IN THE HIGH COURT OF NEW ZEALAND AUCKLAND REGISTRY I TE KŌTI MATUA O AOTEAROA TĀMAKI MAKAURAU 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

BETWEEN

MORGAN JOHN KELLY and PHILIP ALEXANDER

QUINLAN (in their capacity as liquidators)

First Applicants

HALIFAX NEW ZEALAND LIMITED (IN

LIQUIDATION)

Second Applicants

MORGAN JOHN KELLY and PHILIP ALEXANDER

QUINLAN (in their capacity as trustees)

Third Applicants

(continued on next page)

AFFIDAVIT OF IAN PHILLIP SUTHERLAND DATED 25 MARCH 2020

Next event date: 3 April 2020 (joint case management hearing)

Judicial officer: Venning J
Case officer: Corrina MacDonald

Russell Mc\eagh

Counsel: A Leopold SC (Aust) M Kersey / S J Jones

E Holmes

M Kersey / S J Jones P +64 9 367 8000 F +64 9 367 8163 PO Box 8 DX CX10085 Auckland AND

CHOO BOON LEE

First Respondent

ELYSIUM BUSINESS SYSTEMS PTY LTD

Second Respondent

JASON PAUL HINGSTON

Third Respondent

ATLAS ASSET MANAGEMENT PTY LTD (as trustee for the Atlas Asset Management Trust)

Fourth Respondent

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/03/2020 6:40:27 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)

File Number: NSD2191/2018

File Title: IN THE MATTER OF HALIFAX INVESTMENT SERVICES PTY LTD

(ADMINISTRATORS APPOINTED) ACN 096 980 522

Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF

AUSTRALIA



Dated: 25/03/2020 6:40:30 PM AEDT Registrar

Sia Lagos

Important Information

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

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Form 59 Rule 29.02(1)

Affidavit

No. NSD2191 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

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

MORGAN JOHN KELLY AND PHILIP ALEXANDER QUINLAN IN THEIR CAPACITY 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

CHOO BOON LOO

First Defendant

(and other Defendants as named in the Schedule)

Affidavit of:

Ian Phillip Sutherland

Address:

Tower Three, International Towers Sydney, 300 Barangaroo Avenue Sydney

NSW 2000

Occupation:

Chartered Accountant

Date:

25 March 2020

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I Ian Phillip Sutherland of Tower Three, International Towers Sydney, 300 Barangaroo Avenue Sydney NSW 2000, Chartered Accountant say on oath:

I am a Director in the Deals, Tax & Legal Restructuring Services team of KPMG Australia.
 I work under the supervision of Morgan John Kelly and Philip Alexander Quinlan, the Plaintiffs in this proceeding and Partners of KPMG. Mr Kelly and Mr Quinlan (Liquidators) are the liquidators of Halifax Investment Services Pty Ltd (In Liquidation) ACN 096 980

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- 522 (Halifax AU) and its subsidiary, Halifax New Zealand Limited (In Liquidation) NZCN 2130897 (Halifax NZ).
- Since November 2018, when Halifax AU and Halifax NZ went into voluntary administration, I have been a member of the team undertaking the external administration of Halifax AU and Halifax NZ (KPMG Team). In that capacity, I have undertaken investigations into the affairs of Halifax AU and Halifax NZ. I have worked with Mr Kelly, Sarah Arnfield, Martie Livanos and Paul Harlond, who are also part of the KPMG Team, to conduct these investigations.
- 3. In addition, I have had extensive interactions with five employees of Halifax AU (in either the Halifax AU treasury team (Halifax Treasury) or the Halifax AU IT and online trading platform support team (Halifax IT), (together the Halifax AU Team).
- 4. The functions of Halifax Treasury included:
 - (a) conducting a daily review of the bank accounts of Halifax AU and Halifax NZ for the purpose of identifying and allocating deposits made by clients;
 - (b) causing deposited funds to be transferred to the appropriate bank account relating to the specific trading platform used by the client;
 - (c) causing a client's account on a relevant trading platform to be credited with an amount reflecting the funds deposited by the client so that the client could commence trading;
 - (d) actioning redemption requests from clients of Halifax AU or Halifax NZ, meaning requests to transfer funds from accounts held with Halifax NZ or Halifax AU to external accounts nominated by clients;
 - (e) attending to transfers of funds as requested by Jeff Worboys and Matthew Barnett, the former directors of Halifax AU; and
 - (f) attending to periodic internal and external reporting requirements.
- 5. The functions of Halifax IT included monitoring and maintaining the trading platforms used by clients of Halifax AU and Halifax NZ as well as generating equity reports for the various trading platforms.
- 6. I have spoken to members of the Halifax Treasury and Halifax IT Team on an almost daily basis about how the trading platforms used by clients of Halifax AU and Halifax NZ worked, and about individual investor queries in relation to an investor's account generally and in relation to specific transactions within that investor's account. I have also asked Halifax Treasury for bank statements, equity reports and copies of reports prepared by Halifax Treasury prior to November 2018.
- 7. The current Halifax AU Team consists of five people. They are:

- (a) Diogo Couto, who held various roles including administrative roles, and, ultimately was the head of Halifax Treasury from April 2008 to 1 July 2018 and was re-employed by Halifax AU in December 2019;
- (b) Michael Clissold, who from 26 February 2010 worked in Halifax IT;
- (c) Joseph Lum, who from September 2008 to April 2015, and again from January 2016, worked in Halifax IT;
- (d) Antony Wong, who from 3 January 2017 worked in Halifax IT; and
- (e) Pradika Ghimire, who from January 2009 worked as an administration assistant at Halifax AU.
- 8. Shown to me at the time of swearing this affidavit are folders of documents marked "Exhibit IPS-11" (Exhibit). References in this affidavit to page numbers in the Exhibit are to corresponding pages of the Exhibit, unless indicated otherwise. Also shown to me at the time of swearing this affidavit are folders of documents marked "Confidential Exhibit IPS-11" (Confidential Exhibit). As an Annexure to this Affidavit is "IPS-10". The Confidential Exhibit contains material which identifies individual employees of Halifax AU or individual clients of Halifax AU and Halifax NZ, or which reveals assets acquired or positions entered into by individual clients. References in this affidavit to "CE" page numbers are to the corresponding pages of the Confidential Exhibit.
- 9. I make this affidavit further to the affidavit sworn by me on 26 June 2019 (First Affidavit) and the affidavits sworn by me on 26 July 2019 and 11 December 2019 in these proceedings. Unless otherwise stated in this affidavit, undefined capitalised terms have the same meaning as given in my First Affidavit.
- My professional qualifications and experience are set out in my First Affidavit.

Purpose of this affidavit

- 11. I have conducted investigations, which I describe below, to analyse when a deficiency arose in relation to Client Moneys. Although I had already undertaken preliminary investigations (which determined that there was a deficiency at least by 1 July 2016), I undertook significantly more detailed investigations following the claims of some clients of Halifax AU and Halifax NZ that their investments were traceable because they invested in Halifax AU and Halifax NZ before the date on which a deficiency arose.
- 12. In this affidavit, Client Moneys means all moneys deposited by the clients of Halifax AU and Halifax NZ to invest on the trading platforms which were offered to them, all margin payments made by those clients for transactions on the trading platforms, and the proceeds of the closing-out of any position. I have proceeded on the basis that Client Moneys should have been held on trust in accordance with s 981B of the Corporations

- Act 2001 (Cth) (Act) or s 77P of the Financial Advisers Act 2008 (NZ) (FAA NZ) and Reg 240 of the Financial Markets Conduct Regulations 2014 (NZ) (FMCR NZ).
- 13. Client Moneys do not include (a) the interest payable on open positions or where the account of a client was overdrawn, and (b) fees or charges paid by clients to Halifax AU and Halifax NZ. The fees paid by clients were: consideration for entering into FX option transactions (called premiums) on the MT4 and MT5 trading platforms; commissions or transaction fees; conversion fees; data charges; telephone order fees; charges associated with market made quotes; and any other fees or charges levied by Halifax AU and Halifax NZ.
- 14. From my discussions with the Halifax AU team, I have been unable to identify "wholesale investors" either under the Act (read with the *Corporations Regulations 2001* (Cth) (Regulations)) or the *FAA* NZ (read with the *FMCR* NZ and the *FMCR*). I have also not seen any books and records of either company that satisfies me that there were "wholesale investors" amongst the clients of Halifax AU and Halifax NZ.
- 15. In analysing when a deficiency arose in relation to Client Moneys, Ms Arnfield and I have conducted investigations into:
 - (a) when any money required to be held on trust by Halifax AU and Halifax NZ pursuant to s 981B of the Act and s 77P of the FAA NZ and Reg 240 of the FMCR NZ (i.e., Client Moneys) was in fact not held on trust, or when such moneys were otherwise used contrary to the Regulations (which I have called in this affidavit a "Trust Deficiency"); and
 - (b) when there was a shortfall in the available assets held by Halifax AU and Halifax NZ, as trustees as well as in their own right, which would be required to meet all investor entitlements (which I have called in this affidavit a "Client Moneys Shortage").
- 16. Whether and when there was a Trust Deficiency depends on which assets should be regarded as actually being held on trust for clients in accordance with s 981B of the Act and s 77P of the FAA NZ and Reg 240 of the FMCR. Whether and when there was a Client Moneys Shortage depends on which assets are counted as "being available".
- 17. Each of the two investigations above relate to identifying some form of "deficiency". I have endeavoured to identify the first date on which each form of "deficiency" arose respectively the **Date of Trust Deficiency** and the **Date of Client Moneys Shortage**.
- 18. I do not form a view in presenting this information to the Courts, on what, if any, is the appropriate "date of deficiency" for the purposes of any argument by an investor that their investment is traceable because it was made before the "date of deficiency".

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- 19. In conducting my analysis I have not considered funds held by Halifax AU separately from those held by Halifax NZ since, in my First Affidavit, on the basis set out in [28]-[32] and [61] of that affidavit, I concluded that most of the funds that make up the Client Moneys held by each company are part of a single mixed fund. I have treated that as obviating the need to investigate funds held by Halifax AU separately from those held by Halifax NZ.
- 20. Limitations of my investigation include that because banks generally do not keep bank statements for longer than 7 years, it appears that bank statements (or at least a complete set of bank statements) going back beyond 2010-2012 are not available. In that regard:
 - (a) Around 2 January 2019, Bankwest provided copies of statements of accounts held by Halifax AU and Halifax NZ, however, it could not provide bank statements relating to the period prior to January 2012. A copy of email correspondence on 7 January 2019 regarding the provision of bank statements by Bankwest is at pages 1-5 of the Exhibit. A copy of email correspondence on 10 March 2020 regarding access to the bank statements prior to January 2012 is at pages 6-9 of the Exhibit.
 - (b) Although the NAB has provided the Liquidators with copies of bank statements for various accounts held, I have not sighted any statements which the NAB has provided relating to the period prior to 2012.

21. The structure of this affidavit is as follows:

- (a) First, I identify the bank accounts held by Halifax AU and Halifax NZ. I refer to a number of these bank accounts in this affidavit.
- (b) Secondly, I describe equity reports generated by the trading platforms used by clients of Halifax AU and Halifax NZ. I refer to these reports in the description of my investigations into the Date of Trust Deficiency and the Date of Client Moneys Shortage.
- (c) Thirdly, I set out my method and findings in relation to attempts to determine the Date of Trust Deficiency and the Date of Client Moneys Shortage.
- (d) Fourthly, I identify the first and last date of investment by Andrew Whitehead and Marlene Whitehead as trustees for the Beeline Trust (Beeline Trust), Andrew Whitehead personally (Mr Whitehead), Chen Wang (Mr Wang), Fiona McMullin atf the Cool Creek Super Fund (Ms McMullin) and Paul McNeil (Mr McNeil) (together, the Interested Investors). Mr Wang has applied to be a representative defendant and his application is supported by Ms McMullin and Mr McNeil. The Beeline Trust and Mr Whitehead have applied to be appointed as defendants but not as representative defendants. The applications of Mr Wang, Beeline Trust and Mr Whitehead have not yet been determined.

Accounts held by Halifax AU and Halifax NZ

- 22. The accounts held by Halifax AU and Halifax NZ as at 23 November 2018 generally fall into five categories:
 - (a) Named s 981B Accounts;
 - (b) Investor Fund Accounts;
 - (c) Third Party Accounts;
 - (d) Company Accounts; and
 - (e) Term Deposits.
- 23. Below, I describe each type of account. **Annexures A to I** to this affidavit list the accounts that fall within each category. The list of accounts has been prepared based on information provided to the KPMG Team by authorised deposit-taking institutions (**ADIs**) and Halifax Treasury. On 23 November 2018, Candice Ferreira from the KPMG Team wrote to all ADIs in Australia to request details of accounts held by Halifax AU. On 27 November 2018, Harrison Bailey from the KPMG Team wrote to all ADIs in New Zealand to request details of accounts held by Halifax NZ. Mr Harlond also requested that Halifax Treasury provide information in relation to all accounts held in the name of Halifax AU and Halifax NZ.
- 24. The first category of accounts in the name of Halifax AU are those which hold Client Moneys and are designated as s 981B trust accounts (Named s 981B Accounts). From discussions with Mr Couto on 25 February 2020, I believe that Named s 981B Accounts were only designated as such around January 2018. I have viewed a sample of bank statements of Named s 981B Accounts and have verified that this is correct. Before this, Named s 981B Accounts were Investor Fund Accounts, which I describe below at [26].
- 25. **Annexure A** to this affidavit identifies the Named s 981B Accounts of Halifax AU as at 23 November 2018.
- 26. The second category of accounts in the name of Halifax AU or Halifax NZ are those which hold Client Moneys but are not specifically named as s 981B trust accounts (Investor Fund Accounts). Examples of Investor Fund Accounts are the foreign currency accounts held by Halifax AU.
- 27. **Annexure B** to this affidavit identifies the Investor Fund Accounts of Halifax AU as at 23 November 2018.
- 28. **Annexure C** to this affidavit identifies the Investor Fund Accounts of Halifax NZ as at 23 November 2018.

- 29. The third category of accounts are those in the name of Halifax AU or Halifax NZ but held by third parties (**Third Party Accounts**) including, Interactive Brokers (**IB**), Invast and Gain.
- 30. **Annexure D** to this affidavit identifies the Third Party Accounts of Halifax AU as at 23 November 2018.
- 31. **Annexure E** to this affidavit identifies the Third Party Accounts of Halifax NZ as at 23 November 2018.
- 32. The fourth category of accounts maintained by Halifax AU and Halifax NZ are the Company Accounts. These are accounts that were used for everyday company-related transactions for example, for paying company debts and expenses, such as rent, wages, utilities and other operating expenses.
- 33. The Company Accounts of Halifax AU as at 23 November 2018 are set out in **Annexure F** to this affidavit.
- 34. The Company Accounts of Halifax NZ as at 23 November 2018 are set out in **Annexure G** to this affidavit.
- 35. The fifth category of accounts maintained by Halifax AU and Halifax NZ were term deposits (**Term Deposits**). Halifax AU maintained a number of different Term Deposits from time to time which are discussed further below. As I explain below, certain of the Term Deposits held funds that appear to be Client Moneys, with the source of the funds for the Term Deposits being Named s 981B Accounts, primarily the Saxo Allocated Account.
- 36. As at 23 November 2018, some Term Deposits were held as security for lease obligations of Halifax AU and Halifax NZ and some were maintained to meet minimum liquidity requirements for Australian Financial Services Licence No 225973 (AFSL), which was held by Halifax AU, and for Financial Service Provider's Licence No 146605 (FSP) held by Halifax NZ (Security Term Deposits). The Security Term Deposits of Halifax AU and Halifax NZ are set out in Annexure H to this affidavit.
- 37. From my review of the collateral reports prepared by Halifax Treasury and described below at [51]-[67], I have seen that from time to time, other Term Deposits were maintained by Halifax AU. I have assumed that these other Term Deposits were held for the purpose of generating interest on Client Moneys which was paid to or retained by Halifax AU as revenue (Interest Generating Term Deposits). The reason for this assumption is that, unlike for the Security Term Deposits, I have not located documents in the books and records of Halifax AU indicating that these Term Deposits were used as security for any agreements entered into by Halifax AU and Halifax NZ or any obligations of those



- companies. Another reason for this assumption is that, in the course of my investigations during the external administration, I have gained knowledge of the business model of Halifax AU, in particular that one of the main revenue sources of Halifax AU was the generation of interest on Client Moneys.
- 38. As at 23 November 2018, there were no Interest Generating Term Deposits held by Halifax AU. The Interest Generating Term Deposits that are discussed in this affidavit are set out in **Annexure I** to this affidavit. The Security Term Deposits did generate interest but this was not the primary reason that they were established.

Equity reports

- 39. As noted above at [21(b)], the trading platforms used by clients of Halifax AU and Halifax NZ could generate equity reports in relation to individual investors or a group of investors or all investors who were clients of Halifax AU and/or Halifax NZ. Halifax AU also maintained daily equity reports (**Daily Equity Reports**). I have obtained copies of these reports from Mr Couto and Mr Clissold over the course of the external administration.
- 40. Examples of an IB AU and NZ equity report (**Sample IB Equity Report**) is at pages **10-220** of the **Exhibit**. The Sample Equity Report is dated 28 February 2020 and 30 August 2019.
- 41. An example of an MT4 Equity Report is at pages 221-390 of the Exhibit (Sample MT4 Equity Report). The Sample MT4 Equity Report is dated 28 February 2020.
- 42. An example of an MT5 Equity Report is at pages **391-470** of the **Exhibit** (**Sample MT5 Equity Report**). The Sample MT5 Equity Report is dated 28 February 2020.
- 43. Copies of the Daily Equity Reports from 2010-2016 are at the following pages of the **Exhibit**:
 - (a) the Daily Equity Report for 2010-2012 (2010-2012 Daily Equity Report) is at pages 471-533;
 - (b) the Daily Equity Report for 2013 is at pages 534-575;
 - (c) the Daily Equity Report for 2014 is at pages 576-613 of the Exhibit;
 - (d) the Daily Equity Report for 2015 is at pages 614-659 of the Exhibit; and
 - (e) the Daily Equity Report for 2016 is at pages 660-711 of the Exhibit.
- 44. In Annexures J-K to this affidavit, I describe the equity reports for the IB AU and IB NZ platforms (IB Equity Reports) and for the MT4 and MT5 platforms (MT4 and MT5 Equity Reports). I also describe the Daily Equity Reports in Annexure L to this affidavit. My description of these reports is based on discussions with Mr Couto and Mr Clissold in

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- March 2020, as well as my understanding built up in working with Mr Couto and Mr Clissold in the period from November 2018 to present.
- I have assumed that the information presented in the IB, MT4 and MT5 Equity Reports and Daily Equity Reports is accurate. However, I am aware from Mr Couto that these reports are based on information provided by the trading platforms. I have no way of verifying that the information provided by those platforms is correct, but, with one exception, I have no reason to think that it is not. From my discussions with Mr Clissold and Mr Couto in March 2020, I believe that the MT4 and MT5 Equity Reports from July 2016 to December 2016 were not reliable because, in August 2016, Halifax AU transitioned all client positions from Saxo to MT4 and MT5, which caused significant data integrity issues from July 2016 to December 2016.

Investigations into the Date of Trust Deficiency and the Date of Client Moneys Shortage

46. Below I set out my investigations into the Date of Trust Deficiency and the Date of Client Moneys Shortage.

Findings as at November 2018

- 47. In November 2018, shortly after the Liquidators were appointed as voluntary administrators, I prepared an analysis of (a) the total amount of moneys held in the Named s 981B Accounts, the Investor Fund Accounts and the Third Party Accounts held by Halifax AU or Halifax NZ as at 23 November 2018 and (b) the total balance of individual investor accounts (total client equity positions or total client equity balances). Ms Arnfield assisted me. I assumed that the moneys held in the Named s 981B Accounts, the Investor Fund Accounts and the Third Party Accounts should have corresponded to the total client equity positions.
- 48. Based on Ms Arnfield's and my investigations into Halifax AU and Halifax NZ, as at 23 November 2018:
 - (a) there were A\$211.6 million in total client equity positions;
 - (b) the total amount of moneys held in the Named s 981B Accounts, the Investor Fund Accounts and the Third Party Accounts was approximately A\$192.6 million;
 - (c) the difference between the total client equity positions and the total amount of moneys held in Named s 981B Accounts, the Investor Fund Accounts and the Third Party Accounts was A\$19 million.
- 49. Accordingly, the amount in the Named's 981B Accounts, the Investor Fund Accounts and the Third Party Accounts did not correspond to the total client equity positions, which meant there was Trust Deficiency as at 23 November 2018.

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50. In addition, the total quantum of funds held in Company Accounts and Security Term Deposits was A\$3,668,446.13, which was insufficient to make up the difference between the balance in the Named s 981B Accounts, the Investor Fund Accounts and the Third Party Accounts, on the one hand, and the total client equity positions, on the other hand. Therefore, there was a Client Moneys Shortage.

Consideration of Collateral Reports and SLF Reports

- 51. My next step was to further investigate the financial reports maintained by Halifax AU. Throughout the external administration, I have had many conversations with Mr Clissold and Mr Couto about the reporting protocols followed by Halifax Treasury in relation to the net asset position of Halifax AU and Halifax NZ. By net asset position I mean the balance of total client equity positions compared with the assets which at the time were considered to be actually available and held in the accounts of Halifax AU and Halifax NZ. I explain further below which accounts I included in this assessment.
- 52. From these conversations, I am aware that Halifax Treasury prepared two types of reports related to the net asset position of Halifax AU and Halifax NZ: (a) monthly collateral reports from March 2017 to November 2018 and (b) periodic Surplus Liquid Funds reports (SLF Reports) from around 2012 to 2018. Below, I describe each of these reports. The descriptions are based on discussions that I have had with Mr Couto from November 2018 to the present.

