



**Halifax New Zealand Limited
(In Liquidation) (the Company)**

**Company Number 2130897
NZBN 942 903 274 8079**

Liquidators' fifth report

14 October 2021

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Contents

Section	Page
1 Introduction	2
2 Statutory reporting	2
3 Restrictions	2
4 Current position	3
5 Investigation into the Company's affairs	5
6 Professional fees and internal disbursements	5
7 Conduct and estimated timeframe for a distribution	5
8 Reporting obligations	6
9 Future reporting	6
10 Queries	6
Annexures	7
A – Liquidators' operating account - receipts & payments to 22 September 2021	8
B – Company pre-appointment trust accounts receipts and payments to 22 September 2021	9
C – Other company pre-appointment accounts receipts and payments to 22 September 2021	10
D – Appointee segregated accounts receipts and payments to 22 September 2021	11
E – Detailed analysis for fees incurred from 22 March 2019 to 30 June 2021	12
F – List of creditors	13

1 Introduction

Morgan Kelly, Phil Quinlan and Stewart McCallum were appointed as Administrators of the Company on 27 November 2018 pursuant to Section 239I of the Companies Act 1993 (the **Act**). The appointment followed the appointment of the same Administrators to the Australian entity, being Halifax Investment Services Pty Limited (**Halifax AU**) on 23 November 2018.

At the watershed meeting held on 22 March 2019, creditors resolved that the Company be wound up pursuant to Section 239ABA of the Act and that the Administrators be appointed as Liquidators of the Company. As previously advised, Stewart McCallum has since resigned as Liquidator of the Company effective from 9 May 2019.

For the purposes of this Report, the Company and Halifax AU are collectively referred to as the Halifax Group. Investor clients of the Halifax Group are referred to as Investors.

2 Statutory reporting

This report has been prepared pursuant to section 255(2)(d) of the Act and covers the six month period from 23 March 2021 to 22 September 2021 (**This Report**).

This Report should be read in conjunction with the Liquidators' previous reports and updates, and in particular the Liquidators' updates to Investors dated 2 June 2021 and 11 August 2021 as well as the Investor FAQ dated 13 August 2021.

These documents are available at the following links:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-update-to-investors-2-june-2021.pdf>

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-update-to-investors-11-august-2021.pdf>

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-investor-faq-13-august-2021.pdf>

Copies of all previous reports and updates are available at the following link:

<https://home.kpmg/au/en/home/creditors/halifax-nz-limited.html>

3 Restrictions

This Report has been prepared in accordance with and for the purpose of section 255 of the Act. It is prepared for the sole purpose of reporting on the state of affairs of the Company in liquidation and the conduct of the liquidation. It is not the intention that This Report is available for general circulation nor should it be reproduced in full or in part without the Liquidators' written consent.

In preparing This Report, the Liquidators have relied upon information, documentation and explanations provided to them by various parties. The information, documentation and explanations have not been independently verified or audited as at the date of compiling This Report. The Liquidators accept no responsibility for the completeness or accuracy of the information contained in This Report, nor do they accept liability for any losses occasioned to any party due to the circulation, publication, reproduction, or use of This Report.

The Liquidators reserve the right to review and amend This Report in light of any additional information and explanations that become available, although they are under no obligation to do so.

All amounts are in NZD unless specified.

4 Current position

4.1 Matters addressed during the liquidation

During the reporting period the primary focus of the Liquidation has been:

- Preparation and planning for the cash distribution to Investors including the preparation of a detailed process map, working with MYOB on the deployment of the online investor portal and review of bonus credit adjustments required.
- Undertaking a detailed review of the judgments handed down by their Honours Justice Markovic and Justice Venning of the Federal Court of Australia and the High Court of New Zealand respectively and liaising with the legal team regarding the implications of the Orders. Preparation of updates to Investors in respect of the Orders and responding to a high volume of queries from Investors.
- Preparing correspondence to Investors in respect of the Category 3 and 5 Orders and undertaking a verification analysis of over 140 claims received by Investors as well as responding to a high volume of queries relating to this process.
- Preparing for an appeal filed by the solicitors for the First Defendant (the **Appeal**) which was heard by way of a joint hearing between the Courts in Australia and New Zealand on 23 September 2021 (further details below at 4.1.1).
- Investigations of potential antecedent transactions to seek to maximise the return to Investors and creditors, and potential claims against third parties in relation to conduct which occurred prior to the appointment of the Voluntary Administrators.
- Liaising with the legal team and equity market experts to agree the most appropriate method for the eventual closing out of remaining open positions.

