings.

Liberty to apply

12. The parties have liberty to apply on one week's notice.

Date that entry is stamped: 19 February 2020

Sia Lagos
Registrar



Schedule

No: NSD2191/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Third Plaintiff

HALIFAX INVESTMENT SERVICES PTY LTD (IN
LIQUIDATION) (ACN 096 980 522)



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD2191/2018

IN THE MATTER OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (ACN 096 980 522)

MORGAN JOHN KELLY AND PHILIP ALEXANDER QUINLAN AS JOINT AND SEVERAL LIQUIDATORS OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) (ACN 096 980 522) and another named in the schedule
First and Second Plaintiffs

ORDER

JUDGE: JUSTICE GLEESON

DATE OF ORDER: 26 February 2020

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. The Plaintiffs are to provide to all investors who responded to the Investor Notice issued on 15 November 2019 on the issue of closing out of open investments and open positions:
 - (a) notice of these orders, and
 - (b) notice of any form of direction or judicial advice that the Plaintiffs intend to seek in respect of the issue of closing out.
2. Any investor who wants to be heard in respect of the form of direction or judicial advice that the Plaintiffs intend to seek in respect of the issue of closing out is to notify the Plaintiffs by 27 March 2020, and is to appear before the Courts on 3 April 2020 for directions only, on which occasion a timetable is to be set for any substantive argument on the issue of closing out.
3. The matter be listed for a case management hearing on 3 April 2020 at 9.15 am.

Date that entry is stamped: 27 February 2020

Sia Lagos
Registrar



Schedule

No: NSD2191/2018

Federal Court of Australia

District Registry: New South Wales

Division: General

Third Plaintiff

HALIFAX INVESTMENT SERVICES PTY LTD (IN
LIQUIDATION) (ACN 096 980 522)

" B "

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE
COMMERCIAL PANEL

CIV-2019-404-2049

UNDER section 284 of the Companies Act 1993, section 66
of the Trustee Act 1956 and Part 19 of the High
Court Rules 2016

IN THE MATTER of HALIFAX NEW ZEALAND LIMITED (IN
LIQUIDATION)

AND of an application by MORGAN JOHN KELLY and
PHILIP ALEXANDER QUINLAN

First Applicants

AND of an application by HALIFAX NEW ZEALAND
LIMITED (IN LIQUIDATION)

Second Applicant

AND of an application by MORGAN JOHN KELLY and
PHILIP ALEXANDER QUINLAN

Third Applicants

INTERLOCUTORY ORDER

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TO: the clients of Halifax New Zealand Limited (in liquidation) ("**Halifax NZ**") and Halifax Investment Services Pty limited (in liquidation) ("**Halifax Australia**")

AND TO: the Financial Markets Authority

1. The interlocutory applications made by:
 - (a) Morgan John Kelly and Philip Alexander Quinlan (in their capacity as liquidators of Halifax NZ) ("**First Applicants**");
 - (b) Halifax NZ (in its capacity as trustee of a trust in respect of money and property held on behalf clients but not subject to the trust of which the Third Applicants are trustees) ("**Second Applicant**");
 - (c) Morgan John Kelly and Philip Alexander Quinlan (in their capacity as trustees, appointed on 18 September 2019 by the Financial Markets Authority, of a trust created by regulation 246 of the Financial Markets Conduct Regulations 2014) ("**Third Applicants**"),

(together, the "**Applicants**");
 - (d) Choo Boon Loo;
 - (e) Elysium Business Systems Pty Limited;
 - (f) Jason Paul Hingston; and
 - (g) Atlas Asset Management Pty Ltd (ACN 607 442 679) as trustee for the Atlas Asset Management Trust,

on 18 February 2020 were determined by the Honourable Justice Venning on 21 February 2020.