March 2017 to November 2018: Collateral Reports

- 53. From March 2017 to November 2018, Halifax Treasury prepared the monthly collateral reports, which detailed the net asset position of Halifax AU and Halifax NZ.
- 54. From March 2017 to November 2018, the collateral reports were prepared in Excel spreadsheets and recorded the same type of information. As an example, the collateral report dated March 2017 (March 2017 Collateral Report) is at pages 712-725 of the Exhibit. Annexure M to this affidavit describes the March 2017 Collateral Report in full. In the following paragraphs, I describe the results recorded in the "Summary" worksheet of the March 2017 Collateral Report.
- 55. The March 2017 Collateral Report shows that as at March 2017:
 - (a) The total cash held in certain accounts in the name of Halifax AU and Halifax NZ and with other third parties was A\$16,947,901 (March 2017 cash balance). The accounts that were included in the total cash figure are listed in paragraph 20 of Annexure M to this affidavit. They included: accounts held with third parties, primarily IB AU, IB NZ, Halifax NZ, Invast and FXCM; Security Term Deposits; accounts held with Bankwest and the NAB, which were Named s 981B Accounts, Investor Fund Accounts

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- or Company Accounts. The total cash figure was used in the calculation for total assets held by Halifax AU and Halifax NZ available to meet investor entitlements on the MT4 and MT5 platforms.
- (b) The total client equity balances held on the MT4, MT5 and FXCM platforms and the total equity held in dormant accounts on the Infinity, FXCM, Saxo, FXDD and IB platforms was A\$69,356,085.
- (c) The total assets held by Halifax AU and Halifax NZ to meet investor entitlements on the MT4, MT5 and FXCM platforms was A\$64,273,510. This figure includes the March 2017 cash balance.
- According to the March 2017 Collateral Report, Halifax AU and Halifax NZ had a Client Moneys Shortage of A\$5,082,575 as at March 2017. That is, Halifax AU and Halifax NZ held assets totalling A\$64,273,510 to meet investor entitlements on the MT4, MT5 and FXCM platforms of A\$69,356,085.26. In the March 2017 Collateral Report, the available assets held by Halifax AU and Halifax NZ to meet investor entitlements were those included in the March 2017 cash balance and the balance of the IB AU Prop Account, which held stocks relating to client equity positions on the MT5 platform. Below in this affidavit, I describe which accounts I took into account in determining whether and when there was a Client Moneys Shortage.
- 57. In addition to reviewing the collateral reports from March 2017, I reviewed the collateral reports from April 2017 to November 2018. I took the information in those reports at face value because I have no reason to believe that they are inaccurate and I have undertaken spot checks to source documents, including bank statements and equity reports. The only way to confirm the accuracy of the collateral reports is to review each and every source document. This would be an extremely time-consuming and expensive exercise to the extent that it does not seem to me to be feasible.
- 58. The collateral reports showed that Halifax AU and Halifax NZ did not hold sufficient assets to meet client equity positions on the MT4 and MT5 and FXCM platforms from at latest March 2017. The table below identifies the Client Moneys Shortage over this period:

Date	Client's Equity (MT4 / MT5 / FXCM) balance (A\$)	Equity Held by Halifax (MT4 / MT5 / FXCM) (A\$)	Client Moneys Shortage (A\$)
31 March 2017	\$69,356,085	\$64,273,510	\$5,082,575
28 April 2017	\$63,033,910	\$61,137,498	\$1,896,411
26 May 2017	\$59,864,564	\$56,318,106	\$3,546,458

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Date	Client's Equity (MT4 / MT5 / FXCM) balance (A\$)	Equity Held by Halifax (MT4 / MT5 / FXCM) (A\$)	Client Moneys Shortage (A\$)
30 June 2017	\$58,984,047	\$52,442,888	\$6,541,158
28 July 2017	\$56,528,482	\$49,572,840	\$6,955,643
25 August 2017	\$55,002,805	\$47,775,205	\$7,227,600
1 September 2017	\$55,201,536	\$48,382,345	\$6,819,191
29 September 2017	\$54,032,366	\$47,879,169	\$6,153,197
31 October 2017	\$53,175,361	\$48,636,654	\$4,538,707
30 November 2017	\$53,061,103	\$45,766,619	\$7,294,484
29 December 2017	\$51,672,516	\$43,648,800	\$8,023,716
31 January 2018	\$52,857,826	\$44,554,265	\$8,303,561
28 February 2018	\$53,974,425	\$44,878,481	\$9,095,943
30 March 2018	\$51,885,805	\$42,927,887	\$8,957,918
30 April 2018	\$54,377,747	\$44,311,911	\$10,065,836
31 May 2018	\$55,634,773	\$44,769,968	\$10,864,805
29 June 2018	\$57,023,188	\$44,874,537	\$12,148,650
31 July 2018	\$58,317,766	\$47,575,147	\$10,742,619
31 August 2018	\$59,096,052	\$50,443,872	\$8,652,180
30 September 2018	\$58,400,220	\$48,400,318	\$9,999,902
31 October 2018	\$55,644,992	\$44,882,217	\$10,762,774
22 November 2018	\$55,086,820	\$37,949,257.10	\$15,471,228

- 59. In the table above, the amounts in the "Client's Equity (MT4 / MT5 / FXCM) balance" and "Equity Held by Halifax (MT4 / MT5 / FXCM)" columns are sourced from the monthly collateral reports. A copy of the monthly collateral reports are at the following pages of the **Exhibit**:
 - (a) pages 726-754 contains a copy of the collateral report as at 28 April 2017;

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- (b) pages 755-781 contains a copy of the collateral report as at 26 May 2017;
- (c) pages 782-825 contains a copy of the collateral report as at 30 June 2017 (June 2017 Collateral Report);
- (d) pages 826-866 contains a copy of the collateral report as at 28 July 2017 (July 2017 Collateral Report);
- (e) pages 867-896 contains a copy of the collateral report as at 25 August 2017 (August 2017 Collateral Report);
- (f) pages 897-960 contains a copy of the collateral report as at 1 September 2017(September 2017 Collateral Report);
- (g) pages 961-979 contains a copy of the collateral report as at 29 September 2017;
- (h) pages 980-992 contains a copy of the collateral report as at 31 October 2017;
- (i) pages 993-1007 contains a copy of the collateral report as at 30 November 2017;
- (j) pages 1008-1026 contains a copy of the collateral report as at 29 December 2017;
- (k) pages 1027-1072 contains a copy of the collateral report as at 31 January 2018;
- (I) pages 1073-1094 contains a copy of the collateral report as at 28 February 2018;
- (m) pages 1095-1119 contains a copy of the collateral report as at 30 March 2018;
- (n) pages 1120-1141 contains a copy of the collateral report as at 30 April 2018;
- (o) pages 1142-1161 contains a copy of the collateral report as at 31 May 2018;
- (p) pages 1162-1194 contains a copy of the collateral report as at 29 June 2018;
- (q) pages 1195-1228 contains a copy of the collateral report as at 31 July 2018;
- (r) pages 1229-1257 contains a copy of the collateral report as at 31 August 2018;
- (s) pages 1258-1292 contains a copy of the collateral report as at 30 September 2018;
- (t) pages 1293-1312 contains a copy of the collateral report as at 31 October 2018; and
- (u) pages 1313-1343 contains a copy of the collateral report as at 22 November 2018.

SLF Reports

- 60. From the investigations I have undertaken since November 2018, I have understood that SLF stands for 'Surplus Liquid Funds' and that the purpose of the SLF Reports was to provide an accounting of liquid funds (cash) held in accounts holding Client Moneys.
- 61. SLF Reports were Excel spreadsheets. Mr Worboys and Mr Barnett asked Halifax Treasury to complete the template from time-to-time.

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62. An example of an SLF Report is at pages **1344-1368** of the **Exhibit** (**Sample SLF Report**). The Sample SLF Report is dated December 2015. In **Annexure N** to this affidavit, I describe the Sample SLF Report.

Estimated Client Moneys Shortage as at 30 June 2016

- 63. In undertaking my investigations in the external administration, preparing the voluntary administrator's report around early February-March 2019 and preparing the Funds Flow Memorandum in March-June 2019, I formed the view that a Client Moneys Shortage may have arisen from at latest June 2016, but I left open the very real possibility that it may have occurred earlier.
- 64. Around June 2016, Halifax AU transitioned from using the Saxo platform to the MT5 platform and the majority of clients of Halifax AU on the Saxo platform were migrated to the MT5 platform. For this reason, I asked Mr Couto to prepare an estimated collateral report as at June 2016 (Estimated June 2016 Collateral Report). Another reason that I asked for the Estimated June 2016 Collateral Report was that June 2016 was the end of a financial year. The Estimated June 2016 Collateral Report is at pages 1369-1385 of the Exhibit.
- 65. In **Annexure O** to this affidavit, I describe the Estimated June 2016 Collateral Report. The description is based on my discussions with Mr Couto in February-March 2019 and January-February 2020.
- 66. The Estimated June 2016 Collateral Report shows that as at June 2016:
 - (a) The total equity held on the IB, Saxo, MT4 and FXCM platforms and in dormant accounts of the Infinity, FXCM, Saxo, FDD and IB platforms and "Unallocated Moneys" was A\$221,677,139. Unallocated Moneys were those funds held in suspense accounts.
 - (b) The total "non 1:1 client equity" meaning the total of the equity held on the MT4 and FXCM platforms, in dormant accounts and Unallocated Moneys was A\$11,722,236. The equity held on the IB and Saxo platforms was not included in this calculation because all positions on these platforms were exchange-traded and the assets and cash which made up the client equity positions were held by those platforms.
 - (c) The total cash held in certain accounts in the name of Halifax AU and Halifax NZ and with other third parties was A\$10,788,394. The accounts included in the total cash balance as at June 2016 were the same as for the March 2017 cash balance (see above at [55(a)]).
- 67. On the basis of the analysis in the Estimated June 2016 Collateral Report, as at 30 June 2016, there was an estimated Client Moneys Shortage of A\$933,842. This is the

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difference between the data points "total 'non 1:1 client equity" and "total cash held". According to the Estimated June 2016 Collateral Report, from at least June 2016, Halifax AU and Halifax NZ did not hold sufficient assets to meet client equity positions on the MT4 and FXCM platforms. As at 30 June 2016, there were no client equity positions on the MT5 platform because the transition from Saxo to MT5 had not yet occurred. In addition, as at June 2016 Halifax AU and Halifax NZ held A\$76,249.88 in Company Accounts. I have calculated the balance of the Company Accounts from the bank statements for the Company Accounts that are available to me. The bank statements correspond to the NAB Company Account, the Second NAB Company Account and the Business Current Account. I am aware that there may have been other company accounts in existence at this time, however, I do not have copies of statements for these accounts. I am aware from the operating practice of the business of Halifax AU and Halifax NZ that it is unlikely that significant funds would have been held in these accounts in an amount to have made up the Client Moneys Shortage.

Estimated Client Moneys as at May 2012

- Around mid-February 2020, I asked Mr Couto the earliest date at which he could prepare an estimated collateral report. On 26 February 2020, Mr Couto sent me an excel spreadsheet in response to my request with data as at 4 May 2012 (Estimated May 2012 Report). Mr Couto's email of 26 February 2020 is at pages 1386-1387 of the Exhibit. The Estimated May 2012 Report is at pages 1388-1582 of the Exhibit.
- 69. In **Annexure P** to this affidavit, I describe the Estimated May 2012 Report. The description is based on my discussions with Mr Couto in February-March 2020.
- 70. According to the Estimated May 2012 Report:
 - (a) The total "Assets" as at 4 May 2012 was A\$102,035,321. The "Assets" included "Cash" held in certain bank accounts with Bankwest and HSBC, including foreign currency accounts, and Term Deposits in the name of Halifax AU, and the collateral held by third parties on behalf of Halifax AU in respect of the Saxo, IB, GFT, Gain, FXDD and Dukascopy trading platforms.
 - (b) The total "Liability" as at 4 May 2012 was A\$98,600,190. The "Liability" was the client equity balances for the Saxo, IB, GFT, Gain, FXDD, FXCM and Dukascopy trading platforms.
- 71. On this basis, according to the Estimated May 2012 Report, as at 4 May 2012, Halifax AU held an estimated A\$3,435,132 more in assets than it needed to meet client equity positions on the trading platforms it used at that time. In this affidavit, I use the term Client Moneys Surplus to refer to a situation where Halifax AU and Halifax NZ held sufficient

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assets to meet client equity positions on trading platforms (again, with the variable being what assets are counted).

Investigation into movement of A\$5.5 million from December 2010 to November 2013

- 72. I investigated the estimated Client Moneys Surplus as at May 2012 further by reviewing the accounts that constituted "Cash" according to the Estimated May 2012 Report. The total balance of these accounts, which are in the "Bank Balances" worksheet of the Estimated May 2012 Report, was A\$26,152,106. According to the Estimated May 2012 Report, 58% of this cash (A\$15,103,447 of A\$26,152,106) was held in Term Deposits.
- In the "Bank Balances" worksheet, I identified that there was A\$5.5 million held in a Term 73. Deposit with HSBC. The "Counterparty Reference" for this Term Deposit is "HSBC Term Deposit II". This A\$5.5 million stood out because, in the course of my investigations into related party transactions for the purposes of the external administration of Halifax AU, I had seen a reference to A\$5.5 million in relation to the issue of preference shares to Australian Mutual Holdings Limited (AMH) under a subscription agreement dated 10 December 2010 (Subscription Agreement). A copy of the Subscription Agreement is at pages 1583-1604 of the Exhibit. The parties to the Subscription Agreement were Halifax AU as the issuer, AMH as the subscriber and Trident Investment Management Pty Ltd (Trident) as the investment manager of the Trident Global Growth Fund (TGG Fund). AMH is a related entity of Halifax AU, in that the directors of AMH were the directors and shareholders of Halifax AU. The Subscription Agreement provided that Halifax AU would issue 5,500 senior floating rate preference securities (preference shares) to AMH. The subscription price was A\$5.5 million calculated at the rate of A\$1,000 per preference share. The Subscription Agreement also provided for the payment of dividends on specified dates.
- 74. It is in my experience normal practice to review large round sum payments made to related entities by the company subject to external administration early in the investigation process.
- As part of this line of enquiry, I identified that on 24 August 2015, Halifax AU transferred A\$2.75 million to AMH (**Buy Back**). This transfer is recorded in the accounting software used by Halifax AU, Xero. Xero has a record of preference share transactions for the period 1 January 2010 to 23 November 2018 (**Preference Share Transactions Records**). A copy of the Preference Share Transactions Records is at pages **1605-1605** of the **Exhibit**.
- 76. This Preference Share Transactions Records record a debit of A\$2.75 million on 31 August 2015. The Preference Share Transactions Records describe the debit as

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"Repay Trident Perf Shares as at 31/8/15 – Repay Trident Perf [sic] Shares as at 31/8/15". The source for this entry is the "Manual Journal", meaning that the transaction was entered into Xero.

- 77. I have assumed that the reference to the "Trident Perf [sic] Shares" was a reference to a buyback of the preference shares the subject of the Subscription Agreement. Under the Subscription Agreement, Halifax AU could buy back the preference shares, pursuant to the terms of a buy-back agreement included as a schedule to the Subscription Agreement.
- 78. Also, on 31 August 2015, A\$2.75 million was debited from the Saxo Allocated Account which is a Named s 981B Account. This debit is recorded in line 17434 of the 2015 worksheet of the Bankwest Transactions Spreadsheet (page 2995 of the Confidential Exhibit). The "narration" column of the 2015 worksheet describes the debit as 'BWEHALIINS001247'. I describe the Bankwest Transactions Spreadsheet in [51(a)] of Annexure P to this affidavit. A copy of the Bankwest Transactions Spreadsheet is at pages 1-3825 of the Confidential Exhibit.
- 79. I conducted further investigations into the issue of the preference shares to AMH, focusing on whether AMH or Trident paid A\$5.5 million for the preference shares in or around December 2010 and the movement of A\$5.5 million in the books and records of Halifax AU. The results of my investigations are described below at [80]-[131]. At page 1606-1607 of the Exhibit is a diagram showing the transfers of A\$5.5 million described below at [80]-[131].

<u>December 2010: transfer of A\$5.5 million from Saxo Allocated Account to Halifax Grouped Account</u>

- 80. I have seen records of two transfers for A\$5.5 million in December 2010 one on 10 December 2010 and the other on 13 December 2010.
- 81. On 10 December 2010, A\$5.5 million was debited from the Saxo Allocated Account, which is a Named s 981B Account. This debit is recorded in a bank statement for the Saxo Allocated Account for 3-14 December 2010, which is at pages 1608-1608 of the Exhibit (December 2010 Saxo Allocated Account Statement). In or around December 2018, Bankwest provided the KPMG Team with the December 2010 Saxo Allocated Account Statement.
- 82. In the December 2010 Saxo Allocated Account Statement, the "Particulars" of the debit of 10 December 2010 are "Berndale Securities Trust". As at December 2010, Berndale Securities Trust (Berndale) was a wholly owned subsidiary of Merrill Lynch and custodian for the TGG Fund. The Responsible Entity for the TGG Fund was AMH. This information is set out in the Product Disclosure Statement for the TGG Fund dated 28 July 2014 (TGG Fund PDS) and an update dated 1 February 2011 to investors in the TGG Fund issued



by AMH (TGG Fund February 2011 Update). A copy of the TGG Fund PDS is at pages 1609-1638 of the Exhibit. A copy of the TGG Fund February 2011 Update is at pages 1639-1643 of the Exhibit.

- 83. On 13 December 2010, A\$5.5 million was credited to the Halifax Grouped Account, which is a Company Account. This credit is recorded in a bank statement for the Halifax Grouped Account for 9-31 December 2010, which is at pages 1644-1644 of the Exhibit (December 2010 Halifax Grouped Account Statement). In or around December 2018, Bankwest provided the KPMG Team with the December 2010 Halifax Grouped Account Statement.
- 84. In the December 2010 Halifax Grouped Account Statement, the "Particulars" of the credit of 13 December 2010 are "Berndale 1786980".
- 85. I have assumed that the A\$5.5 million transferred from the Saxo Allocated Account on 10 December 2010 was transferred to the Halifax Grouped Account, which is a Company Account. I made this assumption because, apart from the coincidence in the amount, 10 December 2010 was a Friday and 13 December 2010 was a Monday; and because the bank statements for both transfers refer to Berndale.
- 86. I have not seen any documents that indicate that the \$A5.5 million transferred from the Saxo Allocated Account to the Halifax Grouped Account came from AMH or Trident. Nor have I seen any documents that show that prior to the transfer of A\$5.5 million on 10 December 2010 Halifax AU received A\$5.5 million from AMH or Trident for the purchase of the preference shares.
- 87. I note that in or around 6 December 2010, AMH as Responsible Entity for the TGG Fund set up an IB Client Sub-Account on the IB AU platform. The account number was U953042 (AMH IB AU Account). A copy of the Activity Statement for this account from 1 July 2010 to 30 June 2011 is at pages 1645-1670 of the Exhibit (AMH IB AU Activity Statement 2010-2011). The AMH IB AU Activity Statement 2010-2011 was found amongst the books and records of Halifax AU. The AMH IB AU Activity Statement 2010-2011 records cash transfers in and out of the AMH IB AU Account, including a debit of A\$5.5 million from the AMH IB AU Account on 12 January 2011 to the IB AU Master Account (12 January 2011 AMH to IB Master Transfer).

<u>January 2011: transfer of A\$5.5 million from IB AU Master Account to IB Allocated Account</u>

88. On 14 January 2011, A\$5.5 million was credited to the IB Allocated Account, a Named s 981B Account held with Bankwest. This credit is recorded in line 1397 of the 2011 worksheet of the Bankwest Transactions Spreadsheet (page 807 of the Confidential Exhibit). The "narration" column of the 2011 worksheet describes the credit as "PDSBOF INTERACTIVE BROKERS".

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- 89. I have assumed that the transfer of A\$5.5 million to the IB Allocated Account on 14 January 2011 was from the IB AU Master Account (14 January 2011 IB Master to IB Allocated Transfer), with funds supplied by the AMH IB AU Account, as described above at [87].
- 90. I have seen email exchanges between Mr Couto, Mr Worboys and Mr Barnett on 2 December 2011 in relation to A\$5.5 million (December 2011 Email Exchanges). A copy of the December 2011 Email Exchanges is at pages 1671-1671 of the Exhibit. The December 2011 Email Exchanges are as follows:
 - (a) On 2 December 2011 at 5:31pm, Mr Couto emailed Mr Worboys and Mr Barnett stating: "The 5.5mil should probably be sitting at Saxo Allocated". Mr Couto referred to a transfer of A\$5.5 million on 10 December 2010 "from Saxo Allocated to TridentGG_Custodial NAB (Berndale)". I have assumed that "Trident GG" is a reference to the TGG Fund. Mr Couto also referred to a transfer of A\$5.5 million on 12 January 2011 "from Trident non-disclosed IB account U953042 to BWA IB Allocated" and noted that "[t]he funds are still sitting at IB Allocated". I have assumed that the 12 January 2011 transfer referred to by Mr Couto was the 12 January 2011 AMH to IB Master Transfer and the 14 January 2011 IB Master to IB Allocated Transfer.
 - (b) On 2 December 2011 at 5:43pm, Mr Barnett responded to Mr Couto's email of 5:31pm with "Ok please move them to Saxo allocated".
- 91. On 20 March 2020, I had a telephone conversation with Mr Worboys and Mr Barnett about the issue of the preference shares in December 2010. In this conversation:

I said words to the effect of: "Can you explain the transfer of A\$5.5 million in December 2010?"