4.1.1 Status of the Client Money Proceedings

Their Honours Justice Markovic and Justice Venning of the Federal Court of Australia and the High Court of New Zealand respectively handed down their judgments and made consequential orders in the client money proceedings on 19 May 2021.

The judgments and orders are available at the following links:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-judgmentjustice-markovic-19-may-2021.pdf>

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-nz-limited/halifax-nz-judgmentjustice-venning-19-may-2021.pdf>

The solicitors for the First Defendant, Mr Loo, filed an Application for extension of time and leave to appeal in the Federal Court of Australia and a Notice of Appeal in the Court of Appeal in New Zealand on 15 and 16 June 2021. The position taken by Mr Loo in the Appeal is that their Honours erred in concluding that the Liquidators of Halifax AU and Halifax NZ were justified in adopting 27 November 2018 as the date at which the proportionate entitlements of Investors are calculated and that the date at which proportionate entitlements are calculated should be as close as possible to the distribution date and, in any event, only once all remaining open positions have been realised by the Liquidators.

The Appeal was held by way of a joint hearing between the Courts in Australia and New Zealand on 23 September 2021. As expected, both Courts reserved judgment. We will provide a further update to Investors in respect of the outcome of the Appeal once the judgments have been handed down.

4.1.2 Assets

A summary of the assets held by Halifax NZ as at 22 September 2021 is as follows:

Assets	NZ\$	AU\$
Cash held in trust accounts operated by the Liquidators	666,210	624,372
Cash and other assets held by Interactive Brokers	65,273,286	61,174,123
Total	65,939,495	61,798,495

All of the assets of the Company are held on trust for the benefit of Investors and are subject to the Client Money Proceedings. The Liquidators are unable to deal with the assets in any way in the absence of Orders from the Court.

4.1.3 Liabilities

No secured creditors have filed claims since our last report. It is not necessary for preferential or unsecured creditors who have already lodged a proof of debt to lodge another proof of debt at this stage. No distributions have been made to unsecured or preferential creditors.

Total preferential creditors are estimated to be \$116,360. Unsecured creditors are estimated to total \$10,968, however this amount includes approximately 2,100 contingent (Investor) creditors of the Company for the value of \$1.

A list of preferential and unsecured creditors is provided at Annexure F. A list of contingent creditors is provided in the Liquidators' first statutory report at:

<https://app.companiesoffice.govt.nz/companies/app/service/services/documents/040842DEC6D7567469635D94121C7D35>

4.1.3.1 Contingent creditors (trust beneficiaries)

Given the deficiency in Investor funds, it appears that there is likely to be a shortfall to Investors from trust assets, however at this stage it is likely that all Investors will receive a substantial portion of their money back.

At this stage, it is not possible to confirm with any certainty the amount of a distribution payable to investors in their capacity as beneficiaries. This is because the date on which the proportionate entitlement of each Investor is to be calculated is dependent on the outcome of the Appeal. Please refer to question 3 of the FAQ document dated 13 August 2021 for the most recent update provided by the Investors in respect of an estimated return. A copy of this document is available at the following link:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-investor-faq-13-august-2021.pdf>

As previously advised, Investors will have an unsecured claim in the Company in the event of a shortfall in trust assets. Any return to unsecured creditors is contingent on future recoveries of Company assets.

At this stage, we anticipate that a cash distribution will be paid to Investors in early 2022.

4.2 Summary of receipts and payments

A summary of receipts and payments for the period 27 November 2018 to 22 September 2021 is provided at **Annexure A**. Please note that this relates only to the Liquidators' operating account which includes all operating receipts and expenses for the Voluntary Administration and Liquidation period and excludes any receipts and payments from the pre-appointment trust accounts and pre-appointment accounts controlled by Halifax NZ on appointment which are summarised at **Annexure B** and **Annexure C** respectively.