2. The determination was made following a hearing held on 18 February 2020. A Leopold SC (Aust), E Holmes, J S Burnett, M Kersey and S J Jones appeared for the Applicants, E L Smith appeared for Andrew Whitehead and Marlene Whitehead (as trustees for the Beeline Trust) and Andrew Whitehead, and S Munro appeared for Chen Wang. Professor John Knight appeared in person. Counsel for parties appearing in the concurrent Federal Court of Australia hearing in respect of Halifax AU, including counsel for the parties listed at 1(e) to 1(g) above, also made submissions heard by both Courts via audio-visual link.
3. The following orders were made:
 - (a) Pursuant to rule 4.23(3) and 4.24 of the High Court Rules 2016 ("**Rules**"), Choo Boon Loo be added as first respondent and appointed to represent all clients of Halifax Australia and all clients of Halifax NZ whose proportionate entitlement to or share of funds from the "Deficient Mixed Fund" (as that phrase is defined in paragraph 189 of the Affidavit of Morgan John Kelly sworn 26 June

2019 in Federal Court of Australia proceedings NSD 2191 of 2018) will be higher after the realisation of all extant investments than it was on the date administrators were appointed to Halifax Australia and Halifax NZ.

- (b) Pursuant to rule 4.23(3) and 4.24 of the Rules, Elysium Business Systems Pty Ltd ACN 110 669 282 be added as second respondent and appointed to represent all clients of Halifax Australia and all clients of Halifax NZ whose proportionate entitlement to or share of funds from the "Deficient Mixed Fund" (as that phrase is defined in paragraph 189 of the Affidavit of Morgan John Kelly sworn 26 June 2019 in Federal Court of Australia proceedings NSD 2191 of 2018) will be lower after the realisation of all extant investments than it was on the date administrators were appointed to Halifax Australia and Halifax NZ.
- (c) Pursuant to rule 4.23(3) and 4.24 of the Rules, Jason Paul Hingston be added as third respondent and appointed to represent all clients of Halifax Australia and Halifax NZ that transferred shares into the Trader Workstation (also known as Halifax Australia's IB Platform or Halifax NZ's IB Platform) from another stockbroker and have not traded in those shares.
- (d) Pursuant to rule 4.23(3) and 4.24 of the Rules, Atlas Asset Management Pty Ltd ACN 607 442 679 as trustee for the Atlas Asset Management Trust be appointed as fourth respondent to represent all clients of Halifax Australia and Halifax NZ whose investments are not traceable and who wish to contend that all clients should share in any deficiency regardless of whether investments are traceable or not.
- (e) Fiona McMullin as trustee for the Cool Creek Superannuation Fund be granted leave to make any application to be added as a respondent or granted leave to be heard in these proceedings.
- (f) The applications of Chen Wang, John Gordon Knight and Andrew Philip Whitehead and Marlene Whitehead in their capacity as the trustees of the Beeline Trust and Andrew Philip Whitehead, together with any application made in accordance with Order 3(e) above, be listed on 3 April 2020.
- (g) The Applicants to file and serve any notices of opposition or other material in response to the applications referred to in Orders 3(e) and 3(f) above by 25 March 2020.
- (h) The applicants in the applications referred to in Orders 3(e) and 3(f) above to file and serve any submissions in reply by 1 April 2020.
- (i) The applicants referred to in Orders 3(a) to 3(d) above are to file applications to be joined in this proceeding by 25 February 2020.
- (j) The representative respondents appointed pursuant to Orders 3(a) to 3(d) above be indemnified in respect of their legal expenses reasonably incurred in so acting, such expenses to be paid out of the

Accounts (as that term is defined in paragraph 1(b)(i) of the Originating Application for Directions dated 25 September 2019), as agreed by the Liquidators or taxed.

- (k) The Applicants are to provide to all investors who responded to the Investor Notice issued on 15 November 2019 on the issue of closing out of open investments and open positions:
 - (i) notice of these orders, and
 - (ii) notice of any form of direction or judicial advice that the Applicants intend to seek in respect of the issue of closing out.
- (l) Any investor who wishes to be heard in respect of the direction or judicial advice that the Applicants intend to seek in respect of the issue of closing out is to notify the Applicants by 27 March 2020, and is to appear before the Courts on 3 April 2020 for directions only, on which occasion a timetable is to be set for any substantive argument on the issue of closing out.
- (m) The matter be listed for a case management hearing on 3 April 2020.
- (n) The parties have liberty to apply on one week's notice.

Date: 2020

(Registrar/Deputy Registrar)