Mr Worboys responded with words to the effect of: "The issue of preference shares was in response to an ASIC requirement that Halifax hold \$5 million of surplus equity to meet minimum liquidity requirements. The transaction was structured such that the amount owing to Trident was fully subordinated and therefore not necessary to record as a liability on Halifax's balance sheet. Trident was able to record the asset on its balance sheet as an investment in Halifax given that they were receiving a fixed dividend at a rate of repayment which was 300 basis points above the cash rate as at December 2010.

Mr Barnett said words to the effect of: "The purpose of the preference share transaction was to meet the ASIC surplus liquid funds requirements in a way that did not negatively impact either Halifax AU or Trident".

February 2011: AMH issued investor update

92. The TGG Fund February 2011 Update, issued by AMH to investors in the TGG Fund noted that AMH was the Responsible Entity for the TGG Fund. It stated that the TGG Fund had

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acquired 5,500 non-redeemable preference securities in Halifax AU for A\$5.5 million and that AMH considered Halifax AU to be a related party as defined in the Act because the directors of AMH were the same as the directors and shareholders of Halifax AU.

93. The TGG Fund February 2011 Update did not refer to the transfer of A\$5.5 million from the Saxo Allocated Account to the Halifax Grouped Account in December 2010. It also did not refer to the other transfer of A\$5.5 million to the IB Allocated Account in January 2011.

31 March 2011: transfer of A\$5.5 million from Halifax Grouped Account to Citibank Term Deposit

- 94. On 31 March 2011, A\$5.5 million was debited from the Halifax Grouped Account. This transfer is recorded in line 11767 of the 2011 worksheet of the Bankwest Transactions Spreadsheet (page **949** of the **Confidential Exhibit**). The "narration" column of the worksheet describes the debit as "Citibank Term Deposit".
- 95. There is also an unsigned transfer request dated 31 March 2011 (Unsigned 31 March 2011 Transfer Request). A copy of the Unsigned 31 March 2011 Transfer Request is at pages 1672-1672 of the Exhibit. The Unsigned 31 March 2011 Transfer Request is on a "Halifax Investment Services" letterhead and contains space for the signatures of Mr Barnett and Paul Timbs, Treasury. The Unsigned 31 March 2011 Transfer Request asks that A\$5.5 million be debited from the Halifax Grouped Account and credited to an account with Citibank, which has the BSB 242200, the account number 470772351 and the name "HALIFAX INVESTMENT SERVICES LIMITED". The Unsigned 31 March 2011 Transfer Request notes that the "Reference" for the transfer is "Citibank Term Deposit".
- 96. On the basis of the documents above, I have assumed that on 31 March 2011 A\$5.5 million was transferred from the Halifax Grouped Account to a Term Deposit with Citibank (Citibank Term Deposit).
- 97. Amongst the books and records of Halifax AU, I have located a copy of a Special Purpose Financial Statement of Halifax AU as at 15 August 2011 prepared by Stature ARW Accounting Pty Ltd (Stature). A copy of this financial statement is exhibited at pages 1673-1676 of the Exhibit. The financial statement consists of a balance sheet, which records Halifax AU's net asset position as at 15 August 2011 (August 2011 Balance Sheet).
- 98. In the August 2011 Balance Sheet:
 - (a) The Citibank Term Deposit is included as a current asset (cash on hand). The Citibank Term Deposit is not classified as a trust account on the balance sheet.

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- (b) The IB Allocated Account, with a balance of A\$5,467,650.90, is included as a current asset (trust account).
- 99. From the August 2011 Balance Sheet, I have assumed that Halifax AU treated the Citibank Term Deposit as company funds as at August 2011.
- 100. I have not been able to ascertain what happened to the A\$5.5 million after it was deposited into the Citibank Term Deposit on or about 31 March 2011. Halifax AU did not maintain an Excel spreadsheet of the balance of its Term Deposits and I have not found bank statements or certificates for the Citibank Term Deposit in Halifax AU's books and records.

December 2011: transfer of A\$5.5 million from IB Allocated Account to Saxo Allocated Account

- 101. In December 2011, the December 2011 Email Exchanges discussed above at [90] occurred. In these emails, Mr Couto and Mr Barnett agreed to move A\$5.5 million from the IB Allocated Account to the Saxo Allocated Account.
- 102. On 7 December 2011, A\$5.5 million was debited from the IB Allocated Account and credited to the Saxo Allocated Account. This transfer is recorded in:
 - (a) line 40009 of the 2011 worksheet in the Bankwest Transactions Spreadsheet with the "narration" "IB 20101210 repay" (page **1253** of the **Confidential Exhibit**); and
 - (b) line 40032 of the 2011 worksheet in the Bankwest Transactions Spreadsheet with the "narration" "Repay TridGGF to Saxo All 20101210" (page **1253** of the **Confidential Exhibit**).
- 103. My working assumption is that these narrations relate to the repayment to the Saxo Allocated Account of the A\$5.5 million debited from that account to the Halifax Grouped Account on 10 December 2010, which I describe above at [80]-[86].

January 2012: transfer of \$A5.5 million to First and Second Suncorp Term Deposit

- 104. On 4 January 2012, Halifax AU transferred A\$5 million to Term Deposit No 453527450 with Suncorp (First Suncorp Term Deposit). The maturity date for the deposit was 4 April 2012, and the interest rate on that deposit was 5.70%. A copy of the Fixed Term Deposit Record for the First Suncorp Term Deposit is at pages 1677-1678 of the Exhibit.
- 105. On 4 January 2012, Halifax AU transferred A\$500,000 to Term Deposit No 453527557 with Suncorp (**Second Suncorp Term Deposit**). The maturity date for the deposit was 4 April 2012, and the interest rate on that deposit was 5.75%. A copy of the Fixed Term Deposit Record for the Second Suncorp Term Deposit is at pages **1679-1680** of the **Exhibit**.

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106. I have been unable to ascertain the source of the funds deposited into the First and Second Suncorp Term Deposits.

<u>April 2012: transfer of A\$5.5 million from First and Second Suncorp Term Deposits</u> to Saxo Allocated <u>Account</u>

- 107. On 4 April 2012, A\$5.5 million was credited to the Saxo Allocated Account. This credit is recorded in line 10077 of the 2012 worksheet in the Bankwest Transactions Spreadsheet (page **1424** of the **Confidential Exhibit**). The "narration" column of the worksheet describes the credit as "PDSMET SUNCORP TERM DEPOSIT".
- 108. I have assumed that the A\$5.5 million transferred to the Saxo Allocated Account on 4 April 2012 came from the First and Second Suncorp Term Deposits. I have made that assumption principally because the total amount of the First and Second Suncorp Term Deposits was A\$5.5 million and because they each had a maturity date of 4 April 2012.

May 2012: transfer of A\$5.5 million from Saxo Allocated Account to HSBC Term Deposit

- 109. On 1 May 2012, A\$5.5 million was debited from the Saxo Allocated Account. This debit is recorded in line 12582 of the 2012 worksheet in the Bankwest Transactions Spreadsheet (page **1460** of the **Confidential Exhibit**). The "narration" column of the worksheet describes the debit as "HSBC TERM DEPOSIT".
- Transfer Request). A copy of the Unsigned 1 May 2012 Transfer Request is at pages 1681-1681 of the Exhibit. The Unsigned 1 May 2012 Transfer Request is on a "Halifax Investment Services" letterhead and contains space for the signatures of Mr Barnett and Mr Timbs. The Unsigned 1 May 2012 Transfer Request asks that A\$5.5 million be debited from the Saxo Allocated Account and credited to an account with HSBC, which has the BSB 342-011, the account number 032281090 and the name "HALIFAX INVESTMENT SERVICES". The Unsigned 1 May 2012 Transfer Request notes that the "Reference" for the transfer is "HSBC Term Deposit" (HSBC Term Deposit).
- 111. I have assumed that on 1 May 2012, A\$5.5 million was transferred from the Saxo Allocated Account to the HSBC Term Deposit. I have also assumed that the HSBC Term Deposit was an Interest Generating Term Deposit for the reasons set out above at [37].
- 112. On 16 January 2013, Mr Barnett emailed Derek Chen and Jon McArthur, both of Stature, and Mr Worboys (16 January 2013 Email). A copy of the 16 January 2013 Email is at pages 1682-1682 of the Exhibit. He addressed the email to Mr Chen, stating: "What if I leave the hsbc td for 5,500,000 unchanged and use 2,000,000 of the 13,000,000 citibank. The citibank is written up in 13 x 1,000,000 increments, so it won't affect the whole

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- amount". I have been unable to determine from my investigations what prompted Mr Barnett to write this email.
- 113. On 17 January 2013, Mr Chen replied to Mr Barnett, stating: "Will need to use the 5.5M as this is HIS [Halifax Investment Services] money. The other TD's are client monies" (17 January 2013 Email). A copy of the 17 January 2013 Email is at pages 1683-1683 of the Exhibit.
- 114. On the basis of this email exchange, I have assumed that Halifax AU treated the HSBC Term Deposit as a Company Account or as an account containing moneys that could, upon maturity, be used for a company-related transaction. It does not appear to have considered the HSBC Term Deposit as containing funds that should have been treated as Client Moneys or as containing funds that were otherwise available to meet investor entitlements.

November 2013: transfers of A\$5.5 million (a) from HSBC Term Deposit to Saxo Allocated Account and (b) from Saxo Allocated Account to Third Suncorp Term Deposit

- 115. I have seen emails exchanged between Mr Barnett, Mr Couto and HSBC from 30 August 2013 to 28 October 2013 (August-October 2013 Emails). A copy of these emails is at pages 1684-1697 of the Exhibit.
- 116. On 30 August 2013, Mr Barnett emailed Garima Mistry of HSBC, stating that "Upon the expire [sic] of all Term Deposits held by Halifax Investment Services Limited with HSBC, you are hereby instructed to transfer these monies to the below Bank account". He provided the account details for the Saxo Allocated Account.
- 117. On 30 August 2013, Ms Mistry responded to Mr Barnett, noting that "\$5.5 mil is maturing on the 4th of November".
- 118. On 28 October 2013, Mr Couto emailed Peter Rizzo of HSBC and Ms Mistry, stating: "We have a Term deposit of \$5,500,000.00 expiring on the 4/11/2013 and we need to have the funds transferred back to the below account on the maturity date. Can you please assist to make this happen?" Mr Couto provided the account details for the Saxo Allocated Account.
- 119. On 4 November 2013, A\$5.5 million was credited to the Saxo Allocated Account. This debit is recorded in line 28648 of the 2013 worksheet in the Bankwest Transactions Spreadsheet (page 2245 of the Confidential Exhibit). The "narration" column of the worksheet describes the credit as "PDSHKB HALIFAX INVESTMENT".

- 120. On the basis of the August-October 2013 Emails and the credit of 4 November 2013, I have assumed that the A\$5.5 million deposited into the Saxo Allocated Account on 4 November 2013 came from the HSBC Term Deposit.
- 121. On 5 November 2013, A\$5.5 million was debited from the Saxo Allocated Account. This debit is recorded in line 28742 of the 2013 worksheet in the Bankwest Transactions Spreadsheet (page **2246** of the **Confidential Exhibit**). The "narration" column of the worksheet describes the debit as "HALIFAX INVESTME SUNCORP TERM DEPOS".
- 122. In light of the "narration" column and the reasons set out above at [37], I have assumed that A\$5.5 million was transferred to another Suncorp Term Deposit (**Third Suncorp Term Deposit**) for the purpose of generating interest AU.
- 123. On 6 February 2014, Mr Chen emailed Mr Barnett with the subject line: "Pls confirm \$1M Suncorp TD has been withdrawn therefore only \$21M Suncorp TD total excluding 5.5M Trident Suncorp". A copy of this email is at pages 1698-1700 of the Exhibit. From this email, I have assumed that Halifax AU considered that the Third Suncorp Term Deposit contained funds relating to the purchase of the preference shares by AMH in 2010.
- 124. On 6 February 2014, Mr Couto responded to Mr Chen's email, providing a "breakdown for the Suncorp TD's" in a table. Mr Couto noted that "[e]xcluding the \$5.5mil the balance is \$20mil (\$1mil withdrawal on the 13/01/2014)". The table in the email indicates that the account number of the Term Deposit holding A\$5.5 million was 507407718 and the Term Deposit has a maturity date of 6 May 2014. I have assumed that these account details are those of the Third Suncorp Term Deposit.
- 125. I have not located other transfers of A\$5.5 million in the accounts held by Halifax AU or Halifax NZ.

Conclusions as to investigation into movement of A\$5.5 million from December 2010 to November 2013

- 126. From my investigations into the movement of A\$5.5 million from December 2010 to November 2013, I have reached three principal conclusions.
- 127. First, the transaction in December 2010, when A\$5.5 million was transferred from the Saxo Allocated Account to a Company Account (the Halifax Grouped Account), may have given rise to a Trust Deficiency, if it is assumed that the Saxo Allocated Account held Client Moneys. I note that the Saxo Allocated Account is a Named s 981B Account and, in December 2010, was an Investor Fund Account (see above at [24]). If this assumption is made, Client Moneys were not used in accordance with the Regulations because they were transferred to a Company Account. (As discussed below at [133]-[140], I have identified a transfer from a Named s 981B Account to a Company Account in November

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- 2009, which may provide an earlier example of Client Moneys not being used in accordance with the Regulations.)
- 128. I am unable to determine whether there was a Trust Deficiency as at December 2010, in the sense of there being insufficient funds held on trust by Halifax AU to meet investor entitlements because I do not have complete bank statements of Halifax AU for this period.
- Secondly, there were two transfers from the Saxo Allocated Account to two Interest Generating Term Deposits namely, the transfer of A\$5.5 million from the Saxo Allocated Account to the HSBC Term Deposit on 1 May 2012, which I discuss above at [109]-[114]; and the transfer of A\$5.5 million from the Saxo Allocated Account to the Third Suncorp Term Deposit on 5 November 2013, which I discuss above at [115]-[124]. I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to the transfers of A\$5.5 million to these Interest Generating Term Deposits. I believe that the transfers from the Saxo Allocated Account to the Interest Generating Term Deposits involved Client Moneys not being used in accordance with the Regulations, and are another example of a transaction which may cause a Trust Deficiency.
- 130. Thirdly, the transfer of A\$5.5 million from the Saxo Allocated Account to the HSBC Term Deposit on 1 May 2012 gave rise to a Trust Deficiency in the sense of there being insufficient funds held on trust by Halifax AU to meet investor entitlements. My reasoning for this is as follows:
 - (a) As noted above at [71], the Estimated May 2012 Report recorded a Client Moneys Surplus of A\$3,435,132. This was the difference between the total "Assets", as defined in the Estimated May 2012 Report, and the "Liability", as defined in the Estimated May 2012 Report.
 - (b) Within the "Assets", the Estimated May 2012 Report included A\$5.5 million in a Term Deposit held with HSBC. I have assumed above that the Term Deposit with HSBC recorded in the Estimated May 2012 Report was the HSBC Term Deposit, which was credited to that Term Deposit on 1 May 2012 from the Saxo Allocated Account. This transfer is discussed above at [109]-[111].
 - (c) I have assumed that the transfers of A\$5.5 million discussed above at [80]-[125], including the transfer of A\$5.5 million from the Saxo Allocated Account to the HSBC Term Deposit on 1 May 2012, relate to the consideration paid for the preference shares issued by Halifax AU to AMH / Trident in December 2010 pursuant to the Subscription Agreement. The Subscription Agreement stipulated that the consideration was A\$5.5 million.



- (d) The consideration received for the preference shares should have been treated as an asset of Halifax AU, not Client Moneys held on trust by Halifax AU to satisfy investor entitlements.
- (e) If the HSBC Term Deposit had been treated as an asset of Halifax AU, in the Estimated May 2012 Report it should have been excluded from the "Assets" corresponding with Client Moneys; and the "Assets" corresponding with Client Moneys would have been A\$96,535,321, rather than A\$102,035,321. As a result, there would have been a Trust Deficiency as at May 2012 of at least A\$2,064,869. This is the difference between the "Assets" which were considered available to meet investor entitlements in the Estimated May 2012 Report, excluding the HSBC Term Deposit, and the "Liability" (A\$98,600,190) in the Estimated May 2012, representing the total client equity balances for the trading platforms used by clients of Halifax AU as at May 2012.
- (f) I say that the Trust Deficiency, as at May 2012, was at least A\$2 million because, as I discuss below at [144], at least one other Term Deposit comprising "Assets" in the Estimated May 2012 should have been treated as an asset of Halifax AU, not Client Moneys held on trust by Halifax AU to satisfy investor entitlements.
- 131. It is apparent to me that the treatment and classification of the A\$5.5 million paid for the preference shares in or around December 2010 or January 2011, and the amount remaining after the Buy Back in August 2015, as either Halifax AU's own company money or as Client Moneys is relevant to whether or not there was a Trust Deficiency at a particular time between December 2010 and June 2016 (and later). As at the date of this affidavit I am unable to form a view on whether that A\$5.5 million should be properly treated as being Client Moneys, which means that it should have been held in accordance with s 981B of the Act, or Halifax AU's own company money, which means that it may not be available to meet investor entitlements.

Further investigations into the transfer of funds out of the Saxo Allocated Account to Term Deposits

132. As noted above at [127]-[129], from my investigation into the transfer of funds related to the preference shares I identified funds being moved from the Saxo Allocated Account to Term Deposits and to a Company Account. I then decided to undertake further investigations into Term Deposits that had been funded with Client Moneys by searching the books and records of Halifax AU. I identified the following transfers from accounts holding Client Moneys, principally the Saxo Allocated Account, to various Term Deposits.

November 2009: Transfer from Saxo Allocated Account to Security Term Deposit

133. From the following documents, I am aware that in November 2009, Bankwest issued a bank guarantee (First Sydney Office Bank Guarantee) connected with the performance

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by Halifax AU of a lease of Suite 40.B, Level 40, Governor Phillip Tower, 1 Farrer Place (First Sydney Office Lease):

- (a) I have seen a copy of a letter dated 16 November 2009 from Bankwest to Halifax AU, offering A\$420,147.01 as a rental bond guarantee for the First Sydney Office Lease (Offer Letter). A copy of the Offer Letter is at pages 1701-1706 of the Exhibit. The Offer Letter enclosed facility terms (Facility Terms), which appear to have been accepted by Matthew Barnett and Jeff Worboys, as directors of Halifax AU, on 17 November 2009.
- (b) I have seen a copy of a set-off agreement between Bankwest and Halifax AU, which appears to have been executed by Mr Barnett and Mr Worboys as directors of Halifax AU on 17 November 2009 (Set-Off Agreement). A copy of the Set-Off Agreement is at pages 1707-1714 of the Exhibit. The Set-Off Agreement provided that a term deposit or blocked account was to be opened by Halifax AU for a minimum amount of A\$442,260.
- (c) I have seen a copy of the First Sydney Office Bank Guarantee dated 20 November 2009. A copy of the First Sydney Office Bank Guarantee is at page 1715-1715 of the Exhibit. The First Sydney Office Bank Guarantee is from Bankwest to Perpetual Trustee Company Limited ACN 000 0001 0007 (Perpetual) and Lend Lease Funds Management Limited ACN 000 335 473 (Lend Lease) and was made at the request of Halifax AU. It is for an amount not exceeding A\$420,147.01.
- 134. Line 25594 of the 2009 worksheet of the Bankwest Transactions Spreadsheet shows that on 17 November 2009, A\$442,260 was debited from the Saxo Allocated Account (page 37 of the Confidential Exhibit). The "narration" for this debit is "TO SECURED TERM DEPOSIT".
- 135. A reference to a transfer of A\$442,260 in November 2009 also appears in an Excel spreadsheet titled "Deposits on hold 25 May 2014" (Deposits on hold May 2014 Spreadsheet). A copy of the Deposits on hold May 2014 Spreadsheet is at pages 1716-1743 of the Exhibit. From my discussions with Mr Couto, the Deposits on hold May 2014 Spreadsheet was prepared by Halifax Treasury, in part, to try to keep track of large transfers of funds out of accounts holding Client Moneys.
- 136. The Deposits on hold May 2014 Spreadsheet has several worksheets, including an "Account Balances" worksheet, which lists balances of accounts holding Client Moneys and Term Deposit balances at a point in time. There are three columns on the "Account Balances" worksheet. The first column is called "BWA Account", which identifies the name of the account. The second column is called "Account Balance", which identifies the amount held in that account as at May 2014. The third column is unnamed, but contains

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- notes about the account. From my discussions with Mr Couto, I believe that these notes were made by a member of Halifax Treasury.
- 137. In Row 13 of the "Account Balances" worksheet, there is an entry for an account called "BWA Term deposit" which has a balance of \$455,942.06. The third column for this entry says: "Funds from Saxo Allocated (442,260.00 initial deposit)".
- 138. In light of the documents reviewed above, I have assumed that on 17 November 2009, A\$442,260 was transferred from the Saxo Allocated Account, which is a Named s 981B Account, to a Term Deposit holding security for the First Sydney Office Bank Guarantee (First Sydney Office Term Deposit). I have been unable to ascertain why A\$442,260, rather than A\$420,147.01 (the amount stipulated in the First Sydney Office Bank Guarantee), was transferred. I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to the transfer of A\$442,260 to the First Sydney Office Term Deposit.
- 139. The following documents show that, in 2015, A\$420,147 was refunded from the First Sydney Office Term Deposit to the Saxo Allocated Account, when the First Sydney Office Bank Guarantee was cancelled:
 - (a) An email dated 23 April 2015 from Laylah Kessler, a paralegal at Allens, to Mr Barnett and Mr Worboys indicates that in 2015, Halifax AU was intending to surrender the First Sydney Office Lease and to enter into a lease for Suite 4, Level 49, Governor Phillip Tower, 1 Farrer Place, Sydney (Second Sydney Office Lease). A copy of the email is at page 1744-1744 of the Exhibit.
 - (b) On 22 July 2015, Mr Barnett sent an email to Imran Khan of Bankwest asking for the Term Deposits that Halifax AU had on account with Bankwest as of 30 June 2015. A copy of the email is at page 1745-1745 of the Exhibit. On 23 July 2015, Mr Khan responded that the Bankwest Term Deposit details as at 30 June 2015 (23 July 2015 TD Email) included the following account: "GOLDTD 100-156710-4 \$420,147.00". I have assumed that "GOLDTD 100-156710-4" is the First Sydney Office Term Deposit. A copy of this email is at page 1746-1749 of the Exhibit.
 - (c) An email dated 25 August 2015 from Mr Khan of Bankwest to Mr Barnett noted that Mr Khan was processing the cancellation of a bank guarantee. After further email correspondence between Mr Khan and Mr Barnett, in an email dated 27 August 2015, Mr Khan stated that (i) the "Interest details on acc: 100-156710-4 [the First Sydney Office Term Deposit] with interest to be paid at maturity 23/09/2015 interest will receive \$8,035"; (ii) interest would be directed to a nominated non-Bankwest account; (iii) the balance to be paid the nominated account would be \$420,147 less any fees. A copy of the email correspondence dated 25-27 August 2015 between Mr Khan and Mr

Barnett relating to cancellation of the bank guarantee is at pages 1750-1753 of the Exhibit.