A list of the receipts and payments for the period 27 November 2018 to 22 September 2021 for all other accounts opened subsequent to the appointment of the Voluntary Administrators which contain funds held in segregated accounts is provided at **Annexure D**.

5 Investigation into the Company's affairs

The Liquidators are currently investigating the conduct of the Company's director, former directors and various third-party advisors to determine whether there are potential recoveries available to the Liquidators.

In considering the merits of proceeding with any recovery action, a liquidator must have regard to the costs and benefits together with the prospects of success and the financial ability of defendants to meet claims. Recovery actions are often expensive and can involve lengthy delays if court proceedings are required.

A high-level summary of the potential recovery actions being considered by the Liquidators is provided on page 26 of the Report to Investors and Creditors dated 31 August 2020 (link below):

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-report-to-investors-creditors-31-august-2020.pdf>

It is possible that some of the claims outlined above will be subject to litigation and before the Courts at some stage and accordingly, further details of our investigations remain confidential at this stage.

6 Professional fees and internal disbursements

The hourly rates of the Liquidators and their team members, as follows:

Position	Hourly Rate AU\$
Partner	695
Director	625
Associate Director	575
Manager	525
Executive	475
Analyst	375
Support Staff	225

The Liquidators have incurred fees of \$1,977,781 for the period 22 March 2019 to 30 June 2021, representing an average hourly rate of \$544. A detailed analysis of fees incurred is included in Annexure E.

Mr Tony Tesoriero, a former Deputy District Registrar of the FCA continues to be engaged to review the appropriateness of the Liquidators remuneration before it is put before the Courts for final approval.

The remuneration incurred by the Liquidators for the period 1 July 2021 to 22 September 2021 has not yet been approved or paid but is estimated to be approximately AU\$150,000.

7 Conduct and estimated timeframe for a distribution

The Liquidators had previously indicated that a cash distribution could be paid in late 2021, however we now anticipate that the distribution is more likely to be paid in early 2022. The reasons for the delay are set out in the update to Investors dated 11 August 2021:

<https://assets.kpmg/content/dam/kpmg/au/pdf/creditors/halifax-investment-services/halifax-update-toinvestors-11-august-2021.pdf>

This timeline is an estimate only and is subject to change. Please note that there is likely to be an interim distribution of funds to Investors, with a final distribution to follow once various matters are finalised. Events which may delay the payment of the distribution include:

1. The timeframe in which the Appeal is resolved and the length of time between the hearing of the Appeal and the date on which the Courts hand down judgment. This is a matter which is outside of the control of the Liquidators;
2. A large number of Investors disputing their account balance as at 27 November 2018;
3. The possibility of Investors making an application to the Court in relation to their account balance which would have the effect of delaying payment to all Investors; and
4. Issues which may arise with the operation of the Investor Portal including difficulties with verifying the identities of Investors.

We are aiming to be in a position to transfer the Category 3 and Category 5 shares to the relevant Investors by late November 2021. Please refer to the Investor Update dated 2 June 2021 for an explanation of the Category 3 and Category 5 Shares.

8 Reporting obligations

The Liquidators are obligated to evaluate the actions of management, review antecedent transactions and if necessary, report any adverse findings to the appropriate authorities and/or institute proceedings for recovery of funds dissipated.

Should you have any information that you believe would benefit our enquiries then please set out details in writing, attaching copies of all documentary evidence, and send it to the Liquidators. Please note that the Liquidators can only act on written information as undocumented information is deemed to be hearsay only and is inadmissible in court.

9 Future reporting

Reports on the conduct of the liquidation and on proposals for completion of the liquidation will be prepared and distributed six monthly in accordance with section 255 of the Act. A final report will also be prepared and distributed in accordance with section 257 of the Act at the completion of the liquidation.

10 Queries

Questions regarding the Liquidation should be directed to the Liquidators via email at halifax@kpmg.com.au.

Dated 14 October 2021



Morgan John Kelly
Joint and Several Liquidator of **Halifax New Zealand Limited (In Liquidation)**

Annexures

A – Liquidators' operating account - receipts & payments to 22 September 2021

The following table provides a summary of funds held in the Liquidators' operating account as at 22 September 2021.

