

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

CIV-2019-404-2049

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

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

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

First Applicants

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

Second Applicant

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

Third Applicants

INTERLOCUTORY ORDER



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

AND TO: the Financial Markets Authority

1. The interlocutory applications made by:

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

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

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

2. The determination was made following a hearing held on 18 February 2020. A Leopold SC (Aust), E Holmes, J S Burnett, M Kersey and S J Jones appeared for the Applicants, E L Smith appeared for Andrew Whitehead and Marlene Whitehead (as trustees for the Beeline Trust) and Andrew Whitehead, and S Munro appeared for Chen Wang. Professor John Knight appeared in person. Counsel for parties appearing in the concurrent Federal Court of Australia hearing in respect of Halifax AU, including counsel for the parties listed at 1(e) to 1(g) above, also made submissions heard by both Courts via audio-visual link.

3. The following orders were made:

- (a) Pursuant to rule 4.23(3) and 4.24 of the High Court Rules 2016 ("**Rules**"), Choo Boon Loo be added as first respondent and appointed to represent all clients of Halifax Australia and all clients of Halifax NZ whose proportionate entitlement to or share of funds from the "Deficient Mixed Fund" (as that phrase is defined in paragraph 189 of the Affidavit of Morgan John Kelly sworn 26 June



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

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



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

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

Date: 28 February 2020



(Registrar/Deputy Registrar)

R KUMAR
DEPUTY REGISTRAR