- (d) Line 19201 of the 2015 worksheet of the Bankwest Transactions Spreadsheet records a credit to the Saxo Allocated Account of A\$420,147 on 23 September 2015 (page 3015 of the Confidential Exhibit). The "narration" for this credit is "TD 100-156710-4"; that is, the First Sydney Office Term Deposit.
- 140. From my review of the books and records of Halifax AU, the First Sydney Office Term Deposit is the first instance at which I am able to identify a payment from the Saxo Allocated Account, or any other Named s 981B Account, to a Term Deposit. It is possible that there was a transfer from a Named s 981B Account to a Term Deposit at an earlier point in time for which I do not have bank statements.
- 141. If it is assumed that the Saxo Allocated Account should have held Client Moneys, the transfer from the Saxo Allocated Account to the First Sydney Office Term Deposit in November 2009 involved the use of Client Moneys not in accordance with the Regulations because they were transferred into an account not operated as a trust account and not held for the benefit of investors. The funds from the Saxo Allocated Account were used to secure an obligation of Halifax AU. This may have given rise to a Trust Deficiency as at November 2009 in the sense of there being insufficient funds held on trust by Halifax AU to meet investor entitlements. However, I am unable to determine this because:
 - (a) From my discussions with the currently employed staff of Halifax AU, I believe that the books and records of Halifax AU may not disclose complete information in relation to the banks with which Halifax AU held an account in November 2009 and the platform providers used by clients of Halifax AU at this time.
 - (b) From my discussions with Mr Clissold, I believe that the data from 2009 in relation to investor equity positions, and the total amounts actually held in accounts with the trading platforms, is either not available, partially incomplete or unreliable given the age of the data and the number of trading platforms offered to investors by Halifax AU in 2009.
 - (c) The Liquidators are not in possession of bank statements for all accounts held by Halifax AU in 2009. While I do have some bank statements for this period, I am unable to confirm that the statements that I do have constitute a complete listing of accounts held by Halifax AU in 2009. The reason for this is that in my experience banks generally destroy bank statements after a period of 7 years. I refer to my observations above at [20] concerning limitations in my investigations.
- 142. The absence of information regarding investor equity positions means that I cannot calculate the total client equity balance as at November 2009. The absence of the total

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- amounts held by Halifax AU and Halifax NZ in relation to client equity balances on the trading platforms and complete bank statements means that I cannot calculate what assets were actually held on trust as at November 2009.
- 143. For the reasons set out above at [141]-[142], I also cannot determine whether there was a Client Moneys Shortage.
- 144. I refer to my comments above at [130] in relation to there being a Trust Deficiency as at May 2012 of at least \$2 million. I consider that the Trust Deficiency may have been greater than this if the First Sydney Office Term Deposit is considered to be an asset of Halifax AU, not Client Moneys held on trust to satisfy investor entitlements. My reasons for this are as follows:
 - (a) In the Estimated May 2012 Report, the First Sydney Office Term Deposit is recorded in the "Bank Balances" worksheet as an account with Bankwest with a balance of \$499,840.75. The reason why the balance is more than \$442,260 is because of interest that had not yet been withdrawn.
 - (b) Also in the Estimated May 2012 Report, the First Sydney Term Deposit is then included as part of the "Cash" component of the "Assets" available to meet investor entitlements.
 - (c) The First Sydney Term Deposit should have been treated as an asset of Halifax AU because it was maintained to secure an obligation of Halifax AU. It should not have been treated as Client Moneys held on trust by Halifax AU to satisfy investor entitlements. Also, the First Sydney Office Term Deposit was not readily liquid and available because it was held as security for a bank guarantee.
 - (d) If the First Sydney Office Term Deposit had been treated as an asset of Halifax AU, in the Estimated May 2012 Report, like the HSBC Term Deposit discussed above at [130], it should have been excluded from the "Assets" corresponding with Client Moneys alongside.
 - (e) Excluding the HSBC Term Deposit and First Sydney Office Term Deposit from "Assets", the "Assets" in the Estimated May 2012 Report would have been A\$96,035,483 rather than A\$102,035,321. As a result, there would have been a Trust Deficiency as at May 2012 of at least A\$2,564,710. This is the difference between the "Assets" corresponding with Client Moneys to meet investor entitlements in the Estimated May 2012 Report, excluding the HSBC Term Deposit and the First Sydney Office Term Deposit, and the "Liability" (A\$98,600,190) in the Estimated May 2012, representing the total client equity balances for the trading platforms used by clients of Halifax AU as at May 2012.

2012: Transfers from Saxo Allocated Account and Gain Allocated Account to Interest Generating Term Deposit

145. In the 2012 worksheet of the Bankwest Transactions Spreadsheet, I have identified three debits from the Saxo Allocated Account that relate to Term Deposits:

Line	Date	Debited Amount	Narration
6691 (page 1374 of the Confidential Exhibit)	7 March 2012	A\$1,000,000	HSBC TERM DEPOSIT
6835 (page 1377 of the Confidential Exhibit)	8 March 2012	A\$8,000,000	CITIBANK TERM DEPOSIT
27371 (page 1674 of the Confidential Exhibit)	10 September 2012	A\$5,000,000	CITIBANK TERM DEPOSIT

- 146. I have assumed that these transactions were credits to Interest Generating Term Deposits held with HSBC and Citibank for the reasons set out above at [37]. I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to these transfers.
- 147. I am aware of the following emails in relation to these transactions:
 - (a) On 6 March 2012, Mr Barnett emailed Mr Couto, with the subject "HSBC --- Term Deposit" (6 March 2012 Email). Mr Barnett asked Mr Couto to transfer A\$1 million from the Saxo Allocated Account to an account with HSBC, which had a BSB of 342 011 and an account number of 032281001. Mr Mistry was also a recipient of the 6 March 2012 Email. Mr Worboys, Mr Chen, McArthur, and an email address named "Redemptions" were copied into the 6 March 2012 Email. A copy of the 6 March 2012 Email is at pages 1754-1754 of the Exhibit. I have assumed that on 7 March 2012, A\$1 million was transferred from the Saxo Allocated Account to the HSBC account referred to in the 6 March 2012 Email.
 - (b) On 8 March 2012, Mr Barnett emailed Mr Couto, with the subject "Citibank" (8 March 2012 Email). Mr Barnett asked Mr Couto to transfer A\$8 million from the Saxo Allocated Account to an account with Citibank, which had a BSB of 242200 and an account number of 470772351. Mr McArthur, Mr Chen and the "Redemptions" address were also recipients of the 8 March 2012 Email. Mr Worboys was copied into the 8 March 2012 Email. A copy of the 8 March 2012 Email is at pages 1755-1756 of the Exhibit. I have assumed that on 8 March 2012, A\$8 million was transferred from

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- the Saxo Allocated Account to the Citibank account referred to in the 8 March 2012 Email (A\$8 million Term Deposit).
- (c) On 10 September 2012 at 10:39am, Mr Barnett emailed Mr Couto with the subject "Citibank transfer" (First 10 September 2012 Email). Mr Barnett asked Mr Couto to transfer A\$6 million to Citibank "for term deposit". Mr Barnett attached bank account details relating to the transfer; however, the attachment is password protected and I have been unable to open it. Mr Chen, Mr Worboys, Lisa Peng (former employee of Halifax AU), Andrew Graham (former employee of Halifax AU in Halifax Treasury), Mr McArthur and the "Redemptions" address were copied into the First 10 September 2012 Email. A copy of the First 10 September 2012 Email is at is at pages 1757-1761 of the Exhibit.
- (d) On 10 September 2012 at 11:28am, Mr Barnett emailed Mr Couto, indicating that the A\$6 million in the First 10 September 2012 Email had been amended to A\$5 million (Second 10 September 2012 Email). A copy of the Second 10 September 2012 Email is at pages 1762-1766 of the Exhibit. I have assumed that on 10 September 2012, A\$5 million was transferred from the Saxo Allocated Account to the Citibank account referred to in the First 10 September 2012 Email.
- 148. I have also seen the following Statements of Investment, which appear to relate to the A\$8 million Term Deposit:
 - (a) There are eight Statements of Investment from Citibank dated 9 March 2012 (March 2012 Statements of Investment). Each March 2012 Statement of Investment is addressed to Halifax AU and is for A\$1 million. The interest rate on each March 2012 Statement of Investment is 5.8% per annum and the maturity date is 10 September 2012. A copy of the March 2012 Statements of Investment is at pages 1767-1774 of the Exhibit.
 - (b) There are eight Statements of Reinvestment dated 10 September 2012 (September 2012 Statements of Reinvestment). Each September 2012 Statement of Reinvestment is addressed to Halifax AU and is for A\$1 million. The interest rate on each September 2012 Statement of Reinvestment is 5.10% per annum and the maturity date is 11 March 2013. A copy of the September 2012 Statements of Reinvestment is at pages 1775-1782 of the Exhibit.
- 149. In the 2012 worksheet of the Bankwest Transactions Spreadsheet, I have the following debit from and credit to the Gain Allocated Account, a Named s 981B Account with Bankwest, that relates to Term Deposits:

Line	Date	Amount	Account	Narration	

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16928 (page 1523 of the Confidential Exhibit)	5 June 2012	-A\$4,000,000	Gain Allocated Account	HALIFAX DEPOSIT	TERM
35634 (page 1794 of the Confidential Exhibit)	5 December 2012	+A\$4,000,000	Gain Allocated Account	TERM 204231767	DEPOSIT

- 150. I have not seen any document indicating that investors, whose funds were held in the Gain Allocated Account, agreed to the transfer from the Gain Allocated Account to the Term Deposit.
- 151. I have seen the following correspondence concerning a transfer of A\$4 million:
 - (a) On 5 June 2012 at 9:13am, Amanda Miles of Suncorp emailed Mr Barnett with the subject "Suncorp Term Deposit". Ms Miles set out Suncorp's interest rates for monthly interest for the amount of A\$4 million. A copy of this email is at pages 1783-1783 of the Exhibit.
 - (b) On 5 June 2012 at 9:23am, Mr Barnett responded to Ms Miles' email, indicating that Halifax AU chose an interest rate of 5.10% for 6 months for A\$4 million. A copy of this email is at pages 1784-1784 of the Exhibit.
 - (c) On 5 June 2012 at 9:30am, Mr Barnett asked Mr Couto to RTGS (Real Time Gross Settlement) "these monies" from the Gain Allocated Account to an account with Suncorp with the BSB 484799 and the account number 453527298. A copy of this email is at pages 1785-1785 of the Exhibit.
 - (d) On 5 June 2012 at 9:52am, Mr Couto informed Mr Barnett that the current balance for the Gain Allocated Account was A\$3,696,240.77 and that the current balance for the Saxo Allocated Account was A\$7,221,608.26. A copy of this email is at pages 1787-1787 of the Exhibit.
 - (e) On 5 June 2012 at 9:51am, Mr Barnett asked Mr Couto to transfer A\$2 million from the Saxo Allocated Account to the Gain Allocated Account. Mr Barnett stated that this was an "internal transfer" and that, when the Term Deposit expired in six months, A\$2 million would need to "go back" to the Saxo Allocated Account. A copy of this email is at pages 1786-1786 of the Exhibit.
- 152. I have assumed that the email correspondence from 5 June 2012 concerned the debit of A\$4 million on 5 June 2012 from the Gain Allocated Account. In addition, the 2012 worksheet of the Bankwest Transactions Spreadsheet records the following transfers of A\$2 million between the Saxo Allocated Account and the Gain Allocated Account in 2012:

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Line	Date	Amount	Account	Narration
16847 (page 1522 of the Confidential Exhibit)	5 June 2012	-A\$2,000,000	Saxo Allocated Account	Gain Allocated Borrow Suncorp TD
16927 (page 1523 of the Confidential Exhibit)	5 June 2012	+A\$2,000,000	Gain Allocated Account	Borrow fr Saxo All
36237 (page 1803 of the Confidential Exhibit)	5 December 2012	+A\$4,000,000	Saxo Allocated Account	20120605 Gain repa

2013: Transfer from Saxo Allocated Account to Auckland Office Term Deposit

- 153. On 23 September 2013, A\$165,000 was debited from the Saxo Allocated Account. This debit is recorded in line 24715 of the 2013 worksheet of the Bankwest Transactions Spreadsheet (page 2187 of the Confidential Exhibit). The "narration" for the debit is "BWA TERM DEPOSIT".
- 154. I have seen a Bank Guarantee signed on 26 September 2013 by Bankwest (Auckland Office Bank Guarantee). A copy of the Auckland Office Bank Guarantee is at pages 1788-1789 of the Exhibit. The Auckland Office Bank Guarantee states that it was issued at the request of Halifax AU in connection with a "Rental bond for premises at the AlG Building, 41 Shortland Street, Auckland 1010 New Zealand". This was the address for the Halifax NZ office. The Auckland Office Bank Guarantee was for an amount not exceeding A\$164,999.62.
- 155. In the 23 July 2015 TD Email, referred to above at [139(b)], Mr Khan informed Mr Barnett that the Bankwest Term Deposit details as at 30 June 2015 included the following account: "GOLDTD 985-008371-9 –\$165,000.00". These are the account details for the Auckland Office Term Deposit (which is defined in **Annexure H** to this affidavit).
- 156. On 10 December 2018, Mr Harlond emailed Mr Khan requesting certain information in relation to certain Term Deposits, including the Auckland Office Term Deposit and the Second Sydney Office Term Deposit (which is defined in Annexure H to this affidavit). A copy of the email is at pages 1790-1790 of the Exhibit.
- 157. On 10 December 2018, Mr Khan responded to Mr Harlond's email (Khan 10 December 2018 Email), stating that "[t]he term Deposits are securing Bank Guarantees for lease Bond", and providing the following details in relation to the Auckland Office Term Deposit:

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GOLDTD 985-***71-9 HALIFAX (Maturity date: 27-03-2019) \$165,000.00 – (Linked to Bank Guarantee - CL17257)

Purpose – Rental bond for premises at the AIG building, 41 Shortland Street, Auckland 1010, New Zealand.

Guarantee amount \$164,999.62

- 158. A copy of the Khan 10 December 2018 Email is at pages 1791-1793 of the Exhibit.
- 159. On the basis of the above documents, I have assumed that the Auckland Office Term Deposit was held as security for the Auckland Office Bank Guarantee. I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to the transfer from the Saxo Allocated Account to the Auckland Office Term Deposit.

June 2015: Transfer from Saxo Allocated Account to FSP Term Deposit

- 160. On 9 June 2015, A\$1,113,172.54 was debited from the Saxo Allocated Account. This debit is recorded in line 11374 of the 2015 worksheet of the Bankwest Transactions Spreadsheet (page **2925** of the **Confidential Exhibit**). The "narration" for the debit is "BWEHALIINS001049".
- 161. I have seen an International Money Transfer dated 9 June 2015 (International Money Transfer). The International Money Transfer is a request from Halifax AU, which is identified as the remitter, to transfer money to the ANZ HNZ Account in the amount of A\$1,113,172.54 or NZ\$1,200,000. A copy of the International Money Transfer is at pages 1794-1794 of the Exhibit.
- On 9 June 2015, NZ\$1,199.975 was credited to the ANZ HNZ Account. This credit is recorded in line 15 of the "ANZ HNZ" worksheet of the Foreign Currency Transactions Spreadsheet (page 3886 of the Confidential Exhibit). In the "ANZ HNZ" worksheet, the "Particulars" of the credit are "REFER:15060", and the "Other Party Name" of the credit is "HALIFAX INVESTMENTS". From my conversations with Mr Couto, I believe that the "Particulars" and "Other Party" of the credit were copied and pasted from the bank statement of ANZ HNZ. I describe the Foreign Currency Transactions Spreadsheet in [51(b)] of Annexure P to this affidavit. A copy of the Foreign Currency Transactions Spreadsheet is at pages 3826-4131 of the Confidential Exhibit.
- 163. On the basis of the documents reviewed above, I have assumed that the transfer of A\$1,113,172.54 from the Saxo Allocated Account on 9 June 2015 was to the ANZ HNZ Account (9 June 2015 Transfer). I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to the transfer from the Saxo Allocated Account to the ANZ HNZ Account.

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- 164. On 10 June 2015, NZ\$1,200,000.00 was debited from the ANZ HNZ Account. This debit is recorded in line 16 of the "ANZ HNZ" worksheet of the Foreign Currency Transactions Spreadsheet (page **3886** of the **Confidential Exhibit**). In the "ANZ HNZ" worksheet, the "Particulars" of the debit are "882529081000" and the "Other Party Name" is blank.
- 165. I have seen a Shareholder Loan and Security Deed between Halifax NZ, as the borrower, and Halifax AU, as the lender (Shareholder Loan Deed). A copy of the Shareholder Loan Deed is at pages 1795-1800 of the Exhibit. The Shareholder Loan Deed is undated; however, it was found with a shareholders' resolution of Halifax NZ dated 10 June 2015 (Shareholders' Resolution). The Shareholders Resolution' was to approve the Shareholder Loan Deed. A copy of the Shareholders' Resolution is at pages 1801-1804 of the Exhibit. I have assumed that the Shareholder Loan Deed was executed on or about 10 June 2015.
- The Shareholder Loan Deed provides for a loan of NZ\$1.2 million from Halifax AU to Halifax NZ and states that the purpose of the loan is to satisfy the conditions of the derivatives issuer licence issued by the Financial Markets Authority to the Borrower on 8 May 2015. The derivatives issuer licence referred to in the Shareholder Loan Deed is the FSP. The Shareholder Loan Deed also provides that Halifax NZ must ensure that the proceeds of the loan are in a term deposit or interest bearing account with a bank in New Zealand. I have assumed that the FSP Term Deposit (which is defined in Annexure H to this affidavit) was held for the purpose of satisfying Halifax NZ's obligations under the FSP to hold a certain amount of net tangible assets.
- 167. I have seen a Bank Audit Certificate Report dated 13 October 2015 from ANZ (Bank Audit Certificate Report). A copy of the Bank Audit Certificate Report is at pages 1805-1809 of the Exhibit. The Bank Audit Certificate Report outlines the records that ANZ had in relation to Halifax NZ as at close of business on 30 June 2015. Table 1(A) of the Bank Audit Certificate Report identifies balances in all current, deposit, savings and other accounts, and interest accrued on those accounts. An account listed in Table 1A is the FSP Term Deposit. The balance for the FSP Term Deposit is NZ\$1.2 million.
- 168. On the basis of the documents just described, I am of the view that:
 - (a) Halifax AU lent NZ\$1.2 million to Halifax NZ (**FSP Term Deposit Loan**) by the 9 June 2015 Transfer.
 - (b) This loan was funded by the Saxo Allocated Account, a Named s 981B Account. I have assumed that the funds in the Saxo Allocated Account should have been Client Moneys only.
 - (c) The purpose of the loan was to satisfy the conditions of the FSP.