Liquidators' operating account (NZD)	Voluntary Administration 27 November 2018 to 21 March 2019 (NZ\$)	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total (NZ\$)
Opening cash balance at appointment	-	479,185	
Receipts			
Debtor collections	506	-	506
Receipts from pre-appointment accounts	899	1,706,404	1,707,303
Receipt from pre-appointment term deposit	1,113,565	-	1,113,565
Receipts from other post-appointment accounts	-	1,154,381	1,154,381
Unclaimed monies	21,437	-	21,437
Plant & equipment	-	850	850
Cash at bank	95,447	-	95,447
Funds from Interactive Brokers	-	1,267,224	1,267,224
Total receipts	1,231,853	4,128,858	5,360,711
Payments			
Administration expenses	(7,911)	(237,852)	(245,763)
Administrator/Liquidator Disbursements	-	(173,952)	(173,952)
Administrator/Liquidator Fees	(455,500)	(1,954,189)	(2,409,689)
Bank charges	(112)	(4,511)	(4,623)
Employee expenses	(52,519)	(57,399)	(109,918)
Foreign currency loss	-	(34,055)	(34,055)
Investor receipts	-	(41,271)	(41,271)
Licence expenses	-	(26,644)	(26,644)
Platform & IT expenses	-	(5,080)	(5,080)
Other expenses	-	(8,391)	(8,391)
Occupancy expenses	(9,152)	(45,944)	(55,096)
Subcontractor expenses	-	-	-
Valuation fees	-	-	-
Legal fees & disbursements	(227,475)	(1,986,450)	(2,213,924)
Total expenses	(752,668)	(4,575,739)	(5,328,407)
Closing balance for appointee account	479,185	32,305	

B – Company pre-appointment trust accounts receipts and payments to 22 September 2021

The following table provides a summary of funds held in the pre-appointment trust bank accounts and controlled by the Liquidators as at 22 September 2021. The below analysis excludes the Liquidators' operating account set out in Annexure A.

Pre-appointment trust account or s981 account (NZD)	Voluntary Administration 27 November 2018 to 21 March 2019	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total
Opening cash balance at appointment	1,764,981	1,811,069	
Receipts			
Investor deposits	44,011	37,000	81,011
Interest	2,507	5,028	7,535
Total receipts	46,518	42,028	88,546
Payments			
Transfer to Appointee Account	-	(1,664,980)	(1,664,980)
Other expenses	-	(1,000)	(1,000)
Bank charges	(429)	(130)	(559)
Total payments	(429)	(1,666,110)	(1,666,540)
Closing balance for pre-appointment account	1,811,069	186,987	

Please note, all foreign currency accounts have been converted to NZD based on the RBNZ exchange rate as at 27 November 2018

C – Other company pre-appointment accounts receipts and payments to 22 September 2021

The following table provides a summary of funds held in the pre-appointment bank accounts in the name of Halifax NZ and controlled by the Liquidators as at 22 September 2021. The below analysis excludes the appointee trading account set out in Annexure A.

Pre-appointment company accounts (NZD)	Voluntary Administration 27 November 2018 to 21 March 2019	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total
Opening cash balance at appointment	1,209,910	-	
Receipts			
Reversal of bank charges	-	550	550
Foreign currency gain	-	-	-
Total receipts	-	550	550
Payments			
Funds swept into Appointee trading account	(1,209,910)	-	(1,209,910)
Bank charges	-	(574)	(574)
Total payments	(1,209,910)	(574)	(1,210,484)
Closing balance for pre-appointment account	-	(24)	

Please note, there was an error in our previous report dated 21 April 2020 in that foreign currency gains for the period 23 September 2019 to 22 March 2020 were stated as being NZ\$17, when there were no foreign currency gains for this period. The above table now reflects the accurate charges.

D – Appointee segregated accounts receipts and payments to 22 September 2021

The following table provides a summary of funds held in segregated bank accounts opened by the Liquidators in the name of Halifax NZ which hold funds that have been withdrawn from Investor accounts on the IB NZ platform in accordance with the Orders handed down by the Courts on 2 July 2020.