- (d) The funds from this loan were paid into FSP Term Deposit.
- (e) The use of funds from the Saxo Allocated Account for the FSP Term Deposit involved the use of Client Moneys not in accordance with the Regulations because they were used to secure an obligation of Halifax AU. This may have given rise to a Trust Deficiency in the sense that Halifax AU and Halifax NZ held insufficient funds corresponding to Client Moneys to meet investor entitlements. The potential Trust Deficiency is further explained below at [169]-[170].
- 169. On 13-16 March 2012, Mr Couto prepared an analysis of Client Moneys as at 30 June 2015 (June 2015 Client Moneys Report). A copy of the June 2015 Client Moneys Report is at pages 1810-1810 of the Exhibit. The table below summarises the June 2015 Client Moneys Report:

Total cash and collateral held	A\$226,123,562
Less: Total equity	A\$223,677,346
Surplus including Security TDs	A\$2,446,216
Less: Balance of Security TDs	(A\$1,743,697)
Less: Funds used for Buy Back	(A\$2,750,000)
Trust Deficiency	(A\$2,047,481)

170. In the table above:

- (a) The amount in the "Total cash and collateral held" row is comprised of (i) the balances of the Bankwest accounts held by Halifax AU, foreign currency accounts of Halifax AU and Halifax NZ and Term Deposits as at 30 June 2015 and (ii) assets held on the IB and Saxo trading platforms as well as collateral held with GFT and Gain. The Bankwest accounts held by Halifax AU, which have been included in "Total cash and collateral held" are:
 - i. the Saxo Allocated Account;
 - ii. the IB Allocated Account;
 - iii. the GFT Allocated Account;
 - iv. the Gain Allocated Account;
 - v. the "ALARON ALLOCATED Trust Account", which was held with Bankwest and had a BSB of 302-100 and an account number of 0828250;
 - vi. the Mirus Allocated Account;
 - vii. the Infinity Allocated Account;

- viii. the FXDD Allocated Account;
- ix. the FXCM Allocated Account;
- x. the Halifax Pro Allocated Account;
- xi. the FX Pro Allocated Account;
- xii. the "PEPPERSTONE ALLOCATED Trust Ac", which was held with Bankwest, had a BSB of 302-100 and account number of 9325730,

and the foreign currency accounts of Halifax AU and Halifax NZ, which have been included in "Total cash and collateral held" are:

- xiii. the Money Market Call Account;
- xiv. the NAB USD Account;
- xv. the NAB GBP Account;
- xvi. the NAB EUR Account;
- xvii. the NAB NZD Account;
- xviii. the NAB HKD Account;
- xix. the NAB SGD Account;
- xx. the NAB JPY Account; and
- xxi. the NAB CHF Account and the ANZ HNZ Account.
- (b) The amount in the "Less: Total equity" row was calculated using the 2015 Daily Equity Report, specifically the entry for 30 June 2015. The total equity is the total client equity position as at 30 June 2015.
- (c) The "Surplus including Security TDs" row is the difference between the "Total equity" and "Total cash and collateral held" rows. It includes the Security Term Deposits within "Total cash and collateral held". The "Surplus including Security TDs" row shows that as at June 2015, there was a Client Moneys Surplus of A\$2,446,216. The Security Term Deposits included in this calculation are identified in [170(d)].
- (d) The "Less: Balance of Security TDs" row is the total amount held in Security Term Deposits as at 30 June 2015. The Security Term Deposits are:
 - the FSP Term Deposit (A\$1,053,648), called the "ANZ Term Deposit" in the June 2015 Client Moneys Report;
 - (ii) the Auckland Office Term Deposit (A\$165,000), called the "Bankwest Term Deposit III" in the June 2015 Client Moneys Report; and

- (iii) the First Sydney Office Term Deposit (A\$420,147.00), called the "BWA Term Deposit" in the June 2015 Client Moneys Reports.
- (e) The "Less: Funds used for Buy Back" is comprised of the A\$2.75 million Buy Back by Halifax AU, which occurred on 24 August 2015. The Buy Back was paid for with funds from the Saxo Allocated Account, as described above at [75]-[78]. As I noted above at [131], whether the funds related to the purchase of preference shares in December 2010 / January 2011 are classified as Halifax AU's own company money or as Client Moneys is relevant to whether or not there was a Trust Deficiency as at June 2016. These funds include the amount of the Buy Back. If the view is taken that the funds were Halifax AU's own, those funds were not available as Client Moneys and there was a Trust Deficiency, as set out in the "Trust Deficiency" row. If the view is taken that those funds were Client Moneys, there was no Trust Deficiency.
- (f) The "Trust Deficiency" row is the difference between the "Total equity" and "Total cash and collateral held" rows, but where Security Term Deposits and the Buy Back are not included in the "Total cash and collateral held". As at June 2015, there may have been a Trust Deficiency of A\$2 million if Halifax AU and Halifax NZ held insufficient funds corresponding to Client Moneys to meet investor entitlements.
- If the Security Term Deposits and the Buy Back are not included in "Total cash and Collateral held" as of June 2015, there was a Client Moneys Shortage because Halifax AU and Halifax NZ did not have sufficient available assets on trust and in their own right to meet investor entitlements. As at June 2015, Halifax AU and Halifax NZ held A\$16,601.84 in Company Accounts. I have calculated the balance of the Company Accounts from the bank statements of Company Accounts available to me. The bank statements correspond to the NAB Company Account, the Second NAB Company Account and the Business Current Account. I am aware that there may have been other company accounts in existence at this time, however I do not have copies of statements for these accounts. I am aware from the operating practice of the business of Halifax AU and Halifax NZ that it is unlikely that significant funds would have been held in these accounts in an amount to have made up the Client Moneys Shortage.

<u>July 2015: Transfer from Saxo Allocated Account to Second Sydney Office Term Deposit</u>

172. On 28 May 2015, Mr Barnett emailed Mr Khan, asking Mr Khan to arrange for a bank guarantee to be created for Dexus in the amount of A\$111,384.47 and noting that the account to be debited was the Saxo Allocated Account. Mr Worboys, David Websdale (Investments Manager, Dexus) and Ms Kessler were copied into the email. A copy of the email is at pages 1811-1812 of the Exhibit.

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- 173. On 3 June 2015, Ms Kessler emailed Mr Barnett (3 June 2015 Email) in relation to the bank guarantee, stating that the guarantee had to be drawn in favour of Perpetual and Lend Lease for an amount of A\$111,384.47. Ms Kessler also stated that the guarantee had to relate to performance of Halifax AU's obligations under the Second Sydney Office Lease. A copy of the 3 June 2015 Email is at pages 1813-1814 of the Exhibit.
- 174. On 16 July 2015, A\$111,385 was debited from the Saxo Allocated Account. This debit is recorded in line 14010 of the 2015 worksheet of the Bankwest Transactions Spreadsheet (page **2956** of the **Confidential Exhibit**). The "narration" for the debit is "FUNDS TRANSFER".
- 175. In the Khan 10 December 2018 Email, referred to above at [157]-[158], Mr Khan provided the following details in relation to the Second Sydney Office Term Deposit:

GOLDTD 985-****26-0 HALIFAX INV (Maturity date – 11-01-2019) \$111,385.00 - (Linked to Bank Guarantee - CL18027)

Purpose - Beneficiary: Perpetual Trustee Company Limited (ABN 42 000 001 007) of c/- DEXUS Property Group, Level 25, Australia Square, 264 George Street, Sydney, New South Wales and Lend Lease Funds Management Limited (ACN 000 335 473) of Level 4, 30 The Bond, 30 Hickson Road, Sydney, New South Wales

Guarantee amount \$111,385

- 176. On the basis of the above documents, I have assumed that the Second Sydney Office Term Deposit was held as security for the Second Sydney Office Bank Guarantee. I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to the transfer from the Saxo Allocated Account to the Second Sydney Term Deposit.
- 177. I have assumed that the funds in the Saxo Allocated Account which funded the Second Sydney Office Term Deposit should have been Client Moneys as the Saxo Allocated Account was a Named s 981B Account. Accordingly, the use of funds from the Saxo Allocated Account for the Second Sydney Office Term Deposit involved the use of Client Moneys not in accordance with the Regulations because they were used to secure an obligation of Halifax AU. This gave rise to a Trust Deficiency in the sense that Halifax AU and Halifax NZ held insufficient funds corresponding to Client Moneys to meet investor entitlements. This Trust Deficiency is further explained below at [178]-[179].
- 178. During January 2020, Mr Couto prepared an analysis of Client Moneys as at January 2016 (January 2016 Client Moneys Report). A copy of the January 2016 Client Moneys

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Report is at pages **1815-1815** of the **Exhibit**. The table below summarises the January 2016 Client Moneys Report:

Total cash and collateral held	A\$213,604,904
Less: Total equity	A\$213,877,996
Shortage including Security TDs	(A\$273,092)
Less: Balance of Security TDs	(A\$1,367,547)
Trust Deficiency	(A\$1,640,639)

179. In the table above:

- (a) The amount in the "Total cash and collateral held" row is comprised of (i) the balances of the Bankwest accounts held by Halifax AU, which are listed above at [170(a)] (with the exception of collateral held with GFT on the basis that no collateral was held with GFT in January 2016), foreign currency accounts of Halifax AU and Halifax NZ, which are listed above at [170(a)], and Term Deposits as at 30 June 2015 and (ii) assets held on the IB and Saxo trading platforms.
- (b) The amount in the "Less: Total equity" row was calculated using the 2016 Daily Equity Report, specifically the entry for 29 January 2016. The total equity is the total client equity position as at 29 January 2016.
- (c) The "Shortage including Security TDs" row is the difference between the "Total equity" and "Total cash and collateral held" rows. It includes the Security Term Deposits within "Total cash and collateral held". The "Shortage including Security TDs" row shows that as at January 2016, there was a shortfall of A\$273,092 in the cash and collateral corresponding to total client equity. The Security Term Deposits included in this calculation are identified in [179(d)].
- (d) The "Balance of Security TDs" row is the total amount held in Security Term Deposits as at 29 January 2016. The Security Term Deposits are:
 - (iv) the FSP Term Deposit (A\$1,097,645), called the "ANZ Term Deposit" in the January 2016 Client Moneys Report;
 - (v) the Auckland Office Term Deposit (A\$165,000), called the "Bankwest Term Deposit III" in the January 2016 Client Moneys Report; and
 - (vi) the Second Sydney Office Term Deposit (A\$104,902), called the "Gold Term Deposit" in the January 2016 Client Moneys Report.
- (e) The "Trust Deficiency" row is the difference between the "Total equity" and "Total cash and collateral held" rows, but where Security Term Deposits are not included in the

"Total cash and collateral held". As at January 2016, there was a Trust Deficiency of A\$1.6 million because Halifax AU and Halifax NZ held insufficient trust funds to meet investor entitlements.

As at January 2016, there was also a Client Moneys Shortage because Halifax AU and Halifax NZ did not have sufficient available assets on trust and in their own right to meet investor entitlements, even if Term Deposits are included amongst these assets. As at January 2016, Halifax AU and Halifax NZ held A\$98,474.44 in Company Accounts. I have calculated the balance of the Company Accounts from the bank statements of Company Accounts available to me. The bank statements correspond to the NAB Company Account, the Second NAB Company Account and the Business Current Account. I am aware that there may have been other company accounts in existence at this time, however I do not have copies of statements for these accounts. I am aware from the operating practice of the business of Halifax AU and Halifax NZ that it is unlikely that significant funds would have been held in these accounts in an amount to have made up the Client Moneys Shortage.

September 2016: Transfer from Saxo Allocated Account to AFSL Term Deposit

- 181. On 29 September 2016, there were three transfers of A\$1.6 million involving the Saxo Allocated Account:
 - (a) A\$1.6 million was debited from the Halifax Pro Allocated Account. This debit is recorded in line 13592 of the 2016 worksheet of the Bankwest Transactions Spreadsheet (page 3300 of the Confidential Exhibit). The "narration" for the debit is "BWA Term Deposit through halifaxonl".
 - (b) A\$1.6 million was credited to the Saxo Allocated Account. This credit is recorded in line 13560 of the 2016 worksheet of the Bankwest Transactions Spreadsheet (page 3300 of the Confidential Exhibit). The "narration" for the credit is "BWA TD Halplro all".
 - (c) A\$1.6 million was debited from the Saxo Allocated Account. This debit is recorded in line 13561 of the 2016 worksheet of the Bankwest Transactions Spreadsheet (page 3300 of the Confidential Exhibit). The "narration" for the debit is "TO MMKT 4513356".
- 182. Also on 29 September 2016, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (September 2016 TD Confirmation). A copy of the September 2016 TD Confirmation is at page 1816-1816 of the Exhibit. The September 2016 TD Confirmation relates to "Deal No 4513356" and is for A\$1.6 million. The September 2016 TD Confirmation also states that the commencement date is

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- 29 September 2016 and the maturity date is 28 February 2017, with an interest rate of 2.29% per annum.
- 183. I have seen an email from Ivana Trickovska of Bankwest to Mr Harlond dated 13 December 2018, which includes a screen shot of a transaction actioned on 29 September 2016. The "Counterparty Name" for the transaction was Halifax AU. The "Amount" of the transaction was A\$1.6 million and the "Deal" number for the transaction was 4513356. A copy of the email from Ms Trickovksa is at page 1817-1817 of the Exhibit. I have assumed that the email from Ms Trickovksa relates to the A\$1.6 million paid out of the Saxo Allocated Account on 29 September 2016.
- 184. On the basis of the documents listed above, I have assumed that the A\$1.6 million transferred from the Halifax Pro Allocated Account to the Saxo Allocated Account on 29 September 2016, was then transferred from the Saxo Allocated Account to the Term Deposit referred to in the September 2016 TD Confirmation.
- 185. The Term Deposit referred to in the September 2016 TD Confirmation rolled over a number of times as follows:
 - (a) On 7 July 2017, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (February 2017 TD Confirmation). A copy of the February 2017 TD Confirmation is at page 1818 of the Exhibit. The February 2017 TD Confirmation relates to "Deal No 4563213" and is for A\$1.6 million. The February 2017 TD Confirmation also states that the commencement date is 28 February 2017 and the maturity date is 28 July 2017, with an interest rate of 2.32% per annum. I do not know why the February 2017 TD Confirmation was issued in July 2017, not February 2017.
 - (b) On 28 July 2017, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (July 2017 TD Confirmation). A copy of the July 2017 TD Confirmation is at page 1819 of the Exhibit. The July 2017 TD Confirmation relates to "Deal No 4616281" and is for A\$1.6 million. The July 2017 TD Confirmation also states that the commencement date is 28 July 2017 and the maturity date is 26 October 2017, with an interest rate of 2.15% per annum.
 - (c) On 26 October 2017, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (October 2017 TD Confirmation). A copy of the October 2017 TD Confirmation is at page 1820 of the Exhibit. The October 2017 TD Confirmation relates to "Deal No 4646460" and is for A\$1.6 million. The October 2017 TD Confirmation also states that the commencement date is 26 October 2017 and the maturity date is 26 March 2018, with an interest rate of 2.3% per annum.

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- (d) On 26 March 2018, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (March 2018 TD Confirmation). A copy of the March 2018 TD Confirmation is at page 1821 of the Exhibit. The March 2018 TD Confirmation relates to "Deal No 4697665" and is for A\$1.6 million. The March 2018 TD Confirmation also states that the commencement date is 26 March 2018 and the maturity date is 25 June 2018, with an interest rate of 2.3% per annum.
- (e) On 25 June 2018, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (June 2018 TD Confirmation). A copy of the June 2018 TD Confirmation is at page 1822 of the Exhibit. The June 2018 TD Confirmation relates to "Deal No 4727629" and is for A\$1.6 million. The June 2018 TD Confirmation also states that the commencement date is 25 June 2018 and the maturity date is 24 September 2018, with an interest rate of 2.5% per annum.
- (f) On 24 September 2018, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (September 2018 TD Confirmation). A copy of the September 2018 TD Confirmation is at page 1823 of the Exhibit. The September 2018 TD Confirmation relates to "Deal No 4758369" and is for A\$1.6 million. The September 2018 TD Confirmation also states that the commencement date is 24 September 2018 and the maturity date is 24 October 2018, with an interest rate of 1.85% per annum.
- (g) On 24 October 2018, Bankwest issued a document titled "Confirmation of New Money Market Fixed Rate Term Deposit" (October 2018 TD Confirmation). A copy of the October 2018 TD Confirmation is at page 1824 of the Exhibit. The October 2018 TD Confirmation relates to "Deal No 4768431" and is for A\$1.6 million. The October 2018 TD Confirmation also states that the commencement date is 24 October 2018 and the maturity date is 22 January 2019, with an interest rate of 2.5% per annum.
- 186. On the basis of the documents above, I have assumed that the Term Deposits listed above correspond to the AFSL Term Deposit, which has an account number of 4646460. The AFSL Term Deposit is defined in **Annexure H** to this affidavit. I have not seen any document indicating that investors, whose funds were held in the Saxo Allocated Account, agreed to the transfer from the Saxo Allocated Account to the AFSL Term Deposit.
- 187. I have seen a copy of a balance sheet for Halifax AU as at 30 June 2018 (June 2018 Balance Sheet). A copy of the June 2018 Balance Sheet is at pages 1825-1832 of the Exhibit. I assume that the June 2018 Balance Sheet was prepared by Moore Stephens, who were Halifax AU's accountants at the time. Under the "cash and cash equivalents" that comprised the "current assets" of Halifax AU as at 30 June 2018, a short-term bank deposit titled "BWA TD" for A\$1.6 million is listed. I have assumed that this entry

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corresponds to the AFSL Term Deposit because it is for the same amount as that term deposit. The June 2018 Balance Sheet classified the AFSL Term Deposit as an asset of Halifax AU, not as Client Moneys.

Results of analysis

188. In the table below, I summarise my findings in relation to the Date of Trust Deficiency and the Date of Client Moneys Shortage.



In the table below, I summarise my findings in relation to Client Moneys Shortages, beginning in May 2012: 189.

Type of deficiency	Date of deficiency	Description of deficiency	Source
Trust Deficiency	November 2009	On 17 November 2009, A\$442,260 was debited from the Saxo Allocated Account and credited to the First Sydney Office Term Deposit. This Term Deposit held security for the First Sydney Office Bank Guarantee.	See above at [133]-[142]
		As I have explained above, I have assumed that the Saxo Allocated Account held Client Moneys in 2009. On that basis this transfer gave rise	
		to a Trust Deficiency in that Client Moneys were transferred into an account not operated as a trust account and not held for the benefit of investors.	
		That account was used to secure a company obligation of Halifax AU in a manner that was contrary to the Regulations.	
		I do not have a complete set of statements for all bank accounts held by Halifax AU and the total client equity position as at November 2009. This	
		means that I cannot determine whether there was a Trust Deficiency in the sense of Halifax AU holding sufficient funds pursuant to s 981B of the Act to meet investor entitlements as at November 2009. Nor can I determine	
		whether there was a Client Moneys Shortage for the same reason.	



Type of deficiency	Date of deficiency	Description of deficiency	Source
	May 2012	On 1 May 2012, A\$5.5 million was debited from the Saxo Allocated Account and credited to an interest generating Term Deposit with HSBC. This transfer gave rise to a Trust Deficiency in the sense that:	See above at [109]-[114], [129]-[131]
		(a) Client Moneys were used contrary to the Regulations because they were transferred to an interest generating Term Deposit without any written agreement from investors; and	
		(b) it meant that there were insufficient funds held on trust by Halifax AU to meet investor entitlements.	
		The Trust Deficiency in the latter sense which occurred as a result of this transaction is separately summarised in the table below at [190]-[191].	
Client Moneys Shortage	s June 2015	As at June 2015, there was a Client Moneys Surplus of A\$2.3 million, if the First Sydney Office Term Deposit (A\$420,147), the Auckland Office Term	See above at [169]-[171]
Note that for the purposes of considering	ψ D)	Deposit (A\$165,000), the FSP Term Deposit (A\$1,053,648), the Second Sydney Office Term Deposit (\$104,902.07) and the Trident Funds (A\$2.75 million for the Buy Back) are included in the available assets held by Halifax AU and Halifax NZ. In calculating the Client Moneys Surplus, I have assumed that assets in accounts containing Client Moneys and in	



Type of deficiency	Date or deficiency	Description of deficiency	
a Client Moneys Shortage, I have		Company Accounts were available to investors. These accounts are listed above in [170(a)] and [171].	
assumed that, as well as funds which were in accounts containing		If the First Sydney Office Term Deposit, the Second Sydney Office Term Deposit, the Auckland Office Term Deposit, the FSP Term Deposit and the	
Client Moneys, at least all Company Accounts that were not held in Term Deposits were available to investors. The accounts varied from time to time.		Trident Funds are excluded from the available assets held by Halifax AU and Halifax NZ, there is a Client Moneys Shortage of A\$2,030,880. In calculating this Client Moneys Shortage, I have assumed that the Security Term Deposits and Trident Funds were not available to investors and that assets in accounts containing Client Moneys and in Company Accounts were available to investors. These accounts are listed above in [170(a)] and [171].	
		If only the Trident Funds are excluded from the available assets held by Halifax AU and Halifax NZ, there is a Client Moneys Shortage of A\$287,182. In calculating this Client Moneys Shortage, I have assumed that the Trident Funds were not available to investors and assets in accounts containing Client Moneys, in Company Accounts and in the Security Term Deposits were available to investors. These accounts are listed above in [170(a)] and [171].	



Type of deficiency	Date of deficiency	Description of deficiency	Source
	January 2016	As at January 2016, there was a Client Moneys Shortage of A\$273,092,	See above at [178]-[180]
		even if the Second Sydney Office Term Deposit (A\$104,902), the Auckland	
		Office Term Deposit (A\$165,000), and the FSP Term Deposit	
		(A\$1,097,645) are included in the available assets held by Halifax AU and	
		Halifax NZ. In calculating this Client Moneys Shortage, I have assumed	
		that assets in the Security Term Deposits, and accounts containing Client	
		Moneys and in Company Accounts were available to investors. These	
		accounts are listed above in [179(a)] and [180].	
		Even if the Second Sydney Office Term Deposit, the Auckland Office Term	
		Deposit, the FSP Term Deposit are excluded from the available assets	
		held by Halifax AU and Halifax NZ, the Client Moneys Shortage was	
		greater, being A\$1,542,165. In Calculating this Client Moneys Shortage, I	
		have assumed that the Security Term Deposits were not available to	
		investors and assets in accounts containing Client Moneys and in	
		Company Accounts were available to investors. These accounts are listed	
		above in [179(a)] and [180].	

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Type of deficiency	Date	of Description of deficiency	eficiency		Source
	deficiency				
	June 2016	As at June 2016, if all assets helc calculation, include	As at June 2016, there was a Client Moneys Shortage of A\$857,592, even if all assets held in Halifax accounts of any kind are included in the calculation, including Security Term Deposits.	857,592, even	See above at [63]-[67],
		The accounts cla accounts held wit and FXCM; Ter accounts held with Accounts and Inv	The accounts classified as available to satisfy investor entitlements were accounts held with third parties, primarily IB AU, IB NZ, Halifax NZ, Invast and FXCM; Term Deposits, including Security Term Deposits; and accounts held with Bankwest and the NAB, which were Named s 981B Accounts and Investor Fund Accounts and the Halifax Grouped Account	iflements were ifax NZ, Invast Deposits; and Jamed s 981B ouped Account	
		as well as Comp Security Term D (A\$104,902), the Term Deposit (A Term Deposit for	as well as Company accounts held by Halifax AU and Halifax NZ. The Security Term Deposits were: the Second Sydney Office Term Deposit (A\$104,902), the Auckland Office Term Deposit (A\$165,000) and the FSP Term Deposit (A\$1,058,074) as well as the additional bank guarantee Term Deposit for an amount of \$111,385 held in term deposit number 985-026626-0.	Term Deposit Term Deposit) and the FSP ank guarantee it number 985-	
	March 2017	As at March 2017 accounts classifii same as for June AFSL Term Dep (A\$165,000), the	As at March 2017, there was a Client Moneys Shortage of A\$5 million. The accounts classified as available to satisfy investor entitlements were the same as for June 2016, except that the Security Term Deposits were: the AFSL Term Deposit (A\$1,600,000), the Auckland Office Term Deposit (A\$165,000), the FSP Term Deposit (A\$1,021,793) and the additional	\$5 million. The nents were the osits were: the Term Deposit the additional	See above at [53]-[58], [174]-[175]

Type of deficiency	Date of	of Description of deficiency		Source
	deficiency			
		bank guarantee Term Deposit for an amount of \$111,385 held in term	mount of \$111,385 held in ter	Ę.
		deposit number 985-026626-0.		

In the table below, I summarise my calculations in relation to the Trust Deficiency and Client Moneys Shortage as at May 2012, June 2015, January 2016, June 2016 and March 2017: 190.

& &	May 2012	June 2015	January 2016	June 2016	March 2017
Equity	\$98,600,190	\$223,677,346	\$213,877,966	\$221,677,139	\$69,356,08
	(see above at [70(b)], [130(e)])	(see above at [70(b)], (see above at [169]-[170]) [130(e)])	(see above at [178]- [179])	(see above at [66])	(see above at [55(b)], [56], [58])
Cash and	Cash and \$102,035,321	\$226,018,660	\$213,604,904	\$220,743,296.71	\$64,273,510
assers	(see above at [70(a)])	(see above at [169]-[170])	(see above at [178]- (see above at [66]) [179])	(see above at [66])	(see above at [55(c)], [56], [58])
Net	\$3,435,132	\$2,341,314	(\$273,092)	(\$933,842)	(\$5,082,575)
position including Security TDs and	(see above at [71])	(see above at [169]-[170])	(see above at [178]- [179])	(see above at [67])	(see above at [56], [58])
Trident					



A\$	May 2012	June 2015	January 2016	June 2016	March 2017
Funds in cash and assets					
Less: Security TDs and Trident Funds	\$5,999,841 (see above at [72]-[130], [133]-[144])	\$4,493,697 (see above at [169]-[170])	\$1,367,457 (see above at [178]- [179])	\$4,189,361 (which takes into account the Trident Funds, FSP Term Deposit, Auckland Office Term Deposit, Second Sydney Office Term Deposit and Term Deposit supporting the bank guarantee in the amount \$111,385.00)	n/a
Trust Deficiency where Security TDs and Trident Funds excluded	(\$2,564,710) (see above at [144(e)])	(\$2,047,481) (see above at [169]-[170])	(\$1,640,639) (see above at [178]- [179])	(\$5,123,203) (this amount is the sum of "Net position including Security TDs and Trident funds" and "Less: Security TDs and Trident Funds)	(\$5,082,575) (see above at [56])
Company Accounts	Unknown	\$16,601.84 (see above at [171])	\$98,474.44 (see above at [180])	\$76,249.88 (see above at [67]	\$151,488.0





A\$	May 2012	June 2015	January 2016	June 2016	March 2017
Client	(\$2,564,710)	(\$2,030,880)	(\$1,542,165)	(\$5,046,954)	(\$4,931,087)
Moneys Shortage	(see above at [144(e), (see above at [171])	(see above at [171])	(see above at [180])		(see above at [56])
	noting that I have not included company funds				
	in this calculation on the basis that the bank				
	statements are not				

191. In the table above:

- (a) The amounts in the "Equity" row is the total client equity balances for all trading platforms offered by Halifax AU and Halifax NZ.
- (b) The amounts in the "Cash and assets" row is the cash and assets that Halifax AU and Halifax NZ had available to meet client equity positions, as described throughout this affidavit. Security Term Deposits and the Trident Funds, if they exist, are included in these calculations. The Trident Funds are the A\$5.5 million paid by AMH / Trident for the preference shares in December 2010 / January 2011, which was reduced to \$2.75 million in August 2015 after the Buy Back.
- (c) The amounts in the "Net position including Security TDs and Trident Funds in cash and assets" is the difference between the "Equity" and "Cash and assets" rows.
- (d) The amounts in the "Security TDs and Trident Funds" row are (a) the Security Term Deposits that were funded by, what I have assumed to be, Client Moneys and (b) the Trident Funds.
- (e) The amounts in the "Company Accounts" row are the total balances of the Company Accounts that I have been able to identify in the books and records of Halifax AU and Halifax NZ at the relevant points in time.

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- (f) The amounts in the "Trust Deficiency, where Security Term Deposits and Trident Funds excluded" row is the difference between the "Equity" and "Cash and assets" rows where Security Term Deposits and the Trident Funds are not included as part of the funds available to meet client equity positions on the trading platforms. This row calculates the Trust Deficiency in the sense of whether there were sufficient moneys in accordance with s 981B of the Act or s 77P of the FAA NZ and Reg 240 of the FMCR NZ.
- (g) The amounts in the "Client Moneys Shortage" row indicate whether Halifax AU and Halifax NZ had sufficient funds available on trust or on their own account for investor entitlements (that is, for the amounts in the "Equity" row) where Company Accounts are included but Security Term Deposits and Trident Funds are excluded. This affidavit identifies the accounts that have been considered in these calculations.



- In order to determine the date on which (a) a Trust Deficiency first arose in the sense of 192. there being insufficient moneys held on trust in accordance with s 981B of the Act or s 77P of the FAA NZ and Reg 240 of the FMCR NZ or (b) a Client Moneys Shortage first arose, with the assistance of the currently employed staff of Halifax AU, I would need to prepare an analysis similar to the analysis in the Estimated May 2012 Report for any and every given point in time. The Liquidators are not in a position to determine (a) if there was a Trust Deficiency in the sense of there being insufficient moneys held on trust in accordance with s 981B of the Act or s 77P of the FAA NZ and Reg 240 of the FMCR NZ before May 2012 or (b) if there was a Client Moneys Shortage in any sense before May 2012 because they do not have sufficient records as I explain above in [20] and [141]-[142]. I note that there was a Trust Deficiency in the sense that trust moneys were otherwise used contrary to the Regulations at least from 2009 as represented in the table at [189] above, and it seems to me likely, although I cannot be sure, that there was a trust deficiency in the sense that money required to be held on trust by Halifax AU and Halifax NZ pursuant to s 981B of the Act and s 77P of the FAA NZ and Reg 240 of the FMCR NZ (i.e., Client Moneys) was in fact not held on trust from that date
- 193. Even assuming Halifax AU had sufficient records, it would be an extremely time consuming and costly exercise and does not seem to me to be practicable. From my experience, the following steps would be involved in this exercise:
 - (a) The KPMG team would need to write to all ADIs to request bank statements from as far back as they can go. I do not expect that the banks will have bank statements from before 2012. I estimate that the turnaround time on this is likely to be 4-5 weeks.
 - (b) The KPMG team would need to write to all platform providers which were used by clients of Halifax AU from November 2009 to May 2012 to obtain daily equity reports. I estimate that the turnaround on this would be at least 6 weeks. It is also possible that the platform providers do not have these records.
 - (c) After receiving bank statements, Mr Couto would prepare an analysis of Client Moneys. I estimate that this would take approximately two hours for an analysis of one day. If Mr Couto analyses each day between 17 November 2009 and 12 May 2012, I estimate that this would take approximately 1,810 hours (905 days x 2 hours). This assumes that bank statements for this period can be located.
 - (d) After Mr Couto's analysis, Ms Arnfield and I would review Mr Couto's analysis. I estimate that it would take half an hour of our combined time to reach each day of analysis. The cost of this would be \$575/hour. That is, the analysis by Ms Arnfield and I would take approximately 452 hours and cost approximately A\$260,000.



- 194. I note that the estimates above are only estimates and the time and cost of any further analysis into the Date of Trust Deficiency or Date of Client Moneys Shortages would depend on the material available to Mr Couto and the KPMG team, and the results of the analysis of that material.
- 195. The Liquidators have issued subpoenas in these proceedings seeking to obtain records of Halifax AU and Halifax NZ. The below table sets out the name of the parties that have been issued with a subpoena and the status in respect of the production of the documents the subject of the subpoena:

Subpoenaed party	Production status
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	An initial tranche of documents were produced before the first return of the subpoena on 18 March 2020. Further tranches of documents are expected to be produced, across at least two separate tranches, with it having been foreshadowed by the subpoenaed party that tens of thousands of further documents may potentially be produced. The subpoena is next listed for return on 8 April 2020.
Stature Wealth Management Pty Ltd ACN 130 423 700	No documents to be produced.
Stature-ARW Accounting Pty Ltd ACN 143 759 059	Some documents were produced to the Court produced before the first return of the subpoena on 18 March 2020. The subpoena is next listed for return on 8 April 2020. No further documents are expected to be produced.

Interested Investor accounts

196. In the table below, I identify the date on which the Interested Investors made their first deposit in a trading platform used by clients of Halifax AU or Halifax NZ and the date on

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which they made their last deposit in a trading platform used by clients of Halifax AU or Halifax NZ.

Interested Investor	Date, amount and recipient of First Deposit	Source for First Deposit	Date, amount and recipient of Last Deposit	Source for Last Deposit
Beeline Trust	30 April 2018 – NZ\$1,000,000 to the ANZ HNZ Account	Line 8708 of the ANZ HNZ Transaction worksheet of the Foreign Currency Transactions Spreadsheet (page 3977 of the Confidential Exhibit)	8 August 2018 - NZ\$600,000 to the ANZ HNZ Account	Line 9913 of the ANZ HNZ Transaction worksheet of the Foreign Currency Transactions Spreadsheet (page 3990 of the Confidential Exhibit)
Mr Whitehead	13 April 2016 – NZ\$100,000 to the ANZ HNZ Account	Line 1095 of the ANZ HNZ Transaction worksheet of the Foreign Currency Transactions Spreadsheet (page 3897 of the Confidential Exhibit)	9 July 2018 NZ\$300,000 to the ANZ HNZ Account	Line 9531 of the ANZ HNZ Transaction worksheet of the Foreign Currency Transactions Spreadsheet (page 3986 of the Confidential Exhibit)
Mr Wang	16 June 2016 – NZ\$450,000 to the ANZ HNZ Account	Line 1559 of the ANZ HNZ Transaction worksheet of the Foreign Currency Transactions Spreadsheet (page 3902 of the Confidential Exhibit)	Mr Wang only made one deposit.	n/a
Ms McMullin	22 April 2010 - \$5,000 to the Saxo Suspense Account	Line 10,080 of the 2010 worksheet of the Bankwest Transactions Spreadsheet (page 220 of the Confidential Exhibit)		Line 8,826 of the 2018 tab of the Bankwest Transactions Spreadsheet (page 3811 of the Confidential Exhibit)
Mr McNeil	9 February 2011 - \$5,000 to the IB	Line 4,573 of the 2011 worksheet of the Bankwest	12 February 2016 – \$9,900 to	Line 2,354 of the 2016 worksheet of the Bankwest



Interested Investor	Date, amount and recipient of First Deposit		Date, amount and recipient of Last Deposit	Source for Last Deposit
	Suspense Account	Transactions Spreadsheet (page 853 of the Confidential Exhibit)	the IB Suspense Account	Transactions Spreadsheet (page 3122 of the Confidential Exhibit)

Sworn by the deponent

at Sydney

in New South Wales on 25 March 2020

Before me:

Signature of deponent

Signature of witness

Qualification of witness: Solicitor

Rule 29.02(8)

Certificate identifying annexure

NSD 2191 of 2018 No.

Federal Court of Australia

District Registry: New South Wales

Division: General

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

MORGAN JOHN KELLY AND PHILIP ALEXANDER QUINLAN IN THEIR CAPACITY AS JOINT AND SEVERAL LIQUIDATORS OF HALIFAX INVESTMENT SERVICES PTY LTD (IN LIQUIDATION) ACN 096 980 522 AND OTHERS NAMED IN THE SCHEDULE

Plaintiffs

This is the annexure marked "IPS-10" to the affidavit of Ian Phillip Sutherland sworn on 25 March 2020 before me:

Signature of witness before whom the Hoperoft, Solicitar of the Supreme Court of USV.

affidavit is sworn

Name of witness: Dylar Address of witness: Level 31, 1 O'Connell

Street, Sydney NSW 2000 Qualification of witness: Solicitor

Morgan John Kelly and Philip Alexander Quinlan in their capacity as joint

and several liquidators of Halifax Investment Services Pty Ltd (in liquidation)

ACN 096 980 522, Plaintiffs Filed on behalf of

Jason Opperman and Lewis Seelenmeyer Prepared by

K&L Gates Law firm

Fax Tel +61 2 9513 2300 jason.opperman@klgates.com and **Email** Ref 170 Sydney

Address for service Level 31, 1 O'Connell Street, Sydney NSW 2000

Annexures to Affidavit of Ian Phillip Sutherland sworn 25 March 2020

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Annexure A: Named s 981B Accounts

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	Bank of Western Australia Ltd (Bankwest)	302100 9066457	HLFX PRO SUS [s981B Trust A/c] (Halifax Pro Suspense Account)	In connection with using the trading platform MetaTrader 4 (MT4) and the trading platform MetaTrader 5 (MT5), clients deposit funds into this account which is then swept on a daily basis to the Halifax Pro Allocated Account. Holds moneys deposited shortly prior to the administration of Halifax AU on 23 November 2018 but which were never allocated to particular clients (Unallocated Moneys).	AUD
2.	Bankwest	302100 9066473	HLFX PRO ALL [s981B Trust A/c] (Halifax Pro Allocated Account)	The funds in the Halifax Pro Suspense Account flow to this account once the deposit has been allocated to an individual client.	AUD
3.	Bankwest	302100 9023952	IB SUSPENSE [s981B Trust A/c] (IB Suspense Account)	Clients on the trading platform Trader Workstation (IB Platform) deposit funds into this account which is then swept on a daily basis to IB Allocated Account. Holds Unallocated Moneys.	AUD

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
4.	Bankwest	302100 9023944	IB ALLOCATED [s981B Trust A/c] (IB Allocated Account)	The funds in the IB Suspense Account are transferred to this account once the deposit has been allocated to a client.	AUD
5.	Bankwest	302100 9001247	SAXO SUSP [s981B Trust A/c] (Saxo Suspense Account)	Previously used for client deposits on the Saxo platform. Prior to 30 June 2016, Saxo Capital Markets Australia (Saxo) had been providing a client trading platform for Halifax AU.	AUD
6.	Bankwest	302100 0845127	SAXO ALLOC [s981B Trust A/c] (Saxo Allocated Account)	The funds in the Saxo Suspense Account are transferred to this account once the deposit has been allocated to a client.	AUD
7.	Bankwest	302100 9070658	FXCM SUSP [s981B Trust A/c] (FXCM Suspense Account)	1	AUD
8.	Bankwest	302100 9070666	FXCM ALL [s981B Trust A/c] (FXCM Allocated Account)	1	AUD
9.	Bankwest	302100 9049132	GAIN SUSP [s981B Trust A/c] (Gain	deposits by clients	

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
			Suspense Account)	platform. The Gain platform was a trading platform used by Halifax AU from at least 2010 to around February 2016. The account was swept on a daily basis to the Gain Allocated Account.	
10.	Bankwest	302100 9049140	GAIN ALL [s981B Trust A/c] (Gain Allocated Account)	The funds in the Gain Suspense Account are transferred to this account once the deposit has been allocated to a client.	AUD
11.	Bankwest	302100 9068213	FXDD SUSP [s981B Trust A/c] (FXDD Suspense Account)		AUD
12.	Bankwest	302100 9068221	FXDD ALLOC [s981B Trust A/c] (FXDD Allocated Account)	N/A	AUD
13.	Bankwest	302100 9079539	INFINITY SUS [s981B Trust A/c] (Infinity Suspense Account)	N/A	AUD
14.	Bankwest	302100 9079505	INFINTY ALL [s981B Trust A/c] (Infinity		AUD

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
			Allocated Account)		
15.	Bankwest	302100 9079872	FX SUSPENSE [s981B Trust A/c] (FX Suspense Account)	N/A	AUD
16.	Bankwest	302100 9079880	FX ALLOCATED [s981B Trust A/c] (FX Allocated Account)	N/A	AUD
17.	Bankwest	302100 9040578	MIRUS SUSP [s981B Trust A/c] (Mirus Suspense Account)	N/A	AUD
18.	Bankwest	302100 9041095	MIRUS ALLOC [s981B Trust A/c] (Mirus Allocated Account)	N/A	AUD

Annexure B: Investor Fund Accounts of Halifax AU

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	National Australia Bank (NAB)	HAFAXNZD01	HALIFAX INVESTMENT SERVICES LTD NEW ZEALAND DOLLAR ACCOUNT (Halifax AU NZD Account)	Account to which New Zealand clients on Halifax AU's IB Platform (IB AU), Halifax NZ's IB Platform (IB NZ), MT4 and MT5 (collectively, all platforms) deposited New Zealand Dollars (NZD) and redemptions in NZD were made.	NZD
2.	NAB	HAFAXUSD01	HALIFAX INVESTMENT SERVICES LTD US DOLLAR ACCOUNT (NAB USD Account)	Account to which clients on all platforms deposited US Dollars (USD) and redemptions of USD were made.	USD
3.	NAB	HAFAXSGD01	HALIFAX INVESTMENT SERVICES LTD SINGAPORE ACCOUNT (NAB SGD Account)	Account to which clients on all platforms deposited Singapore Dollars (SGD) and redemptions of SGD were made.	SGD
4.	NAB	HAFAXGBP01	HALIFAX INVESTMENT SERVICES LTD POUND STERLING ACCOUNT (NAB GBP Account)	deposited	GBP
5.	NAB	HAFAXEUR01	HALIFAX INVESTMENT SERVICES LTD EURO ACCOUNT	j •	EUR

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
			(NAB EUR Account)	of Euro were made.	
6.	NAB	HAFAXJPY01	HALIFAX INVESTMENT SERVICES LTD JAPANESE YEN ACCOUNT (NAB JPY Account)	Account to which clients on all platforms deposited Japanese Yen (JPY) and redemptions of JPY were made.	JPY
7.	NAB	HAFAXHKD01	HALIFAX INVESTMENT SERVICES LTD HONG KONG DOLLAR ACCOUNT (NAB HKD Account)	Account to which clients on all platforms deposited Hong Kong Dollars (HKD) and redemptions of HKD were made.	HKD
8.	NAB	HAFAXCHF01	HALIFAX INVESTMENT SERVICES LTD SWISS FRANC ACCOUNT (NAB CHF Account)	Account to which clients on all platforms deposited Swiss Francs (CHF) and redemptions of CHF were made	CHF
9.	Bankwest	302100 828234	Unallocated Deposits (Unallocated Account)	Holds client deposits made to the Halifax Pro Suspense Account, the IB Suspense Account and the Merchant Account, which are not to be allocated to individual client accounts. Holds Unallocated Manager	
10	. Bankwest	302985 0402377	BUSINESS ZERO TRANSACTION	Moneys. Account to which clients on all platforms	1

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
			ACCT (Merchant Account)	deposited funds via credit card.	
		·		Holds Unallocated Moneys.	
11.	Bankwest	302100 9111894	CREDIT CARD MERCHANT	Account to which clients on all platforms deposited funds via credit card.	AUD
12.	Bankwest	302100 0810796	GFT SUSPENSE Trust Account (GFT Suspense Account)	Previously used for client deposits on platform that is no longer offered by Halifax.	AUD