	Voluntary Administration 27 November 2018 to 21 March 2019	Liquidation 22 March 2019 to 22 September 2021 (NZ\$)	Total
Period from 27 November 2018 to 22 March 2020	VA	Liquidation	Total
Opening cash balance at appointment	-	(8)	
Receipts			
Funds withdrawn from Interactive Brokers as per July 2020 Funding Orders	-	3,682,176	3,682,176
Total receipts	-	3,682,176	3,682,176
Payments			
Interaccount Transfers	-	(542,021)	(542,021)
Legal fees & disbursements	-	(1,968,917)	(1,968,917)
Administration expenses (including Link Market Services)	-	(1,737)	(1,737)
Administrator/Liquidator Fees	-	(68,055)	(68,055)
Administrator/Liquidator Disbursements	-	(200)	(200)
Transfer to Appointee Account	-	(654,000)	(654,000)
Bank charges	(8)	(296)	(304)
Total payments	(8)	(3,235,226)	(3,235,234)
Closing balance for post-appointment segregated account	(8)	446,942	

E – Detailed analysis for fees incurred from 22 March 2019 to 30 June 2021

The following table provides a summary fees incurred for the liquidation period of 22 March 2019 to 30 June 2021.

Staff Classification	Hourly rate / AU\$	FMCR / FMA Trust	Hours per phase								Total (Hrs)	Total AU\$	Average fee per hour (AU\$)
			Investigation	Creditors	Trade on	Assets	Employees	Administration	Dividend	Other Professional Services			
Partner	695	13	363.7	93.8	18.8	1.8	0.5	83.4	10.1	5.2	590.3	410,224	695
Executive Director	650	0	3.3	9.4	-	-	-	3.5	-	-	16.2	10,530	650
Director	625	18.7	375.7	54.2	5.8	4.4	-	47.0	15.2	3.5	524.5	327,797	625
Associate Director	575	1.3	270.1	123.3	63.6	7.9	0.2	64.3	50.3	7.5	588.4	338,308	575
Manager	525	8.4	610.8	194.3	21.3	18.4	-	29.9	3.2	24.5	910.8	478,144	525
Assistant Manager	475	-	6.1	1.8	-	-	-	9.1	-	-	17.0	8,075	475
Executive	475	-	113.8	63.4	35.2	1.9	4.0	17.0	0.7	2.4	238.4	113,246	475
Senior Analyst	425	-	142.2	75.8	40.9	1.5	-	13.8	-	-	274.2	116,535	425
Analyst	375	-	148.0	59.9	64.0	51.9	-	64.7	25.8	6.7	420.9	157,838	375
Accountant	325	-	0.2	0.4	26.6	0.5	-	14.9	-	-	42.6	13,845	325
Vacationer	225	-	1.9	0.3	0.1	-	-	0.3	-	-	2.6	585	225
Accounts Supervisor	225	-	0.3	-	11.5	-	-	-	-	-	11.8	2,655	225
Total		41.4	2,036.0	676.7	287.8	88.3	4.7	347.9	105.2	49.7	3,637.6	1,977,781	544

F – List of creditors

The following table provides a summary of the list of creditor claims the Liquidators have received to date. The Liquidators have not admitted any preferential or non-preferential unsecured creditors' claims.

Creditor	Preferential unsecured (NZ\$)	Non-preferential unsecured (NZ\$)
Digital Island		224
Employee entitlements	79,454	
Get More Traffic HQ		79
HD NET		454
Inland Revenue Department	36,906	8,724
Iris Samia		739
Miriam Samia		2,081
NZME Radio		345
Packaging Recyclers (1992)		12
Receipt Bank Ltd		20
Simply Energy		536
StaffChecks		191
Tech Management Group		541
Unlimited Internet		10
UPWORK		2,931
Verifi Identity Services Ltd		531
Voyager		65
We Clean U		109
Total	116,360	8,868

Please note that due to the quantity of contingent creditors and the confidentiality of this information it is not practical to replicate the list in full in this report. As such the above table does not include a list of individual Halifax NZ client Investors which make up approximately 2,100 contingent creditors of Halifax NZ for the value of \$1. A list of these contingent creditors can be found in the Liquidators' first statutory report at:

<https://app.companiesoffice.govt.nz/companies/app/service/services/documents/040842DEC6D7567469635D94121C7D35>