Annexure C: Investor Fund Accounts of Halifax NZ

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	ANZ	01-0121-0135307- 02	ANZ HNZ Account	Used for NZ client deposits and redemptions for the IB NZ Consolidated Account. Also used for New Zealand clients on the IB AU, MT4 and MT5 platforms.	NZD
2.	ANZ	205964EUR0001	FCA(EUR)	Used for NZ client deposits in Euro on all platforms.	EUR
				I have reviewed the statements for this account from May 2018 to November 2018. I do not have accounts from earlier because the online platform is only able to generate statements from May 2018. My review of the statements for this account indicates that this account was not frequently used.	
3.	ANZ	205964USD00001	FCA(USD) (ANZ USD Account)	Used for NZ client deposits in USD on all platforms.	USD
4.	ANZ	205964GBP00001	FCA(GBP)	Used for NZ client deposits in Pounds on all platforms. I have reviewed the statements for this account from May 2018 to November 2018. I do not have	

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
				accounts from earlier because the online platform is only able to generate statements from May 2018. My review of the statements for this account indicates that this account was not frequently used.	
5.	ANZ	205964AUD00020	FCA (AUD)	Used for NZ client deposits in AUD on all platforms. I have reviewed the statements for this account from May 2018 to November 2018. I do not have accounts from earlier because the online platform is only able to generate statements from May 2018. My review of the statements for this account indicates that this account was not frequently used.	AUD

Annexure D: Third Party Accounts of Halifax AU

	Bank / Third Party	Account Number	Account Name	Description / Primary purpose	Currency
1.	Invast	HFAX1001	Invast	Funds held with third party hedging provider.	USD
2.	Gain	GT590848 & CX058903	Gain	Funds held with third party hedging provider.	AUD
3.	IB	I214923	IB AU Master I214923 (IB AU Master Account) and client	This account is used to fund individual client accounts in connection with Halifax AU's and Halifax NZ's clients that trade on the IB AU Platform.	AUD
4.	IB	U1430547	IB AU Prop U1430547 (IB AU Prop Account)	This account holds cash generated from Halifax AU revenue relating to commissions, interest, and stocks and hedges against MT5 stock positions.	AUD
5.	IB	11916780	OLD IB AU Master Account I1916780	N/A	AUD
6.	IB	1960105	OLD IB AU Disclosed Master 1960105	N/A	AUD
7.	IB	U1434362	OLD IB AU Disclosed Prop U1434362	l .	AUD
8.	IB	1323137	OLD IB AU Master Account I323137	N/A	AUD
9.	IB	Unknown	OLD IB AU Disclosed	N/A	AUD

	Bank / Third Party	Account Number	Account Name	Description / Primary purpose	Currency
			Prop Account Unknown		
10.	IB	F1198045	OLD IB AU Master Account F1198045	N/A	AUD
11.	IB	U1916781	OLD IB AU Prop U1916781	N/A	AUD
12.	Neteller	71468	Neteller	Funds held with third party merchant providers	USD
13.	Payment Asia Merchant	10000578 & 10000699	Payment Asia Merchant	Funds held with third party merchant providers.	CNY
14.	RPN Pay	Unknown	RPN Pay	Funds held with third party merchant providers.	CNY
15.	Paysec	Unknown	Paysec	Funds held with third party merchant providers.	CNY
16.	Skrill	Unknown	Skrill	Funds held with third party merchant providers.	AUD
17.	Bankwest	302100 9301780	iSignThis Merchanr Direct Debi (FX Pro Suspense Account)		AUD
18.	Bankwest	302100 9301798	Dynamic Payment Merchant (FX Pro Allocated Account)		AUD
19.	GT Pay	Unknown	GT Pay	Funds held with third party	i i

	Bank / Third Party	Account Number	Account Name	Description / Primary purpose	Currency
				merchant providers.	
20.	GSD Pay	Unknown	GSD Pay	Funds held with third party merchant providers.	AUD

Annexure E: Third Party Accounts of Halifax AU

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	ΙΒ	U1439482	IB NZ Prop Account U1439482 (IB NZ Prop Account)	This account holds cash generated from Halifax NZ revenue relating to commissions and interest.	NZD
2.	IB	U1439481	IB NZ Master U1439481 (IB NZ Master Account) and clients	This account is used to fund individual client accounts in connection with Halifax AU's and Halifax NZ's clients that trade on the IB NZ Platform.	NZD
3.	IB	I1483133	OLD IB NZ Disclosed Master Account	N/A	NZD
4.	IB	F480518	OLD IB NZ Disclosed Master Account	N/A	NZD
5.	IB	11727887	OLD IB NZ Non Disclosed Master Account	N/A	NZD
6.	IB	U1727888	OLD IB NZ Non Disclosed Prop Account	N/A	NZD

Annexure F: Company Accounts of Halifax AU

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	NAB	820579 6205445	HALIFAX INVESTMENT SERVICES LTD (NAB Company Account)	Company transaction account. Used to pay Halifax AU expenses such as wages and to receive revenue.	AUD
2.	NAB	082057 946562768	2ND ACCT (Second NAB Company Account)	Company transaction account. Used to pay Halifax AU expenses.	AUD
3.	NAB	820573 08580742	HALIFAX INVESTMENT SERVICES LTD (Third NAB Company Account)	Company transaction account. Used to pay Halifax AU expenses. Not frequently used.	AUD
4.	ANZ	2023-53031	ANZ bank account (ANZ Company Account)	Company transaction account. Used to pay Halifax AU expenses. Not frequently used.	AUD
5.	Bankwest	302100 9030850	Halifax Grouped Account	Account contains interest on all Bankwest accounts and revenue withdrawal from the Halifax Pro Allocated Account.	AUD
6.	Bankwest	2000735	Money Market Call Account	N/A	USD
7.	Bankwest	302100 9111909	Halifax Group Allocated Account	Previously used for deposits and redemptions on the Saxo platform, From 2017, not frequently used.	AUD

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
8.	Bankwest	302100 0828250	Bad Debts Victoria Account	N/A	AUD

Annexure G: Company Accounts of Halifax NZ

	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	ANZ	01-0121- 0135307-00	Business Current Account	Used to pay Halifax NZ expenses and receive revenue.	NZD
2.	ANZ	01-0121- 0135307-01	Online Account	Used to pay Halifax NZ expenses.	NZD

Annexure H: Security Term Deposits

	Halifax entity	Bank	Account Number	Account Name	Description / Primary purpose	Currency
1.	Halifax AU	Bankwest	4646460	Bankwest term deposit (AFSL Term Deposit)	Term deposit. Held security for purposes of AFSL.	AUD
2.	Halifax AU	Bankwest	9850266260	BWA Gold TD (Second Sydney Office Term Deposit)	Term deposit. Held security for Halifax AU office lease.	AUD
3.	Halifax AU	Bankwest	9850083719	BWA Gold TD (Auckland Office Term Deposit)	Term deposit. Held security for Halifax NZ office lease.	AUD
4.	Halifax NZ	ANZ	88252908- 1000	Term Deposit (FSP Term Deposit)	Term deposit used to support FSP.	NZD

Annexure I: Interest Generating Term Deposits

	Bank	Account Number	Start date	Maturity date
1.	HSBC	342-011 032281090	1 May 2012	I have not been able to ascertain the maturity date.
2.	HSBC	032281001	6 March 2012	Unknown
3.	Citibank	9010385147	9 March 2012	10 September 2012
4.	Citibank	9010385147	10 September 2012	11 March 2013
5.	Suncorp	204231767	5 June 2012	5 December 2012

Annexure J: IB Equity Reports

- I can generate IB Equity Reports on the IB AU and IB NZ platforms for the period from 2015 to the present. I can ask Interactive Brokers for IB Equity Reports from before 2015.
- 2. Over the course of conducting investigations in the external administration, I have reviewed a number of IB Equity Reports from 2012 to the present. They contain the same type of information.
- 3. The Sample IB AU Equity Report at pages **10-55** of the **Exhibit** contains the following information:
 - (a) The first column of this report lists investor IB account numbers, which are unique to each investor.
 - (b) The second column lists account aliases, like an account nickname, where they exist.
 - (c) The third column lists the names of the account holders.
 - (d) The fourth column is titled "Prior NAV", which is the net asset value of the individual investor account from the prior period (usually end of the previous day).
 - (e) The fifth column is titled "Current NAV", which is the net asset value of the individual investor account as at the date of the report.
 - (f) The sixth column is titled "TWR", which stands for time weighted return. TWR is a measure of calculating the return on an investment.
 - (g) The seventh column lists the base currency of the investor account.

Annexure K: MT4 and MT5 Equity Reports

- 4. Throughout the course of the external administration, I have requested Mr Clissold or Mr Couto to generate MT4 and MT5 Equity Reports. These reports can be generated for the period from October 2016 to the present. They cannot be generated prior to October 2016 because from April 2016, when Halifax AU started using the MT4 platform, to October 2016 Halifax AU engaged Think Liquidity to provide the trading bridge for currency trading on MT4. In October 2016, Halifax AU engaged OneZero to undertake this task. Halifax AU has been unable to salvage data from the period when Think Liquidity was used.
- Over the course of conducting investigations in the external administration, I have reviewed a number of MT4 and MT5 Equity Reports from June 2016 to the present. They contain the same type of information.
- 6. The Sample MT4 Equity Report contains a number of worksheets, which have been generated or prepared by Mr Couto. The worksheet that contains an MT4 Equity Report is at the "Report" worksheet.
- 7. Columns A to J of the "Report" worksheet are generated on the MT4 platform. These columns are:
 - (a) Column A "Time", which is the date at which the equity report was obtained from the MT4 platform;
 - (b) Column B "Login", which lists MT4 account numbers for each investor;
 - (c) Column C "Deposit", which is the amount deposited in an account per day;
 - (d) Column D "Closed P/L", which is profit and loss realised for trades closed per day;
 - (e) Column E "Balance", which provides the balance of the individual client accounts as at the date of the report was generated;
 - (f) Column F "Credit", which is the amount of bonus credits available to each investor. From my discussions with Mr Lum and Mr Worboys in November 2018, I understand that bonus credits were provided to investors to incentivise them to trade. When provided, bonus credits were immediately credited to the investor's account, so the investor's equity balance increased by the value of the bonus credit. The circumstances in which bonus credits were provided and the circumstances in which an investor could withdraw a bonus credit in cash differed from investor to investor. Investors had to meet certain conditions to

- be receive and withdraw bonus credits, which were documented in an email or written agreement. Usually, investors had to conduct a trade of the bonus credit before being entitled to withdraw funds related to that bonus credit.
- (g) Column G "Floating P/L", which is unrealised profit and loss for all open trades at the close of the end day of the report;
- (h) Column H "Equity", which are the assets of the account at the end of the day;
- (i) Column I "Used Margin", which is the required margin for all open trades; and
- (j) Column J "Free Margin", which is the free margin for trading based on balance, used margin and profits and losses.
- 8. Columns K to S of the "Report" worksheet have been inserted by Mr Couto to assist in summarising the MT4 generated information. These columns are:
 - (a) Column K "Client equity", which is the same as Column H;
 - (b) Column L "Balance", which is the same as Column E;
 - (c) Column M "Month", which is the month of the equity report;
 - (d) Column N "Ignore?", which denotes whether the account should be counted in the total equity owing to Investors of Halifax AU and Halifax NZ (for example, if the account is a test account, it should not be included);
 - (e) Column O "Profile", which identified the advisor or broker who introduced the client to Halifax AU;
 - (f) Column P "Currency", which is the currency in which an investor trades on MT4;
 - (g) Column Q "Profile error check", which was a check to see whether the introducing advisor or broker was on the list of introducing broker codes maintained by Halifax AU and Halifax NZ;
 - (h) Column R "Currency error check", which was a check to see that the account balance was listed in the correct currency; and
 - (i) Column S "Office", which identified whether the investor's account was set up in Australia, New Zealand or China.
- 9. The "Equity totals" worksheet of the Sample MT4 Equity Report contains the total client equity on the MT4 platform. This was calculated by Mr Couto from the information in the "Report" worksheet, after making adjustments for foreign currency and "test accounts" which are excluded from the calculation of total equity.

- 10. The Sample MT5 Equity Report contains a number of worksheets, which have been generated or prepared by Mr Couto. The worksheet that contains an MT5 Equity Report is at the "Report" worksheet.
- 11. Columns A to M of the "Report" worksheet are generated on the MT5 platform. These columns are:
 - (a) Column A "Time", which is the date and time at which the data in the report was obtained from the MT5 platform;
 - (b) Column B "Login", which lists MT5 account numbers for each investor;
 - (c) Column C "Name", which lists the names of each MT5 investor;
 - (d) Column D "Prev Balance", which is the balance at the end of the previous day;
 - (e) Column E "Deposit", which is the total funds deposited or withdrawn from an account per day;
 - (f) Column F "Closed P/L", which is profit and loss realised for trades closed per day;
 - (g) Column G "Balance", which is the balance at the end of the day;
 - (h) Column H "Credit", which is the amount of bonus credits available to each investor;
 - (i) Column I "Floating P/L", which is unrealised profit and loss for all open trades at the close of the day;
 - (j) Column J "Equity", which are the assets of the account at the end of the day;
 - (k) Column K "Margin", which is the money recovered to cover open positions as of the end of the day;
 - (I) Column L "Free Margin", which is the free margin for trading based on balance, used margin and profits and losses; and
 - (m) Column M "Currency", which is the currency in which an investor trades on MT5.
- 12. Column N of the "Report" worksheet is blank.
- 13. Columns O to AD of the "Report" worksheet have been inserted by Mr Couto to assist in summarising the MT5 generated information. They are:
 - (a) Column O "Month", which is the month of the equity report;

- (b) Column P "Client equity", which is the same as Column J;
- (c) Column Q "Balance", which is the same as Column G;
- (d) Column R "Ignore client", which denotes whether the account should be counted in the total equity owing to Investors of Halifax AU and Halifax NZ (for example, if the account is a test account, it should not be included);
- (e) Column S "Ignore profile", which is a check to confirm that accounts are listed under a valid and current "Profile";
- (f) Column T "Profile", which identified the advisor or broker who introduced the client to Halifax AU;
- (g) Column U "Currency", which is the currency in which an investor trades on MT5;
- (h) Column V "Conversion Rate", which is the conversion rate used to convert the currency in which an investor trades on MT5 into AUD;
- (i) Column W "Equity AUD", which is Column P in AUD;
- (j) Column X "Balance AUD", which is Column Q in AUD;
- (k) Column Y "Stock margin AUD", which is a column inserted by Halifax IT which relates to the total margin allocated on stock positions in each account;
- Column Z "Non-stock margin AUD", which is a column inserted by Halifax IT which relates to the total margin allocated on non-stock positions in each account;
- (m) Column AA "Category", which is a column inserted by Halifax IT which relates to the classification of the accounts by the type of open positions held in that account and margin requirements;
- (n) Column AB "Profile error check", which was a check to see whether the introducing advisor or broker was on the list of introducing broker codes maintained by Halifax AU and Halifax NZ;
- (o) Column AC "Currency error check", which is a check to confirm the account is listed in the correct currency; and
- (p) Column AD "Office", which identified whether the investor's account was set up in Australia, New Zealand or China.
- 14. The "Equity totals" worksheet of the Sample MT5 Equity Report contains the total client equity on the MT5 platform. This was calculated by Mr Couto from the information in

the "Report" worksheet, after making adjustments for margin requirements, foreign currency and "test accounts" which are excluded from the calculation of total equity.

Annexure L: Daily Equity Reports

- 15. The Daily Equity Reports record the equity held in each trading platform used by Halifax AU and Halifax NZ on a daily basis. From my discussions with Mr Couto and Mr Clissold in February-March 2020, I am aware that from 2010 to 2018, a member of the Halifax IT team updated the daily client equity balances in these reports using information generated by each trading platform.
- 16. The format of each Daily Equity Report is the same. They are all Excel spreadsheets. In the spreadsheets, each trading platform used by Halifax AU and Halifax NZ is listed. For each day of the year, the equity held in each trading platform and the total amount of equity across all trading platforms are listed. The spreadsheet also contains currency conversion rates for some of the trading platforms.
- 17. The Daily Equity Reports maintained by Halifax IT from 2010 to 2018 are as follows:
 - (a) From 10 September 2010 to 2014, Halifax IT maintained Daily Equity Reports for the Saxo, IB, GFT, Gain, FXDD, FXCM, Infinity and Dukascopy trading platforms.
 - (b) In 2015, Halifax IT maintained Daily Equity Reports for the Saxo, IB, GFT, Gain, FXDD, FXCM and Infinity trading platforms (2015 Daily Equity Report). The 2015 Daily Equity Report refers to the Dukascopy trading platform, but records no equity held in that platform.
 - (c) In 2016, Halifax IT maintained Daily Equity Reports for the Saxo, IB, GFT, Gain, FXCM, MT4 and MT5 trading platforms (**2016 Daily Equity Report**). The MT4 trading platform is listed as "Halifax Pro" in the 2016 Daily Equity Report. The Daily Equity Reports for MT4 began on 15 February 2016. The MT5 trading platform is listed as "Halifax Plus" in the 2016 Daily Equity Report. The Daily Equity Reports for MT5 began on 1 August 2016. The 2016 Daily Equity Report refers to the FXDD, Infinity and Dukascopy trading platforms, but records no equity held in those platforms.
 - (d) In 2017 and 2018, Halifax IT maintained Daily Equity Reports for the trading platforms used by Halifax AU and Halifax NZ. Mr Couto and Mr Clissold have been unable to locate copies of those Daily Equity Reports in the books and records of Halifax AU and Halifax NZ.

Annexure M: March 2017 Collateral Report

- 18. The March 2017 Collateral Report contains the following worksheets:
 - (a) "Summary";
 - (b) "Collateral";
 - (c) "FXCM Equity Report";
 - (d) "BWA Snapshot";
 - (e) "NAB Snapshot";
 - (f) "TD's + ANZ + BWA USD";
 - (g) "Dormant Accounts";
 - (h) "exchange rates";
 - (i) "Bonus";
 - (j) "FXCM".
- 19. The "Summary" worksheet contains the following five tables, which pull information from the other worksheets.
- 20. First, the "Cash Report" table provides a summary of cash held in certain accounts in the name of Halifax AU and Halifax NZ and with other third parties. The "Cash Report" table contains the following line items:
 - (a) "Counterparty Collateral" is the cash held with third parties, including Interactive Brokers; Halifax NZ; FXCM, which was a trading platform that operated in New Zealand and from which Halifax AU purchased a number of investor accounts in June 2016; and Invast, which was a hedging provider. The data used to populate the "Counterparty Collateral" line item comes from the "Collateral" worksheet.
 - (b) "Bank TD" consists of (i) the AFSL Term Deposit; (ii) the Second Sydney Office Term Deposit; (iii) the Auckland Office Term Deposit; and (iv) the FSP Term Deposit. The data used to populate the "Bank TD" line item comes from the "TD's + ANZ + BWA USD" worksheet.
 - (c) "BWA Balances" is the total of all of the balances in the AUD accounts held by Halifax AU with Bankwest, excluding the term deposits captured in the "Bank TD" line item. The data used to populate the "BWA Balances" line item comes from the "BWA Snapshot" worksheet. The accounts included in the total for BWA Balances line item and listed in the "BWA Balances" worksheet are (i) the

Saxo Suspense Account; (ii) the Saxo Allocated Account; (iii) the IB Suspense Account; (iv) the IB Allocated Account; (v) the Halifax Pro Allocated Account; (vi) the Halifax Pro Suspense Account; (vii) the Gain Suspense Account; (viii) the Gain Allocated Account; (ix) the Halifax Grouped Account; (x) the GFT Suspense Account; (xi) an account with the nickname "GFT ALLOCATED Trust Account" with a BSB of 302-100 and an account number of 810801 (GFT Allocated Account); (xii) the Unallocated Account, which was called the "Bad Debts Southport Account" in the BWA Snapshot worksheet; (xiii) the Bad Debts Victoria Account; (xiv) the Mirus Suspense Account; (xv) the Mirus Allocated Account; (xvi) the FXDD Suspense Account; (xvii) the FXDD Allocated Account; (xviii) the FXCM Suspense Account; (xix) the FXCM Allocated Account; (xx) the Infinity Allocated Account; (xxi) the Infinity Suspense Account; (xxii) the FX Suspense Account; (xxiii) the FX Allocated Account; (xxiv) the Credit Card Merchant Account; (xxv) the Halifax Group Allocated Account; (xxvi) the FX Pro Suspense Account; (xxvii) the FX Pro Allocated Account; and (xxviii) the Merchant Account.

- with NAB, excluding the NAB Company Account and the Third NAB Company Account. The data used to populate the "NAB Balances" line item comes from the "NAB Snapshot" worksheet. The accounts included in the total for "NAB Balances" line item and listed in the "NAB Snapshot" worksheet are (i) the Second NAB Company Account; (ii) the NAB CHF Account; (iii) the NAB EUR Account; (iv) the NAB GBP Account; (v) the NAB HKD Account; (vi) the NAB USD Account; (vii) the NAB JPY Account; and (viii) the NAB SGD Account. These amounts have been converted to AUD using the foreign currency conversion rates in the "exchange rates" worksheet. The conversion rates in the "exchange rates" worksheet were the rates on the IB Platform at the date the collateral report was prepared.
- (e) "BWA USD" is the balance of the Money Market Call Account, a USD account held by Halifax AU with Bankwest. The data used to populate the "BWA USD" line item comes from the "TD's + ANZ + BWA USD" worksheet.
- (f) "ANZ NZD" is the balance of the ANZ HNZ Account, a NZD account held by Halifax NZ with ANZ. The data used to populate the "ANZ NZD" line item comes from the "TD's + ANZ + BWA USD" worksheet.

- 21. Secondly, the "MT4 / MT5 Bonus" table provides a total of the bonus credits available to MT4 and MT5 investors by Halifax AU in AUD, NZD and USD. The data used to populate this table comes from the "Bonus" and "exchange rates" worksheets. The "Bonus" worksheet consists of an internal spreadsheet that was maintained by Halifax Treasury prior to 23 November 2018. The "Bonus" worksheet accounts for all bonus credits available to investors on the MT4 and MT5 platforms.
- 22. Thirdly, the "Client's Equity (MT4 / MT5 / FXCM)" table provides a summary of the equity balances held on the MT4, MT5 and FXCM platforms and the equity held in dormant accounts. The equity balances held on the MT4, MT5 and FXCM platforms are in the following line items:
 - (a) "MT4 Equity" is the total balance of all individual investor accounts on the MT4 platform. This figure was directly typed into the "Client's Equity (MT4 / MT5 / FXCM)" table by the person who prepared the collateral report, usually Mr Couto. The figure was taken from the MT4 Equity Reports, which are described above at [4]-[9] in **Annexure K**.
 - (b) "MT5 Equity" is the total balance of all individual investor accounts on the MT5 platform. This figure was directly typed into the "Clients Equity (MT4 / MT5 / FXCM)" table by the person who prepared the collateral report, usually Mr Couto. The figure was taken from the MT5 Equity Reports, which are described above at [4]-[5] and [10]-[14] in **Annexure K**.
 - (c) "FXCM Equity" is the total balance of all individual investor accounts, which were transferred to Halifax AU from FXCM around June 2016. The data used to populate the "FXCM Equity" line item is taken from the "FXCM Equity Report" worksheet. Some of the data in the "FXCM Equity Report" worksheet is taken from the "FXCM" worksheet.
- 23. The equity held in dormant accounts is in the "Dormant Accounts" line item, which has the total balance of the accounts listed in the "Dormant Accounts" worksheet. The accounts listed in this worksheet represent equity which has been deducted from investor accounts on the Infinity, FXCM, Saxo, FXDD and IB platforms, based on criteria set by Mr Worboys and Mr Barnett, mainly relating to inactive accounts over a certain period.
- 24. In addition, the "Bonus Funds" line item in the "Client's Equity (MT4 / MT5 / FXCM)" table deducts bonus credits from the equity held on the trading platforms and the equity balance of the Dormant Accounts. The March 2017 Collateral Report thus assumes

- that the bonus credits available to MT4 and MT5 were not currently payable to investors, and so should be excluded from the total client equity.
- 25. Fourthly, the "Equity Held by Halifax (MT4 / MT5 / FXCM)" table contains the total of the assets held by Halifax AU and Halifax NZ available to meet investor entitlements on the MT4 and MT5 platforms. The table consists of two line items:
 - (a) "IB Prop Account NAV (less Cash)" is the balance of the assets held in the IB AU Prop Account by Halifax AU less cash held in this account. The cash held in this account is included in the "Total Cash Halifax" line item, which is the second line item in the "Equity Held by Halifax (MT4 / MT5 / FXCM)" table.
 - (b) "Total Cash Halifax" is the balance of cash held by Halifax AU. This balance is taken from the total of the "Cash Report" table discussed above at [20] in **Annexure M**.
- 26. Fifthly, there is a table with four columns with the following headings: "Sum of Balance"; "MT4"; "MT5"; and "total". The numbers in the table are all directly typed into the worksheet. I do not know where the data in this table comes from or what it relates to.
- 27. Some of the Collateral Reports do not include figures relating to the assets (such as cash and stocks) and client equity positions held with Interactive Brokers in the IB AU Master Account and the IB NZ Master Account. However:
 - In the June 2017 to November 2018 Collateral Reports, the client equity positions in the IB AU Master Account and IB NZ Master Accounts are reflected in the "Client's Equity" table. However, given that positions are held 1:1 on these platforms, there is no corresponding figure in the "Equity held by Halifax (MT4/MT5/FXCM) table". Accordingly, the amounts in the IB AU Master Account and the IB NZ Master Accounts are not included in the net client equity calculation in the Collateral Reports.
 - (b) The IB AU Prop Account, which holds stocks relating to client equity positions on the MT5 platform, is reflected in the collateral reports.

Annexure N: SLF Reports

- 28. The Sample SLF Report contains the following worksheets:
 - (a) "How to read", which provides a diagram instructing Halifax Treasury how to account for transfers between various Halifax AU and Halifax NZ bank accounts (SLF Report Diagram). For example, the diagram indicates that "Client deposits" from "Client individual external bank accounts" are accounted for on the "Non Allocated Non Trust" worksheet. The diagram then indicates that "Identified deposits" of this nature should then be transferred to bank accounts included in either the "Allocated Account Trust" worksheet or the "Allocated Account Non Trust" worksheet. I do not know the basis on which the SLF Report Diagram was prepared.
 - (b) "NON-ALLOCTAED NON TRUST", which recorded the balance of cash of suspense accounts operated by Halifax AU and Halifax NZ as at December 2015;
 - (c) "ALLOCATED TRUST", which recorded the balance of cash of the Saxo Allocated Account and the IB Allocated Account as at December 2015;
 - (d) "ALLOCATED NON TRUST", which recorded the balance of cash as at December 2015 of the following accounts:
 - (i) the GFT Allocated Account;
 - (ii) an account referred to as the "ALARON ALLOCATED Trust Account", which was held with Bankwest and had a BSB of 302-100 and an account number of 0828250;
 - (iii) the Mirus Allocated Account;
 - (iv) the Gain Allocated Account;
 - (v) the Infinity Allocated Account;
 - (vi) the FXDD Allocated Account;
 - (vii) the FXCM Allocated Account;
 - (viii) the Halifax Pro Allocated Account, which was referred to as the "MACQ ALLOCATED Trust Account" in the "ALLOCATED NON-TRUST" worksheet;
 - (ix) the FX Pro Allocated Account;

- (x) an account referred to as the "PEPPERSTONE ALLOCATED Trust Ac", which was held with Bankwest, had a BSB of 302-100 and account number of 9325730; and
- (xi) the Second NAB Company Account, which was referred to as "NAB MULTI CURRENCY AUD" in the "ALLOCATED NON TRUST" worksheet.

From my review of the books and records of Halifax AU and Halifax NZ, I assume that the accounts above were allocated accounts of the trading platforms, except for the IB Platform and the Saxo Platform, used by Halifax AU and Halifax NZ as at December 2015. I am unable to ascertain why these accounts were included in the "ALLOCATED NON TRUST" worksheet.

- (e) "NON-PLATFORM NON TRUST", which recorded the balance, as at December 2015, of bank accounts that do not contain the name of a trading platform in the name of the account. These accounts are:
 - (i) the Halifax Group Allocated Account, which is a Company Account;
 - (ii) three Term Deposits, including the Auckland Office Term Deposit and the FSP Term Deposit; and
 - (iii) foreign currency accounts namely, the Money Market Call Account; the NAB USD Account; the NAB GBP Account; the NAB EUR Account; the Halifax AU NZD Account; the NAB HKD Account; the NAB SGD Account; the NAB JPY Account; the NAB CHF Account and the ANZ HNZ Account.

I have been unable to ascertain why these accounts were included in the "NON-PLATFORM NON TRUST" worksheet.

- (f) "COUNTERPARTY TRUST", which refers to "Saxo" and "Interactive Brokers" and states that it is for "Jeff [Mr Worboys] to fill in";
- (g) "COUNTERPARTY NON TRUST", which is blank;
- (h) "HALIFAX ACCOUNTS", which lists the bank, name and account number of bank accounts maintained by Halifax AU and Halifax NZ with Bankwest, NAB and ANZ;

- (i) "FOREIGN CURRENCY RATES", which lists exchange rates taken from the IB Platform:
- (j) "DORMANT ACCOUNTS NON TRUST", which records the balance of accounts which Halifax AU considered to be dormant on the Infinity, FXCM, Saxo, FXDD and IB Platforms and would not be claimed by investors. I am unable to ascertain how the balances in this table were calculated and the basis on which accounts were considered dormant;
- (k) "UNFUNDED ACCOUNTS ALL" I am unable to ascertain what this worksheet included;
- (I) "NOTES", which contains a record of internal transfers between Halifax bank accounts. I understand that these notes were prepared to assist Halifax Treasury in keeping track of transfers of Client Moneys. I am unable to verify the accuracy or completeness of the information in this worksheet. The "NOTES" made are not relevant to my review of the SLF reports for the purpose of determining the Date of Trust Deficiency or any Client Moneys Shortage;
- (m) "BWA Snapshot", which records the balance of bank accounts held by HalifaxAU with Bankwest as at December 2015; and
- (n) "NAB Snapshot", which records the balance of bank accounts held by Halifax AU with NAB as at November 2015.
- 29. The "NON-ALLOCATED NON TRUST", "ALLOCATED TRUST", "ALLOCATED NON TRUST" and "NON-PLATFORM NON TRUST" worksheets each have the following seven columns:
 - (a) the "Reference" column, which records the name of the bank account or the name that Halifax Treasury gave to a bank account in order to identify it internally;
 - (b) the "Bank" column, which records the bank with which the bank account was held;
 - (c) the "Bank Account" column, which records the BSB and account number for each bank account;
 - (d) the "Foreign Balance" column, which records the balance of cash as at 31 December 2015 in a bank account if it was held in a foreign currency and which is marked "n/a" for AUD accounts;

- (e) the "Australian Balance" column, which records the balance of cash as at 31 December 2015 for each account held in AUD and which is marked "n/a" for foreign currency accounts;
- (f) the "Converted AUD Balance" column, which records the balance of cash in each account as at 31 December 2015 in AUD, using the exchange rate provided by the IB Platform; and
- (g) the "Rate if converted" column, which contains the exchange rate provided by the IB Platform and is marked "n/a" for AUD accounts.
- 30. The exchange rates in the "Rate if converted" column are taken from the "FOREIGN CURRENCY RATES" worksheet.
- 31. The SLF Report Diagram is at the bottom of each of the "NON-ALLOCATED NON TRUST", "NON-ALLOCTAED NON TRUST", "ALLOCATED TRUST", "ALLOCATED NON TRUST", "NON-PLATFORM NON TRUST", "COUNTERPARTY TRUST" and "COUNTERPARTY NON TRUST", with a circle indicating the part of the diagram to which the accounts in the relevant worksheet relate.

Annexure O: Estimated June 2016 Collateral Report

- 32. With one exception, the Estimated June 2016 Collateral Report generally has the same worksheets as the March 2017 Collateral Report, described above at [18]-[26] in **Annexure M**. The exception is that the Estimated June 2016 Collateral Report contains an "FXCM" worksheet with the same type of data as the "FXCM Equity Report" worksheet in the March 2017 Collateral Report. The Estimated June 2016 Collateral Report does not contain a worksheet with the same type of data as the "FXCM" worksheet in the March 2017 Collateral Report.
- 33. The "Summary" worksheet of the Estimated June 2016 Collateral Report contains three tables.
- 34. First, the "Cash Report" table which contains the same type of data as the "Cash Report" table in the March 2017 Collateral Report. As at June 2016, the total cash held by Halifax AU and Halifax NZ in the accounts encompassed by the line items in this table was A\$10,788,394.24.
- 35. Secondly, the "Bonus Balance" table contains the same type of data as the "MT4 / MT5 Bonus" table in the March 2017 Collateral Reports. As at June 2016, the total bonus credits available to MT4 and MT5 investors by Halifax AU was A\$531,345.04.
- Thirdly, the "Client's Equity" table contains the same type of data as the "Client's Equity (MT4 / MT5 / FXCM)" table in the March 2017 Collateral Report as well as the following four additional line items:
 - (a) "I214923 AU Master" is the total balance of individual client accounts on the IB AU platform. This information is taken from an IB Equity Report. IB Equity Reports are described above at [1]-[3] in Annexure J.
 - (b) "I1439481 NZ Master" is the total balance of individual client accounts on the IB NZ platform. This information is taken from an IB Equity Report.
 - (c) "Saxo Equity" is the total balance of individual client accounts on the Saxo platform. This information is taken from the 2010-2012 Daily Equity Report, described above at [17(a)] in Annexure L.
 - (d) "Unallocated Funds (Suspense BWA Accounts)" is the total balance of Unallocated Moneys held in various Bankwest accounts by Halifax AU. This balance is taken from the "BWA Snapshot" worksheet. The accounts included in the balance of Unallocated Funds are the IB Suspense Account; the Halifax Pro Suspense Account; the Saxo Suspense Account; and the Gain Suspense Account.

- 37. The "Summary" worksheet in the Estimated June 2016 Collateral Report contained two additional data points. These were:
 - (a) "(Total Cash Held) Asset", which was the same as the total in the "Cash Report" table" that is, A\$10,788,394.24; and
 - (b) "(non 1:1 client equity) Liability", which was the total of the "Dormant Accounts", "Unallocated Funds (Suspense BWA Accounts)", "MT4 Equity" and "FXCM Equity" line items, less the "Bonus Funds" line item, in the "Client's Equity" table. This total was A\$11,722,236.31.

Annexure P: Estimated May 2012 Report

- 38. The Estimated May 2012 Report contains the following worksheets:
 - (a) "Summary";
 - (b) "Equity";
 - (c) "Bank Balances";
 - (d) "Saxo Balances";
 - (e) "FXCM Clearing"; and
 - (f) "Exchange Rates".
- 39. The "Summary" worksheet contains the following features.
- 40. First, the trading platforms offered to investors by Halifax AU as at May 2012 are listed in the first column of the "Summary" worksheet. According to the "Summary" worksheet, these were Saxo, IB, GFT, Gain, FXDD, FXCM and Dukascopy.
- 41. Secondly, the second column is titled "Equity". It lists the total client equity balances for each of the platforms identified in the first column. The data used to populate the "Equity" column comes from the "Equity" worksheet. The data in the "Equity" worksheet comes from 2010-2012 Daily Equity Report, which is described above at [17(a)] in **Annexure L**.
- 42. Thirdly, the third column is titled "Collateral". It lists collateral held by third parties on behalf of Halifax AU in respect of the trading platforms in the first column.
- 43. The amount of collateral held in relation to the Saxo trading platform comes from the "Saxo Balances" worksheet. This worksheet contains an "end of day" file for 4 May 2012, which was generated from the Saxo trading platform by Mr Couto on 4 May 2012. This "end of day" file lists each open trade on the Saxo platform and the nominal value for each trade as at close of trading on 4 April 2012. Halifax AU held a number of "house accounts" on the Saxo platform. The amount of collateral in relation to the Saxo trading platform was calculated by adding up the value of the collateral in the house accounts.
- 44. The amount of collateral held in relation to the IB AU platform was directly typed into the spreadsheet by Mr Couto. The source for this amount is a report setting out the cash balance of the IB AU Master Account, excluding client accounts, as at 4 May 2012 (IB AU Master Account 4 May 2012 Report). The amount of collateral is recorded as "Ending Cash" in the IB AU Master Account 4 May 2012 Report. This

- report was generated by Mr Couto from the IB AU platform on 4 May 2012. A copy of this report is at pages 1833-1842 of the Exhibit.
- 45. The amount of collateral held in relation to GFT was directly typed into the spreadsheet by Mr Couto. The source for this amount is a report which was generated by GFT showing the client account balances and the margin required to be held by Halifax AU (GFT Account 4 May 2012 Report). The amount of collateral is recorded as "Halifax Omnibus Balance" in the GFT Account 4 May 2012 Report. This report was generated by Mr Couto from the GFT platform on 4 May 2012. A copy of this report is at pages 1843-1891 of the Exhibit.
- The amount of collateral held in relation to Gain and FXDD was directly typed into the spreadsheet by Mr Couto. The sources for these amounts are emails sent to Halifax Treasury by Gain and FXDD on 5 May 2012 and 7 May 2012 respectively. A copy of the email from Gain providing the sum of the "Net Cash" (in USD) held as at as at the end of 4 May 2012 is at pages 1925 of the Exhibit. A copy of the equity report for Gain as at the end of 4 May 2012 is at pages 1892-1906 of the Exhibit. A copy of the email from FXDD providing the balance of the "Cash account" in USD as at the end of 4 May 2012 is at pages 1926 of the Exhibit. A copy of the equity report for FXDD as at the end of 4 May 2012 is at pages 1907-1923 of the Exhibit. Both of the collateral figures in the emails described in this paragraph are converted to AUD in the "Summary" worksheet of the Estimated May 2012 Report using the exchange rates in the "Exchange rates" worksheet.
- 47. The amount of collateral held in relation to Dukascopy was directly typed into the spreadsheet by Mr Couto. The source for this amount is a Dukascopy portfolio report as at 4 May 2012 (**Dukascopy Portfolio Report**). A copy of the Dukascopy Portfolio Report is at pages **1924** of the **Exhibit**. The amount of collateral is the total balance of the "partner account AUD" in the top row of the Dukascopy Portfolio Report. The Dukascopy Portfolio Report was located amongst the books and records of Halifax AU.
- 48. Fourthly, there is a row called "Cash", which provides a summary of cash held in certain bank accounts and Term Deposits in the name of Halifax AU. According to the Estimated May 2012 Collateral Report, as at May 2012, the total "Cash" held by Halifax AU was A\$26,152,106.26. This amount appears in the "Collateral" column, described above at [42], and the "Assets" column, described below at [54] in **Annexure P**. The amount in the "Cash" row is taken from the "Bank Balances" worksheet.
- 49. The "Bank Balances" worksheet has the heading "Halifax Trust Accounts". It contains the balance of the following accounts:

Counterparty reference	Bank	Currency
Saxo Bank	Bankwest	AUD
Interactive Brokers	Bankwest	AUD
GFT	Bankwest	AUD
GAIN	Bankwest	AUD
Interbank FX	Bankwest	AUD
Dukascopy	Bankwest	AUD
FXCM	Bankwest	AUD
FXDD	Bankwest	AUD
Macquarie Bank	Bankwest	AUD
HSBC Multi Currency AUD	HSBC	AUD
Bankwest Term Deposit	Bankwest	AUD
Gold Term Deposit	Bankwest	AUD
HSBC Term Deposit I	HSBC	AUD
HSBC Term Deposit II	HSBC	AUD
Citibank Term Deposit	Citibank	AUD
USD	HSBC	USD
STERLING	HSBC	GBP
EURO	HSBC	EUR
YEN	HSBC	JPY
HONG KONG	HSBC	HKD
NZD	HSBC	NZD
SGD	HSBC	SGD
USD	BANKWEST	USD

- 50. The "Counterparty reference" is the platform to which the funds relate or the purpose for which the funds are held that is, as a term deposit or foreign currency account.
- 51. From my conversations with Mr Couto, I believe that Halifax Treasury prepared the "Halifax Trust Accounts" document in 2012 based on information available to it about

Halifax AU's bank accounts and Term Deposits. The balances were directly typed into the worksheet. The source for some of this information is two internal Excel spreadsheets maintained by Halifax Treasury:

- (a) The balances of the Bankwest accounts held by Halifax AU which were not foreign currency accounts and which were not Term Deposits are recorded in an Excel spreadsheet called "BWA Transactions" (Bankwest Transactions Spreadsheet). A copy of the Bankwest Transactions Spreadsheet is at pages 1-3825 of the Confidential Exhibit. The Bankwest Transactions Spreadsheet lists the transactions for these accounts from 2009-2018. There is a worksheet for each year. Each worksheet is organised chronologically, with the dates of the year in ascending order. For each transaction, the bank account where the transaction occurred is identified by BSB and account number and there is a "narration". Each day a member of Halifax Treasury downloaded the bank statements from the Bankwest online portal in Excel format and copied and pasted them into the Bankwest Transactions Spreadsheet.
- (b) The balances of the foreign currency accounts held by Halifax AU and Halifax NZ were recorded in an Excel spreadsheet called "Foreign Currency Accounts" (Foreign Currency Transactions Spreadsheet). A copy of the Foreign Currency Transactions Spreadsheet is at pages 3826-4131 of the Confidential Exhibit. The "Foreign Currency Transactions Spreadsheet" contains a worksheet for each foreign currency account. On each worksheet, transactions are recorded in chronological order, with dates of the year in ascending order. Each day a member of Halifax Treasury downloaded the bank statements from the online portal for each bank account in Excel format and copied and pasted them into the Foreign Currency Transactions Spreadsheet. Sometimes Halifax Treasury made additional notes next to certain transactions.
- 52. The "Halifax Trust Accounts" document also includes the balances of Term Deposits. From my conversations with Mr Couto, I understand that Halifax Treasury did not maintain an Excel spreadsheet recording the balance of Term Deposits in the same way as the Bankwest Transactions Spreadsheet and Foreign Currency Transactions Spreadsheet. I do not know the source of the Term Deposit balances in the "Bank Balances" worksheet.
- 53. From my review of the books and records of Halifax AU and my discussions with Mr Couto, it seems that "Halifax Trust Accounts" documents were prepared periodically.

- 54. Fifthly, in the "Summary" worksheet, there is a column titled "Assets" for each platform. For the Saxo and IB platform, the "Assets" are the total of the "Equity" and "Collateral" columns. The positions on these platforms were exchange-traded.
- 55. For the other platforms listed in the first column, the amounts in the "Assets" column are the same as the amounts in the "Collateral" column. These platforms did not hold stocks. Instead, there was a pool of money, including the margin paid, as collateral for the hedged trades by Halifax AU.
- 56. Sixthly, there is a "Liability" column which is the same as the "Equity" column for each platform. According to the Estimated May 2012 Report, the total "Liability" as at 4 May 2012 was A\$98,600,189.56.